



# **Bolton NHS Foundation Trust**

## **Constitution**



## Version Control

October 2016		<ul style="list-style-type: none"> <li>• Change to areas of the public constituency</li> <li>• Reduction in number of governors from 39 to 35</li> <li>• Change references to the regulator Monitor to NHS Improvement</li> <li>• Update to model election rules to include electronic voting</li> </ul>
November 2015	7	<ul style="list-style-type: none"> <li>• Membership age reduced to 14</li> </ul>
Nov 2013	6	<ul style="list-style-type: none"> <li>• Addition of version control section</li> <li>• Removal of reference to CCG</li> <li>• Change CRB to DBS</li> <li>• Removal of clauses to establish initial COG and Board</li> <li>• Removal of reference to the Audit commission</li> <li>• Monitor panel</li> <li>• Approval of significant transactions</li> <li>• Change to Constitution approval</li> </ul>
Sept 2012	5	<ul style="list-style-type: none"> <li>• The continuation of the body corporate known as Monitor;</li> <li>• Change from the 'Board of Governors' to the 'Council of Governors';</li> <li>• Requirement for the principal purpose (i.e. provision of goods and services for the health service in England) to be stated in the constitution;</li> <li>• Introduction of the new legal duty to ensure that income of NHS funded goods and services is greater than income from other sources;</li> <li>• Introduction of additional oversight and scrutiny by the Council of Governors over activities generating non-NHS income;</li> <li>• Replacement of HM Treasury with Secretary of State as regards giving guidance over FT accounts</li> </ul>
2011	4	<ul style="list-style-type: none"> <li>• Name changed to Bolton NHS Foundation Trust</li> <li>• Reduced number of out of area governors from four to three</li> </ul>
2010	3	<ul style="list-style-type: none"> <li>• Change to allow flexibility to the number of Directors</li> <li>• Change to limit the number of elections to one per year</li> <li>• temporary addition of Community staff governor</li> </ul>
2009	2	<ul style="list-style-type: none"> <li>• Addition of a Governor to represent LINK</li> <li>• Change to quorum requirement for AMM</li> </ul>
2008	1	<ul style="list-style-type: none"> <li>• approved on authorisation 1st October 2008</li> </ul>

# BOLTON NHS FOUNDATION TRUST CONSTITUTION

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## **1. Name**

The name of the foundation trust is Bolton NHS Foundation Trust (the trust).

## **2. Principal purpose**

- 2.1** The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- 2.2** The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.3** The trust may provide goods and services for any purposes related to -
  - 2.3.1** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 2.3.2** the promotion and protection of public health.
- 2.3** The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## **3. Powers**

- 3.1** The powers of the trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 3.2** The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 3.3** Any of these powers may be delegated to a committee of directors or to an executive director.

## **4. Membership and constituencies**

- 4.1** The trust shall have members, each of whom shall be a member of one of the following two constituencies:
  - 4.1.1** the Public Constituency
  - 4.1.2** the Staff Constituency
- 4.2** The members of the trust are those individuals whose names are entered in the register of members.
- 4.3** Members may attend and participate at members meetings, vote in elections for, and stand for election to the Council of Governors, and

take such other part in the affairs of the trust as is provided in this constitution.

- 4.4 The Trust shall hold members meetings in accordance with the provisions of Annex 8

**5. Application for membership**

- 5.1 An individual who is eligible to become a member of the trust may do so on application to the trust.
- 5.2 Subject to this constitution, membership is open to any individual who is entitled under this constitution to be a member of the Public Constituency or one of the classes of the Staff Constituency, and who (unless they are a member of one of the classes of the Staff Constituency) completes a membership application form in whatever form the Secretary specifies.

**6. Public Constituency**

- 6.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 6.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 6.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

**7. Staff Constituency**

- 7.1 Subject to paragraph 7.3 below an individual who is employed by the trust under a contract of employment (which for the avoidance of doubt includes full and part time contracts of employment) with the trust may become or continue as a member of the trust provided:
- 7.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 7.1.2 he has been continuously employed by the trust and/or the Predecessor Trust under a contract of employment for at least 12 months.
- 7.2 Subject to paragraph 7.3 below individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

- 7.3** For the avoidance of doubt, the eligibility to be a member of the Staff Constituency described at paragraph 7.2 above does not include those who assist or provide services to the trust on a voluntary basis.
- 7.4** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.5** The Staff Constituency shall be divided into four (4) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.6** The Chief Executive of the Trust shall make a final decision about the class of which an individual is eligible to be a member.
- 7.7** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

**Automatic membership by default – staff**

- 7.8** An individual who is:
- 7.8.1** eligible to become a member of the Staff Constituency, and
  - 7.8.2** invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

**8. Restriction on membership**

- 8.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class of the trust.
- 8.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3** A member of any constituency must be fourteen (14) years of age or over
- 8.4** An individual who:

- 8.4.1 has threatened, harassed, harmed or abused staff, patients and/or visitors of the trust or the Predecessor Trust; or
- 8.4.2 has been a vexatious complainant. For the purposes of this paragraph a vexatious complainant is an individual who is found by the trust (applying the relevant trust policy) to have abused or used inappropriately the trust's or the Predecessor Trust's complaints procedure

shall be refused membership of the trust or where an existing member shall have his membership of the trust withdrawn

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

- 9.1 The trust is to have a board of governors, which shall comprise both elected and appointed governors. The board of governors shall be known as the Council of Governors.
- 9.2 The composition of the Council of Governors is specified in Annex 3.
- 9.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are areas or classes within a constituency, by their area or class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each area or class of each constituency, is specified in Annex 3.

## **10. Council of Governors – election of governors**

- 10.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 10.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.
- 10.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.
- 10.4 An election, if contested, shall be by secret ballot.

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

- 11.1 An elected governor may hold office for a period of up to 3 years following each election that resulted in their election as a governor.
- 11.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class or area of the constituency by which he was elected, which, for the avoidance of doubt, includes in respect of

a Public Governor a governor moving their principal residence from one area within the Public Constituency to another.

- 11.3 An elected governor shall be eligible for re-election at the end of his term.
- 11.4 An elected governor may not, if re-elected for more than a single term of office hold office for more than nine (9) consecutive years in total.
- 11.5 The trust shall conduct annual elections for elected governors during each year (being a period of 12 months commencing on an anniversary of the Authorisation Date) in respect of each governor whose term of office shall expire at the end of that year, with any governors elected pursuant to such an annual election taking office on the next anniversary of the Authorisation Date following such election.

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

- 12.1 The following may not become or continue as a member of the Council of Governors:
  - 12.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 12.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - 12.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 12.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 12.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

## **13. Council of Governors – meetings of governors**

- 13.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1 or paragraph 21.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 22 below), shall preside at meetings of the Council of Governors.

**13.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting (whether for the whole or part of such meeting) whenever 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 arising from the nature of that business following appropriate resolution by the Council of Governors

**13.3** The Chairman may exclude any member of the public from a meeting of the Council of Governors if he is interfering with or preventing the proper conduct of the meeting.

**14. Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

**15. Council of Governors - conflicts of interest of governors**

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

**16. Council of Governors – travel expenses**

The trust may pay travelling and other expenses to members of the Council of Governors as determined by the trust.

**17. Council of Governors – referral to the Panel**

17.1 In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing —

17.1.1 to act in accordance with its constitution, or

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

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

**18. Council of Governors – further provisions**

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

**19. Board of Directors – composition**

**19.1** The trust is to have a Board of Directors to manage the business of the trust and to exercise all powers of the trust (subject to any contrary provisions in the 2006 Act and/or this constitution) which shall comprise both executive and non-executive directors.

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

**19.2.1** a non-executive Chairman

**19.2.2** a minimum of five (5) non-executive directors; and

**19.2.3** a minimum of five (5) executive directors.

**19.2.4** The number of executive directors will not exceed the number of non-executive directors excluding the Chairman.

**19.3** One of the executive directors shall be the Chief Executive.

**19.4** The Chief Executive shall be the Accounting Officer.

**19.5** One of the executive directors shall be the finance director.

**19.6** One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

**19.7** One of the executive directors is to be a registered nurse or a registered midwife.

**20. Board of Directors – qualification for appointment as Chairman or another non-executive director**

**20.1** A person may be appointed as the Chairman or another non-executive director only if –

**20.1.1** he is a member of the Public Constituency, and

**20.1.2** he is not disqualified by virtue of paragraph 24 below.

**20.2** The Chairman must on appointment for each and every term of office meet the Independence Criteria and may not have previously served as the chief executive of the trust or the Predecessor Trust.

**20.3** Every other non-executive director must on appointment and throughout his term of office meet the Independence Criteria.

**20.4** The Independence Criteria are that the Chairman on appointment for each and every term of office and every other non-executive director on appointment and throughout his term of office should;

**20.4.1** not have been an employee of the trust within the last five (5) years;

**20.4.2** not have, or have had within the last three (3) years a material interest in any matter within the meaning of paragraph 5.3 of Annex 7;

**20.4.3** not receive or have received additional remuneration from the trust (apart from a director's fee), participate in the trust's performance-related pay scheme (if any) or be or have been a member of the trust's pension scheme;

**20.4.4** not have any close family tie with any director, senior employee or professional advisor to the trust;

**20.4.5** not have any significant business link with any other director of the trust including through any involvement in any company or body; or

**20.4.6** not have served on the trust Board of Directors for more than nine (9) years from the date of their first appointment (including any tenure as a director of the Predecessor Trust).

**21. Board of Directors – appointment and removal of Chairman and/or other non-executive directors**

**21.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the trust and/or the other non-executive directors.

**21.2** Appointment of the Chairman or of a non-executive director shall require the approval of a majority of the members of the Council of Governors.

**21.3** Removal of the Chairman or any other non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**22. Board of Directors – appointment of deputy Chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Deputy Chairman. If the Chairman is unable to discharge their office as Chairman of the trust, the Deputy Chairman shall be acting Chairman of the trust.

**23. Board of Directors - appointment and removal of the Chief Executive and other executive directors**

- 23.1** The Chairman and the other non-executive directors shall appoint or remove the Chief Executive.
- 23.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 23.4** A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors. The Chairman shall act as chairman of such committee.

**24. Board of Directors – disqualification**

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

- 24.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 24.2** a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 24.3** a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 24.4** a person who is a member of the Council of Governors;
- 24.5** a person who is the spouse, partner, parent or child of a member of the Board of Directors (including the Chairman) of the trust
- 24.6** a person who is a member of a local authority's Overview and Scrutiny Committee covering health matters;
- 24.7** a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 24.8** a person whose tenure of office as a chairman or as an officer or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for nondisclosure of a pecuniary interest;
- 24.9** a person who has within the preceding five (5) years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

**24.10** in the case of a non-executive director, a person who has

**24.10.1** refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or

**24.10.2** refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.

**24.11** on the basis of disclosures obtained through an application to the Disclosure and Barring Service (DBS), they are not considered suitable by the trust's director responsible for Human Resources;

**24.12** they are a person who has had his name removed or been suspended from any list (including any performers list maintained by a primary care trust) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included in such a list or had his suspension lifted or qualification reinstated.

**24.13** they have within the preceding five (5) years been:

**24.13.1** made subject to a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41:

**24.13.2** made subject to an interim Hospital Order under section 38 of the MHA;

**24.13.3** made subject to a transfer direction under section 48 of the MHA whether or not subject to restrictions under section 49; and/or

**24.13.4** made subject to an order under the Criminal Procedure (Insanity) Act 1964 as amended

**24.14** they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation.

## **25. Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

## **26. Board of Directors - conflicts of interest of directors**

If a director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by

the Board of Directors, the director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

**27. Board of Directors – remuneration and terms of office**

**27.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

**27.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

**27.3** The trust may reimburse executive directors' travelling and other costs and expenses incurred in carrying out their duties as the remuneration committee of non-executive directors decides. These are to be disclosed in the annual report.

**27.4** The remuneration and allowances for directors are to be disclosed in bands in the annual report.

**28. Registers**

The trust shall have:

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

**28.2** a register of members of the Council of Governors;

**28.3** a register of interests of governors;

**28.4** a register of directors; and

**28.5** a register of interests of the directors.

**29. Admission to and removal from the registers**

**29.1** The Secretary shall add to the register of members the name of any individual who is accepted as a member of the trust under the provisions of this constitution.

**29.2** The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

**30. Registers – inspection and copies**

**30.1** The trust shall make the registers specified in paragraph 29 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

**30.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.

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

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

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

**30.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

**31. Documents available for public inspection**

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

**31.1.1** a copy of the current constitution;

**31.1.2** a copy of the current provider licence;

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

**31.1.4** a copy of the latest annual report;

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

**31.1.6** a copy of any notice given under section 52 of the 2006 Act.

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

**31.3** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

## **32. Auditor**

- 32.1** The trust shall 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.
- 32.2** A person may only be appointed as the auditor if he (or in the case of a firm, each of its members) is a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 32.3** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 32.4** The auditor shall be required to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS Improvement on standards, procedures and techniques to be adopted.

## **33. Audit committee**

The trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

## **34. Accounts**

- 34.1** The Trust must keep proper accounts and proper records in relation to the accounts.
- 34.2** NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 34.3** The accounts are to be audited by the trust's auditor.
- 34.4** The trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 34.5** The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 34.6** In preparing its annual accounts, the Accounting Officer shall require the trust to comply with any directions given by NHS Improvement with the approval of the Treasury as to:
- 34.6.1** the methods and principles according to which the accounts are to be prepared; and
  - 34.6.2** the information to be given in the accounts;

and shall be responsible for the duties of the trust as set out in paragraph 25 of Schedule 7 to the 2006 Act. The trust shall comply with any such requirements of the Accounting Officer.

**34.7** The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a meeting of the Council of Governors.

**34.8** The trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to NHS Improvement.

## **35. Annual report and forward plans**

**35.1** The trust shall prepare an Annual Report and send it to NHS Improvement.

Each Annual Report is to contain:

**35.1.1** information on any steps taken by the trust to secure that (taken as a whole) the actual membership of its Public Constituency and of the classes of the Staff Constituency are representative of those eligible for such membership; and

**35.1.2** any other information NHS Improvement requires including information required by 'the NHS Foundation Trust Code of Governance' as summarised at Schedule A of that Code

35.1.2.1 a statement of how the Board of Directors and the Council of Governors operate, including a high-level statement of which types of decisions are to be taken by each of the boards and which are to be delegated by the board of directors under a scheme of delegation;

35.1.2.2 the names of the Chairman, the Deputy Chairman, the chief executive, the senior independent director and the chairmen and members of the nomination, audit and remuneration committees;

35.1.2.3 the number of meetings of the Board of Directors and the committees set out in paragraph 34.1.2.2 above and individual attendance by directors;

35.1.2.4 the names of the non-executive directors whom the Board of Directors determine to be independent, with reasons where necessary;

35.1.2.5 a description of each director's expertise and experience

35.1.2.6 a clear statement about the Board of Directors' balance, completeness and appropriateness;

35.1.2.7 the names of the governors and details on their constituency, whether they are elected or appointed and the duration of their appointments;

- 35.1.2.8 the number of meetings of the Council of Governors and individual attendance by governors and directors;  
and
  - 35.1.2.9 any other significant commitments of the Chairman and any changes to them during the year.
- 35.2** The trust is to comply with any decision NHS Improvement makes as to:
- 35.2.1** the form of Annual Reports;
  - 35.2.2** when the reports are to be sent to them;
  - 35.2.3** the periods to which the Annual Reports are to relate.
- 35.3** The trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.
- 35.4** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 35.5** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 35.6** Each forward plan must include information about –
- 35.6.1** 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
  - 35.6.2** the income it expects to receive from doing so.
- 35.7** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must –
- 35.7.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
  - 35.7.2** notify the directors of the trust of its determination.
- 35.8** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

**36. Meeting of Council of Governors to consider annual accounts and reports**

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

- 36.1 the annual accounts
- 36.2 any report of the auditor on them
- 36.3 the annual report.

**37. Instruments**

- 37.1 The trust shall have a seal.
- 37.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 37.3 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.

**38. Indemnity**

The trust may provide an indemnity to any member of the Council of Governors, the Board of Directors or the Secretary that if any such person acts honestly and in good faith such person will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the trust. The trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Secretary.

**39. Dissolution of the Trust**

The trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

**40. Mergers etc. and significant transactions**

- 40.1 The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.
- 40.2 The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 40.3 "Significant transaction" means amounts equal to or greater than 25%

of:-

- 40.3.1** in relation to assets, the gross assets (being the sum of fixed assets and current assets) subject to the transaction, divided by the gross assets of the foundation trust
- 40.3.2** in relation to income, the income attributable to the assets or the contract associated with the transaction, divided by the income of the foundation trust
- 40.3.3** in relation to acquisitions or divestments, the gross capital (being the market value of the target's shares and debt securities plus the excess of current liabilities over current assets) of the company being acquired or divested, divided by the total capital (being the total taxpayers' equity) of the Foundation Trust following completion, or the effects on the total capital of the Foundation Trust resulting from a transaction

#### **41. Notices**

- 41.1** 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. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.
- 41.2** A notice shall be treated as delivered forty eight (48) hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, immediately after it was sent provided it was sent between the hours of 09.00 and 17.00 on a working day, and at 09.00 on the next working day if such notice was sent on a non-working day or outside the hours of 09.00 to 17.00 hours.

#### **42. Interpretation and definitions**

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the 2006 Act.

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

the **2006 Act** is the National Health Service Act 2006.

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

the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

**Authorisation Date** means the date that the trust's initial authorisation as an NHS Foundation Trust took effect.

**Financial Year** means: (a) the period beginning with the date on which the trust is authorised as a Foundation Trust and ending with the next 31 March; and (b) each successive period of twelve (12) months beginning with 1 April.

the **Independence Criteria** means those criteria set out at paragraph 19.4 above

**Local Authority Governor** means a governor appointed by one or more local authorities.

the **MHA** means the Mental Health Act 1983.

**NHS Improvement** is the body corporate previously known as Monitor, as provided by Section 61 of the 2012 Act..

**Partnership Governor** means a governor appointed by a partnership organisation.

**Predecessor Trust** means Bolton Hospitals NHS Trust or Royal Bolton Hospital NHS Foundation Trust.

**Public Constituency** means all those individuals who live in the areas specified in Annex 1.

**Public Governor** means a governor elected by the members of one of the areas in the Public Constituency.

**Secretary** means the secretary of the trust or any other person appointed by the trust pursuant to paragraph 2.1 of Annex 7 to perform the duties of the secretary, including a joint, assistant or deputy secretary.

**Staff Constituency** means all those individuals who are eligible for membership of the trust as set out at paragraphs 7.1 to 7.3 (inclusive)

**Staff Governor** means a governor elected by the members of one of the classes of the Staff Constituency.

**terms of authorisation** are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

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

## ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

<b>Areas comprising the Public Constituency</b>	<b>Electoral Wards as set out in The Borough of Bolton (Electoral Changes) Order 2004</b>	<b>Minimum number of Members</b>
Bolton North East	Astley Bridge Bradshaw Brightmet Bromley Cross Crompton Halliwell Tonge with the Haulgh	250
Bolton South East	Farnworth Great Lever Harper Green Hulton Kearsley Little Lever & Darcy Lever Rumworth	250
Bolton West	Atherton Heaton & Lostock Horwich & Blackrod Horwich North East Smithills Westhoughton North & Chew Moor Westhoughton South	250
Out of Area	All electoral divisions in England not falling within an area detailed above in this table as being an area of the Public Constituency	100

## **ANNEX 2 – THE STAFF CONSTITUENCY**

The Staff Constituency is divided into four (4) classes as follows:

1. Nurses and midwives who are registered with their regulatory body to practice.
2. Doctors and dentists who are registered with their regulatory body to practice.
3. Allied health professionals and scientists who are registered with their regulatory body to practice in a clinical capacity.
4. All other staff.

The minimum number of members in each class is to be 20% of the total number of employees who are eligible for membership of that class.

### ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors shall comprise thirty five (35) governors composed as set out below and as illustrated in the following table:

- Twenty (20) governors elected by members of the trust from the Public Constituency with each area as set out in Annex 1 appointing six (6) governor save that the out of area area of the Public Constituency may appoint two (2) governors:
- six (6) governors elected by the Staff Constituency, with the following number of governors elected from each class within the Staff Constituency by that class:

Nurses and midwives who are registered with their regulatory body to practise	2
Doctors and dentists who are registered with their regulatory body to practise	1
Allied health professionals and scientists who are registered with their regulatory body to practise in a clinical capacity	1
All other staff	2

- Two (2) governors appointed by Bolton Metropolitan Borough Council or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency set out at Annex 1.
- Two (2) governors appointed by educational institutions from the further and/or higher education sector which shall be: one (1) governor appointed by the University of Bolton and one (1) by Salford University.
- Two (2) governors appointed by voluntary organisations which shall be two (2) governors appointed by the Council for Voluntary Services (CVS).or a successor organisation
- One (1) governors appointed by the Bolton LMC (Local Medical Committee), each of whom must be practising GPs.
- One (1) governor appointed by Bolton Healthwatch or a successor organisation

The following organisations (or their successor organisations) shall be partnership organisations for the purpose of this constitution:

- University of Bolton
- Salford University
- Council for Voluntary Services
- Bolton Healthwatch

**Public Constituency**

	<b>Number of seats</b>
Bolton West	6
Bolton North East	6
Bolton South East	6
Out of Area	2
<b>Sub Total</b>	<b>20</b>

**Staff Constituency**

	<b>Number of seats</b>
Nurses and midwives who are registered with their regulatory body to practise	2
Doctors and dentists who are registered with their regulatory body to practise	1
Allied health professionals and scientists who are registered with their regulatory body to practise in a clinical capacity	1
All other staff	2
<b>Sub Total</b>	<b>6</b>

**Appointed Governors Constituency**

	<b>Number of seats</b>
Bolton Metropolitan Borough Council	2
University of Bolton	1
Salford University	1
Council for Voluntary Services	2
Bolton Local Medical Committee	2
Bolton Healthwatch	1
<b>Sub Total</b>	<b>9</b>
<b>TOTAL</b>	<b>35</b>

## **ANNEX 4 – THE MODEL RULES FOR ELECTIONS**

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## PART 1 INTERPRETATION

### 1. Interpretation

1.1 In these rules, unless the context otherwise requires: “2006 Act” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution;  
“*council of governors*” means the council of governors of the corporation;  
“*declaration of identity*” has the meaning set out in rule 21.1;

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

“*e-voting*” means voting using either the internet, telephone or text message; “*e-voting information*” has the meaning set out in rule 24.2;

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

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

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

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

“*NHS Improvement (NHSI)*” means the corporate body NHS Improvement formerly known as Monitor as provided by section 61 of the 2012 Act;

“*numerical voting code*” has the meaning set out in rule 64.2(b); “*polling website*” has the meaning set out in rule 26.1;

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

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

“*telephone voting facility*” has the meaning set out in rule 26.2; “*telephone voting record*” has the meaning set out in rule 26.5 (d); “*text message voting facility*” has the meaning set out in rule 26.3; “*text voting record*” has the meaning set out in rule 26.6 (d);

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

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

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

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

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

## **PART 2 TIMETABLE FOR ELECTIONS**

### **2. Timetable**

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

<b>Proceeding</b>	<b>Time</b>
Publication of notice of election	Not later than the 40 <sup>th</sup> day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the 28 <sup>th</sup> day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the 27 <sup>th</sup> day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than 25 <sup>th</sup> day before the day of the close of the poll
Notice of the poll	Not later than the 15 <sup>th</sup> day before the close of the poll.
Close of the poll	By 5pm on the final day of the election.

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

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

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

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

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

## **PART 3 RETURNING OFFICER**

### **4. Returning officer**

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

### **5. Staff**

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

### **6. Expenditure**

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

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

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

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

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

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

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

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

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

9.2 The returning officer:

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

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

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

10.1. The nomination form must state the candidate's:

- a. full name;
- b. contact address in full (which should be a postal address although an email address may also be provided for the purposes of electronic communication); and

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

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

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

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

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

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

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

- a. decides that the candidate is not eligible to stand;
- b. decides that the nomination form is invalid;
- c. receives satisfactory proof that the candidate has died; or

- d. receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- a. that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election;
  - b. that the paper does not contain the candidate's particulars, as required by rule 10;
  - c. that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
  - d. that the paper does not include a declaration of eligibility as required by rule 12; or
  - e. that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an email address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

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

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- a. the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing; and
  - b. the declared interests of each candidate standing;
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.

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

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

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

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

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

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

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

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

## **PART 5 CONTESTED ELECTIONS**

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

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

### **20. The ballot paper**

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

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

20.3 Each ballot paper must have a unique identifier.

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

## **21. The declaration of identity (public constituencies)**

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

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

("declaration of identity")

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

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

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

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

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

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- a. a postal address; and,
  - b. the member's email address, if this has been provided;
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by email to those members in the list of eligible voters for whom an email address is included in that list.

#### **23. Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
- a. the name of the corporation;
  - b. the constituency, or class within a constituency, for which the election is being held;
  - c. the number of members of the council of governors to be elected from that constituency, or class with that constituency;
  - d. the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
  - e. that the ballot papers for the election are to be issued and returned, if appropriate, by post;
  - f. the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3;
  - g. the address for return of the ballot papers;
  - h. the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

- i. the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located;
  - j. the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located;
  - k. the date and time of the close of the poll;
  - l. the address and final dates for applications for replacement voting information;
- and
- m. the contact details of the returning officer.

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

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

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

("postal voting information").

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

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

("e-voting information").

- 24.3 The corporation may determine that any member of the corporation shall:
- a. only be sent postal voting information; or
  - b. only be sent e-voting information; or
  - c. be sent both postal voting information and e-voting information;
- for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

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

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

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

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

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

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

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

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

## **The poll**

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

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

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

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

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

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- a. is satisfied as to the voter's identity; and

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

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

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

- a. the name of the voter;
- b. the details of the unique identifier of the replacement ballot paper, if applicable; and
- c. the voter ID number of the voter.

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

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):

- a. the name of the voter;
- b. the unique identifier of any replacement ballot paper issued under this rule;
- c. the voter ID number of the voter.

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

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

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

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

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

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

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

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

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

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

### **36. Receipt of voting documents**

- 36.1 Where the returning officer receives:
  - a. a covering envelope; or
  - b. any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper;before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
  - a. the candidate for whom a voter has voted; or

- b. the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

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

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- a. put the ID declaration form if required in a separate packet; and
  - b. put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- a. mark the ballot paper “disqualified”;
  - b. if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper;
  - c. record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - d. place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- a. mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”;
  - b. record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - c. place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public constituency)
- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- a. mark the ID declaration form “disqualified”;
  - b. record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and
  - c. place the ID declaration form in a separate packet.
- 39. De-duplication of votes**
- 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
- a. only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
  - b. mark as “disqualified” all other votes that were cast using the relevant voter ID number.
- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
- a. mark the ballot paper “disqualified”;
  - b. if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper;
  - c. record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
  - d. place the document or documents in a separate packet; and
  - e. disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- a. mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”;
  - b. record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
  - c. place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet; and

- d. disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

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

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

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

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

## PART 6 COUNTING THE VOTES

### 41. Interpretation of Part 6

#### 41.1 In Part 6 of these rules:

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

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

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

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

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

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

- a. on which no second or subsequent preference is recorded for a continuing candidate;

or

- b. which is excluded by the returning officer under rule 49;

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

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

“*quota*” means the number calculated in accordance with rule 46;

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

“*stage of the count*” means:

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

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

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

“*transfer value*” means the value of a transferred vote calculated in accordance with rules 47.4 or 47.7.

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

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
  - a. the board of directors and the council of governors of the corporation have approved:
    - i. the use of such software for the purpose of counting votes in the relevant election; and
    - ii. a policy governing the use of such software; and
  - b. the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

## **43. The count**

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

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

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

#### **44. Rejected ballot papers and rejected text voting records**

44.1 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.

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

44.3 Any text voting record:

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

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

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

44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule

44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

#### **45. First stage (Single Transferable vote)**

- 45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- 45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- 45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

#### **46. The quota**

- 46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- 46.2 The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- 46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

#### **47. Transfer of votes**

- 47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
  - a. according to next available preference given on those ballot documents for any continuing candidate; or
  - b. where no such preference is given, as the sub-parcel of non-transferable votes.
- 47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub- parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4 The vote on each ballot document transferred under rule 47.3 shall be at a value (“the transfer value”) which:
  - a. reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and

- b. is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- 47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- a. according to the next available preference given on those ballot documents for any continuing candidate; or
  - b. where no such preference is given, as the sub-parcel of non-transferable votes.
- 47.6 The returning officer is, in accordance with this rule and rule 48, to transfer each sub- parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.7 The vote on each ballot document transferred under rule 47.6 shall be at:
- a. a transfer value calculated as set out in rule 47.4(b); or
  - b. at the value at which that vote was received by the candidate from whom it is now being transferred;
- whichever is the less.
- 47.8 Each transfer of a surplus constitutes a stage in the count.
- 47.9 Subject to rule 47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- 47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- a. less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or
  - b. less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- 47.11 This rule does not apply at an election where there is only one vacancy.

## **48. Supplementary provisions on transfer**

- 48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- a. the surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first; and
  - b. the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- 48.2 The returning officer shall, on each transfer of transferable ballot documents under rule 47:
- 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.
- 48.3 All ballot documents transferred under rule 47 or 49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.
- 48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

## **49. Exclusion of candidates**

49.1 If:

- a. all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred; and
- b. subject to rule 50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule 49.12 applies, the candidates with the then lowest votes).

49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 into two sub- parcels so that they are grouped as:

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

49.3 The returning officer shall, in accordance with this rule and rule 48, transfer each sub- parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.

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

49.5 If, subject to rule 50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule 49.1 into sub- parcels according to their transfer value.

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

49.7 The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.

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

49.9 After the returning officer has completed the transfer of the ballot documents in the sub- parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub- parcel of ballot documents

with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule 49.1.

49.10 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.

49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules 47.5 to 47.10 and rule 48.

49.12 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.

49.13 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.

## **50. Filling of last vacancies**

50.1 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.

50.2 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.

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

**51. Order of election of candidates**

51.1 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 47.10.

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

51.3 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.

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

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

### **52. Declaration of result for contested elections**

52.1 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 Bolton NHS Foundation Trust by section 33(4) of the 2006 Act, to the chair of the NHS trust; or
  - ii in any other case, to the chair of the corporation; and
- c. give public notice of the name of each candidate who he or she has declared elected.

52.2 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 44.1;
- f. the number of rejected text voting records under each of the headings in rule 44.3; available on request.

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

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

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

## **PART 8 DISPOSAL OF DOCUMENTS**

### **54. Sealing up of documents relating to the poll**

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

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

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

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

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

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

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

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

### **55. Delivery of documents**

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

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

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

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

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

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

58.1 The corporation may not allow:

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

by any person without the consent of the board of directors of the corporation.

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

58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- a. persons;
- b. time;
- c. place and mode of inspection;
- d. production or opening;

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

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

- a. in giving its consent; and
- b. in making the documents available for inspection;

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

- i. that his or her vote was given; and
- ii. that NHS Improvement has declared that the vote was invalid.

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

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

- 59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- a. publish a notice stating that the candidate has died; and
  - b. proceed with the counting of the votes as if that candidate had been excluded from the count so that:
    - i. ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted; and
    - ii. ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- 59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

## **PART 10 ELECTION EXPENSES AND PUBLICITY**

### **Election expenses**

#### **60 Election expenses**

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

61. Expenses and payments by candidates

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

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

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

62.1 No person may:

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

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

### **Publicity**

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

63.1 The corporation may:

- a. compile and distribute such information about the candidates; and
- b. organise and hold such meetings to enable the candidates to speak and respond to questions

as it considers necessary.

- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- a. objective, balanced and fair;
  - b. equivalent in size and content for all candidates;
  - c. compiled and distributed in consultation with all of the candidates standing for election; and
  - d. must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- 63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.
64. Information about candidates for inclusion with voting information
- 64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 64.2 The information must consist of:
- a. a statement submitted by the candidate of no more than 250 words;
  - b. if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”); and
  - c. a photograph of the candidate.
65. Meaning of “for the purposes of an election”
- 65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

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

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

## **PART 12 MISCELLANEOUS**

### **67. Secrecy**

67.1 The following persons:

- a. the returning officer; and
- b. the returning officer's staff;

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

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

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

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

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

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

### **69. Disqualification**

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

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

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

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

- a. the delivery of the documents in rule 24; or

b. the return of the ballot paper;

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

## **ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

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

**1.1** The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the trust's authorisation include:

**1.1.1** to hold the Board of Directors to account for the performance of the trust, including ensuring that the Board of Directors acts so that the trust does not breach its terms of authorisation;

**1.1.2** to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;

**1.1.3** to undertake such functions as the Board of Directors shall from time to time request;

**1.1.4** to prepare and review on an annual basis the trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive directors;

**1.1.5** when appropriate to make recommendations for the revision of this constitution.

### **2. Appointed Governors**

#### Local Authority Governors

**2.1** The Trust Secretary, having consulted with Bolton Metropolitan Borough Council or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency, is to adopt a process for agreeing the appointment of Local Authority Governors with that local authority.

#### Partnership Governors

**2.2** The Partnership Governors are to be appointed by the partnership organisations, in accordance with a process agreed with the Trust Secretary

#### General Provisions

**2.3** Appointed Governors:

**2.3.1** shall normally hold office for a period of three (3) years commencing on the date such election is to have effect;

**2.3.2** are eligible for re-appointment subject to paragraph 2.3.3;

**2.3.3** may not where reappointed hold office for longer than nine (9) consecutive years,

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

- 3.1** A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:
- 3.1.1** they are a director of the trust, or a governor or director of a health service organisation (unless they are an appointed governor appointed by the health service organisation for which they are a governor or director);
  - 3.1.2** they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chairman) of the trust;
  - 3.1.3** they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
  - 3.1.4** being a member of the Staff Constituency they have a current and unexpired written warning which has been imposed following disciplinary action by the trust or the Predecessor Trust arising out of their employment with the trust or Predecessor Trust. For the avoidance of doubt, a member will not be precluded from eligibility as a Governor by reason of his suspension or in the event that he is the subject of an on-going disciplinary procedure and/or fact-finding investigation. Spent disciplinary warnings will not preclude eligibility to be a Governor.
  - 3.1.5** being a member of the Public Constituency they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the trust, and that they are not prevented from being a member of the Council of Governors;
  - 3.1.6** they are a vexatious complainant within the meaning of paragraph 8.4.3;
  - 3.1.7** on the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the trust's director responsible for Human Resources;
  - 3.1.8** they have within the preceding five (5) years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service organisation;
  - 3.1.9** they are a person whose tenure of office as the Chairman or as a member or director of a health service organisation has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 3.1.10** they are a person who has had his name removed or been suspended from any list (including any performers list maintained by a primary care trust) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from

any healthcare profession, and has not subsequently had his name included in such a list or had his suspension lifted or qualification reinstated.

**3.1.11** they have within the preceding five (5) years been:

- 3.1.11.1** made subject to a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41;
- 3.1.11.2** made subject to an Interim Hospital Order under section 38 of the MHA;
- 3.1.11.3** made subject to a transfer direction under section 48 of the MHA whether or not subject to restrictions under section 49; and/or
- 3.1.11.4** made subject to an order under the Criminal Procedure (Insanity) Act 1964 as amended.

**3.1.12** they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation.

#### **4. Termination of office and removal of Governors**

**4.1** A person holding office as a governor shall immediately cease to do so if:

- 4.1.1** they resign by notice in writing to the Secretary;
- 4.1.2** they fail to attend three (3) consecutive meetings, unless the other governors are satisfied that:
  - 4.1.2.1** the absences were due to reasonable causes; and
  - 4.1.2.2** they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable.
- 4.1.3** in the case of an elected governor, they cease to be a member of the constituency or class or area of the constituency by which they were elected which for the avoidance of doubt includes in respect of a Public Governor a governor moving their principal residence from one area within the Public Constituency to another;
- 4.1.4** in the case of an appointed governor, the appointing organisation terminates the appointment;
- 4.1.5** they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;

**4.1.6** they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for governors;

**4.1.7** they are removed from the Council of Governors under the following provisions;

**4.1.7.1** a governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining governors present and voting on the grounds that they have committed a serious breach of the code of conduct for governors, or they have acted in a manner detrimental to the interests of the trust, and the Council of Governors consider that it is not in the best interests of the trust for them to continue as a governor.

## **5. Vacancies amongst Governors**

**5.1** Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:

**5.1.1** where the vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

**5.1.2** where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:

**5.1.2.1** to invite the next highest polling candidate for that seat at the most recent 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 of the governor who is being replaced.

**5.1.2.3** If there is no other candidate available the governors may choose to leave the seat vacant until the next elections are held unless to do so would mean that there is no longer a majority of public governors on the Council of Governors.

## **6. Expenses and Remuneration of Governors**

**6.1** The trust may reimburse governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.

**6.2** The trust may at their discretion decide to reimburse the cost and expense of a governor's carer arrangements necessarily and reasonably incurred in such governor carrying out their duties as the Board of Directors decide

**6.3** In respect of a Staff Governor who is an employee of the Trust, the Board of Directors shall seek to facilitate such employee's reasonable participation as a Staff Governor during normal working hours to the extent reasonably necessary for the performance of their duties as a Staff Governor (including reasonable time off from his/her contracted duties) and shall not make any corresponding deduction from salary.

**6.4** Governors are not to receive remuneration from the trust otherwise than as set out in paragraphs 6.1 and/or 6.2 and/or 6.3 above of this Annex 5.

**7. Governors Code of Conduct**

The trust may from time to time publish a governors' code of conduct and each governor shall be required to follow and observe such code of conduct's provisions.

## **ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **1. Meetings of the Council of Governors**

- 1.1** The Council of Governors is to meet a minimum of four (4) times in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will also be published on the trust's website.
- 1.2** Meetings of the Council of Governors may be called by the Secretary, or by the Chairman.
- 1.3** Meetings of the Council of Governors may be called by ten (10) governors (including at least two (2) elected governors and two (2) appointed governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request.
- 1.4** The Secretary shall call a meeting on at least fourteen (14) but not more than twenty eight (28) days' notice.
- 1.5** If the Secretary fails to call such a meeting following notice pursuant to paragraph 1.3 of Annex 6 above then the Chairman or ten (10) governors, whichever is the case, shall call such a meeting.
- 1.6** Subject to paragraph 1.7 of Annex 6 below, fifteen (15) governors including no fewer than ten (10) Public Governors, no fewer than two (2) Staff Governors and no fewer than one (1) appointed governor shall form a quorum for the Council of Governors.
- 1.7** The Council of Governors shall not be quorate unless a majority of governors present are Public Governors.
- 1.8** The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Council of Governors.
- 1.9** The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 1.10** Except as provided for in paragraph 20.2 of the main body of the constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 1.11** In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

- 1.12** The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors and may invite directors and other persons to serve on such committees. The Council of Governors may, through the Secretary request that external advisors assist them or any committee they appoint in carrying out its duties.
- 1.13** All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the governors attending the meeting.

## **2. Disclosure of interests**

- 2.1** Any governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and shall withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if inadvertently they do remain and vote, their vote shall not be counted).
- 2.2** Any governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a not less than two thirds of the remaining governors.

Subject to the exceptions below, a material interest in a matter is where a governor:

- 2.2.1** holds any directorship of a company;
- 2.2.2** holds any interest or position in any firm or company or business;
- 2.2.3** has any interest in an organisation providing health and social care services to the National Health Service; or
- 2.2.4** holds any position of authority in a charity or voluntary organisation in the field of health and social care;

and such organisation is, in connection with the matter, trading with the trust or entering into a financial arrangement with the trust, or is likely to be considered as a potential contractor to the trust. In the case of two persons living together as a couple (whether married or not) the interest of one shall be deemed to be also an interest of the other

- 2.3** The exceptions which shall not be treated as material interests are as follows:
- 2.3.1** shares held in any company where the value of those securities does not exceed £10,000 or the number of shares held does not exceed 2% of the total number of issued shares in a company whose shares are listed on any public exchange;
  - 2.3.2** an employment contract with the trust held by a Staff Governor;

**2.3.3** an employment contract with a local authority held by a Local Authority Governor;

**2.3.4** an employment contract with a partnership organisation held by a Partnership Governor.

### **3. Declaration**

An elected governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the trust and that they are not prevented from being a member of the Council of Governors. An elected governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected governors.

## **ANNEX 7– STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

- 1. The Appointment and Removal of the Chairman and/or other non-executive directors**
- 1.1** Subject to paragraph 21.3 of the main body of the constitution only a member of the Public Constituency is eligible for appointment as the Chairman or another non-executive director.
- 1.2** The Chairman and the other non-executive directors are to be appointed by the Council of Governors using the following procedure:
  - 1.2.1** The Council of Governors will maintain a policy for the appointment of the Chairman and the other non-executive directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
  - 1.2.2** The Council of Governors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non- executive directors.
  - 1.2.3** Appropriate candidates (not more than five (5) for each vacancy) will be identified by a nominations and remuneration committee through a process of open competition, which takes account of the policy maintained by the Council of Governors and the skills and experience required;
  - 1.2.4** The nominations and remuneration committee will comprise the senior independent director who should act as chairman of the committee, two elected governors and one appointed governor. The chairman or senior independent director of another Foundation Trust or NHS Trust shall be invited to act as an independent assessor to the nominations and remuneration committee.
  - 1.2.5** The Chairman and any other non-executive director may hold office for a period of up to 3 years and shall, subject to the Independence Criteria be eligible for re-appointment at the end of his term.
- 1.3** The removal of the Chairman or any other non-executive director shall be a decision of the Council of Governors and shall be carried out in accordance with the following procedures:
  - 1.3.1** Any proposal for removal must be proposed by a governor and seconded by no fewer than ten (10) governors including at least two (2) elected governors and two (2) appointed governors.

- 1.3.2 Written reasons for the proposal shall be provided to the Chairman or other non-executive director in question, who shall be given the opportunity to respond to such reasons.
- 1.3.3 In making any decision to remove a non-executive director (other than the Chairman), the Council of Governors shall take into account any annual appraisal carried out by the Chairman.
- 1.3.4 Removal of the Chairman or any other non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 1.3.5 If any proposal to remove the Chairman or other non-executive director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive director based upon the same reasons within twelve (12) months of the meeting.

## **2. Appointments**

- 2.1 The Chief Executive and Chairman shall appoint the Secretary of the trust and subject to following good employment practice may also remove a Secretary from that position.
- 2.2 The Board of Directors shall, following consultation with the Council of Governors, appoint one of the non-executive directors to be the senior independent director. The senior independent director shall make himself available to members and governors who have concerns that they do not feel they can raise with the Chairman or any executive director of the trust. Recourse to the senior independent director shall not replace the right to instigate the dispute resolution procedures at Annex 9.

## **3. Committees and Delegation**

- 3.1 The Board of Directors may delegate any of its powers to:
  - 3.1.1 a committee of directors or;
  - 3.1.2 to an executive director.
- 3.2 The Board of Directors shall maintain a formal schedule of matters reserved for decision by the Board of Directors
- 3.3 The Board of Directors shall appoint an audit committee of non-executive directors to monitor and review the exercise of the auditor's functions.
- 3.4 The Board of Directors shall appoint a remuneration committee of non executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors.

**3.5** The Board of Directors may appoint committees consisting wholly or partly of persons who are not executive directors or non-executive directors of the trust for any purpose that is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to such committee.

#### **4. Meetings of the Board of Directors**

**4.1** The Board of Directors shall meet sufficiently regularly to discharge its duties effectively.

**4.2** Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all directors at least fourteen (14) days' written notice of the date and place of every meeting of the Board of Directors.

**4.3** Meetings of the Board of Directors may be called by the Secretary, or by the Chairman.

**4.4** Meetings of the Board of Directors may be called by four (4) directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after receipt of such a request.

**4.5** The Secretary shall call a meeting on at least fourteen (14) but not more than twenty-eight (28) days' notice.

**4.6** If the Secretary fails to call a meeting following notice pursuant to paragraph 4.4 of this Annex 7 then the Chairman or four (4) directors, whichever is the case, shall call such a meeting.

**4.7** Seven (7) directors including no fewer than two (2) executive directors, and no fewer than two (2) non-executive directors (one of whom must be the Chairman or the Deputy Chairman of the Board) shall form a quorum.

**4.8** The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

**4.9** The Chairman of the trust or, in their absence, the Deputy Chairman of the Board of Directors, is to chair meetings of the Board of Directors.

**4.10** Subject to the following provisions of this paragraph 4, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.

**4.11** In case of an equality of votes the Chairman shall have a second and casting vote. No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive directors present or by all of the executive directors present.

**4.12** The Secretary shall keep and maintain a record of the number of meetings of the Board of Directors and the attendance of individual directors

## **5. Conflicts of Interest of Directors**

**5.1** Any director who has a material interest in a matter as defined below shall declare such interest to the Board of Directors and shall withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if inadvertently they do remain and vote, their vote shall not be counted).

**5.2** Details of any such interest shall be recorded in the register of the interests of directors.

**5.3** A material interest in a matter is where a director:

**5.3.1** holds any directorship of a company;

**5.3.2** holds any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding does not exceed 2% of the total issued share capital or the value of such share holding does not exceed £10,000) or position in any firm or company or business;

**5.3.3** has any interest in an organisation providing health and social care services to the National Health Service; or

**5.3.4** holds a position of authority in a charity or voluntary organisation in the field of health and social care;

and such organisation is, in connection with the matter, trading with the trust or entering into a financial arrangement with the trust, or is likely to be considered as a potential contractor to the trust. In the case of two persons living together as a couple (whether married or not) the interest of one shall be deemed to be also an interest of the other.

## **6. Role of Secretary of the Trust**

**6.1** The Secretary's role shall include but not be limited to:

- 6.1.1** ensuring good information flows within the Board of Directors and committees of the Board of Directors and between senior management, non-executive directors and governors;
- 6.1.2** ensuring that the Standing Orders of both the Board of Directors and Council of Governors are complied with;
- 6.1.3** advising the Board of Directors and the Council of Governors (through the Chairman) of all governance matters;
- 6.1.4** being available to give advice and support to individual directors, particularly in relation to the induction of new directors and assistance with professional development.

## **7. Additional Provisions**

This Annex 7 is to be read in conjunction with the trust's standing orders, which contain additional provisions.

## **ANNEX 8 MEMBERSHIP AND MEMBERS MEETINGS**

### **Members Meetings**

- 1.1** The trust is to hold a members meeting (called the annual members meeting) within nine (9) months of the end of each Financial Year.
- 1.2** All members meetings other than annual meetings are called special members meetings.
- 1.3** Members meetings are open to all members of the trust, governors and directors, and representatives of the auditor. Annual Members meetings are also open to all members of the public who are not members of the trust, but only in the capacity as an observer (which for the avoidance of doubt does not include any right to address the meeting, speak, be heard or vote at such meeting). Special members meetings should not be open to members of the public unless the Council of Governors decides otherwise.
- 1.4** The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the trust to attend a members meeting.
- 1.5** All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 1.6** The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members arrange for the annual members meeting to be held in different venues each year
- 1.7** The Council of Governors shall also fix an appropriate quorum for each venue provided that the aggregate of the quorum requirements shall not be less than the quorum set out below at the annual members meeting.
- 1.8** At each annual members meeting the Board of Directors shall present to the members:
  - 1.8.1** the annual accounts
  - 1.8.2** any report of the auditor
  - 1.8.3** forward planning information for the next financial year
- 1.9** At each annual members meeting the Council of Governors shall present to the members:
  - 1.9.1** a report on steps taken to secure that (taken as a whole) the actual membership of each area of its Public Constituency and of each of the classes of the Staff Constituency are representative of those eligible for such membership;

- 1.9.2** the progress of the membership strategy
- 1.9.3** any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
- 1.10** At any members meeting the results of the election and appointment of governors and the appointment of non-executive Directors that have occurred since the preceding members meeting will be announced.
- 1.11** Notice of a members meeting is to be given:
  - 1.11.1** by notice to all members;
  - 1.11.2** by notice prominently displayed at the head office and at all of the Trust's places of business; and
  - 1.11.3** by notice on the trust's website at least fourteen (14) clear days before the date of the meeting.
- 1.12** The notice of a members meeting must:
  - 1.12.1** be given to the Council of Governors and the Board of Directors, and to the auditor;
  - 1.12.2** state whether the meeting is an annual or special members meeting; give the time, date and place of the meeting; and indicate the business to be dealt with at the meeting.
- 1.13** Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is at least ten members present from the public constituency and at least ten members present from the staff constituency.
- 1.14** The trust may make arrangements for members to vote by post, or by using electronic communications.
- 1.15** It is the responsibility of the Council of Governors, the chairman of the members meeting and the Secretary to ensure that at any members meeting:
  - 1.15.1** the issues to be decided are clearly explained;
  - 1.15.2** sufficient information is provided to members to enable rational discussion to take place.
- 1.16** The Chairman of the trust, or in their absence the Deputy Chairman of the Board of Directors, or in their absence one of the other non executive Directors shall act as chairman at all members meetings of the trust. If neither the Chairman, the Deputy Chairman of the Board of Directors or a non executive Director is present, the members of the Council of Governors present shall elect

one of their numbers to be chairman of that member's meeting and if there is only one (1) governor present and willing to act they shall be chairman of that members meeting.

- 1.17** If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 1.18** A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 1.19** Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the chairman of the meeting is to have a second or casting vote.
- 1.20** The result of any vote will be declared by the chairman of the members meeting and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## **2. Termination of Membership**

- 2.1** A member shall cease to be a member if:
  - 2.1.1** they resign by notice to the Secretary;
  - 2.1.2** they die;
  - 2.1.3** they are expelled from membership under this constitution;
  - 2.1.4** they cease to be entitled under this constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency;
  - 2.1.5** it appears to the Secretary that they no longer wish to be a member of the trust, and after enquiries made in accordance with a process approved by the Council of Governors they fail to demonstrate that they wish to continue to be a member of the trust.
- 2.2** A member may be expelled by a resolution approved by not less than two thirds of the governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
  - 2.2.1** Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the trust.
  - 2.2.2** If a complaint is made, the Council of Governors may itself 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:



## **ANNEX 9 FURTHER PROVISIONS**

### **1. Dispute Resolution Procedures**

- 1.1** 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 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 1.2** In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.
- 1.3** In the event of dispute between the Council of Governors and the Board of Directors:
  - 1.3.1** in the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
  - 1.3.2** if the Chairman is unable to resolve the dispute he or she shall refer the dispute to the Trust Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
  - 1.3.3** if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.

## **ANNEX 10 Amendment of the constitution**

- 1.1** The trust may make amendments of its constitution only if –
- 1.1.1** More than half of the members of the Council of Governors of the trust voting approve the amendments, and
  - 1.1.2** More than half of the members of the Board of Directors of the trust voting approve the amendments.
- 1.2** Amendments made under paragraph 48.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 1.3** Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust) –
- 1.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 1.3.2** The trust must give the members an opportunity to vote on whether they approve the amendment.

If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

Amendments by the trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement'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.