

**CONSTITUTION OF  
TORBAY AND SOUTH DEVON NHS FOUNDATION TRUST  
(A PUBLIC BENEFIT CORPORATION)**

**updated October 2015**

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

References in this constitution to legislation include all amendments, replacements, or re-enactments made. Headings are for ease of reference only and are not to affect interpretation.

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

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# **1 Definitions**

## **1.1 In this constitution:-**

'the 2006 Act'	Means the National Health Service Act 2006;
'the 2012 Act'	Means the Health and Social Care Act 2012;
'constitution'	Means this constitution and all annexes to it.
'Monitor'	Means the body corporate known as Monitor, as provided by section 61 of the 2012 Act.
'Accounting Officer'	Means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
'applicant NHS Trust'	Means South Devon Healthcare NHS Trust which made the application to become an NHS Foundation Trust;
'area of the Trust'	Means the area consisting of all the areas specified in Annex 1;
'Board of Directors'	Means the Board of Directors as constituted in accordance with this constitution;
'Council of Governors'	Means the Council of Governors constituted in accordance with this constitution;
'Lead Governor'	Elected by the Council of Governors (excluding the chair) to act as Lead Governor as defined by Monitor's Code of Governance;
'Annual Members Meeting'	As defined in paragraph 7 in the constitution.
'Director'	Means a member of the Board of Directors;
'Financial year'	Means:-  (a) The period beginning with the date on which the Trust is authorised and ending with the next 31st March; and  (b) Each successive period of twelve months beginning with 1 <sup>st</sup> April.
'Local Authority Governor'	Means a member of the Council of Governors appointed by a local Authority in accordance with paragraph 8.7. ;
'Member'	Means a member of the Trust;
'Other Partnership Governor'	Means a governor of the Council of Governors appointed by a partnership organisation specified in paragraph 8.3;
'Public Governor'	Means a governor of the Council of Governors elected by the members of the public constituency;
'Secretary'	Means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust, including a joint, assistant or Deputy Secretary;

'Staff Governor'	Means a member of the Council of Governors elected by the members of one of the classes of the Staff Constituency;
'the Trust'	Means the Torbay and South Devon NHS Foundation Trust;
'University Governor'	Means a governor of the Council of Governors appointed by a University providing a medical or dental school to a hospital of the Trust;
'Public Constituency'	Means collectively those members living in the areas of the Foundation Trust.
'Staff Constituency'	Those individuals who are eligible for membership of the Trust as outlined in section 6.3 are referred to collectively as the 'Staff Constituency'.

## **2 Name**

- 2.1 The name of this Trust is to be 'Torbay and South Devon NHS Foundation Trust'.

## **3 Principal Purpose**

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

## **4 Powers**

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

## **5 Core Principles**

The Trust will operate within and as part of the wider health and social care community in order to deliver appropriate services, and in doing so cooperate with other NHS bodies and local authorities in the exercise of its functions.

## **6 Members**

6.1 The Trust shall have members, each of whom shall be a member of one of the following four constituencies:-

- (a) Three public constituencies, and
- (b) A Staff Constituency.

### **6.2 Public Constituencies**

6.2.1 The public constituencies are to be known by the names listed in column 1 of Annex 1.

6.2.2 Members of the Trust who are members of the public constituencies are to be individuals:-

- (a) Who live in the area specified for that constituency in the corresponding entry in column 2 of Annex 1; and
- (b) Who are not eligible to become a member of the Staff Constituency or otherwise disqualified for membership under paragraph 6.4; and
- (c) Who have each made an application for membership to the Trust and been entered on the Register of Members of the Trust.

6.2.3 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's Register of Members.

6.2.4 The minimum number of members required for each public constituency is to be 500.

### **6.3 Staff Constituency**

6.3.1 The Staff Constituency is divided into three classes as follows:

- (a) Acute clinical, which shall include the following staff:
  - (i) nursing, midwifery, health visiting and assistants
  - (ii) medical and dental
  - (iii) allied health professionals and helpers
  - (iv) scientific and professional
  - (v) medical laboratory assistants
  - (vi) operating department operatives
- (b) Acute non-clinical, which shall include the following staff:
  - (i) senior managers (assistant service manager level and above)
  - (ii) administrative and clerical
  - (iii) ancillary
  - (iv) maintenance

- (v) works professional
- (vi) medical electronics

- (c) Community Health and Social Care, which shall include the following staff:
  - (i) nursing, midwifery, health visiting and assistants
  - (ii) medical and dental
  - (iii) allied health professionals and helpers
  - (iv) scientific and professional
  - (vi) senior managers (assistant service manager level and above)
  - (vii) administrative and clerical
  - (viii) ancillary
  - (ix) maintenance
  - (x) works professional

6.3.2 An individual is eligible to become a member of the Staff Constituency if

- (a) They are employed under a contract of employment by the Trust ; or
- (b) They are not so employed but who nevertheless exercise functions for the purposes of the Trust; and
- (c) They satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 7 to the 2006 Act, that is to say (i) in the case of individuals described at (a) above they are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or they have been continuously employed by the Trust for at least 12 months;(ii) in the case of individuals described at (b) above, who have exercised the functions for the purposes of the Trust continuously for at least 12 months; and
- (d) They are not disqualified for membership under paragraph 6.4 below.

6.3.3 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.

6.3.4 An Individual who is:-

- (a) Eligible to become a member, and
- (b) Invited by the Trust to become a member of the appropriate class,

Will become a member of the Trust as a member of one of the classes of the Staff Constituency without an application being made, unless he/she informs the Trust that he/she does not wish to do so.

6.3.5 The minimum number of members of each class of the Staff Constituency is to be 100.

6.3.6 A person who is eligible to be a member of one of the classes of the Staff Constituency (see paragraph 6.3.2 above) may not become or continue as a member of any constituency other than the Staff Constituency.

## 6.4 Disqualification for Membership

- 6.4.1 A person may not be a member of the Trust if they do not meet the eligibility criteria under 6.2 and 6.3, or if under sixteen years of age or in the circumstances set out in paragraph 6.5.1(c) (vii).
- 6.4.2 Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member they shall give the member 14 days written notice to show cause why his name should not be removed from the Register of Members. On receipt of any such information supplied by the member, the Secretary may, if he considers it appropriate, remove the member from the Register of Members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine.

## 6.5 Termination of Membership

- 6.5.1 A member shall cease to be a member if he-
- (a) Resigns by notice to the Secretary;
  - (b) Ceases to fulfil the requirements of paragraph 6.2 or 6.3;
  - (c) Is expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a general meeting on the grounds that the Member to be expelled has acted in a way detrimental to the interests of the Trust. In this instance the following procedure is to be adopted:-
    - (i) Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust and the Secretary shall consider the complaint and either dismiss it summarily or refer the complaint to the Council of Governors;
    - (ii) 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:
      - Dismiss the complaint and take no further action: or
      - Arrange for a resolution to expel the member complained of to be considered at the next general meeting of the Council of Governors;
    - (iii) If a resolution to expel a member is to be considered at a general meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting;
    - (iv) At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them;
    - (v) If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence;



- (vi) A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried;
- (vii) No person who has been expelled from membership is to be re-admitted except by resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a general meeting.

## **6.6 Voting at Governor Elections**

- 6.6.1 A person may not vote at an election for a governor unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a member of the constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular. The period and form are specified in Annex 5. This offence does not apply to the Staff Constituency pursuant to section 60(4) of the 2006 Act.

## **7 Annual Members Meeting**

- 7.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

## **8 Council of Governors - Composition**

- 8.1 The Trust is to have a Council of Governors which shall comprise both elected and appointed governors. It is to consist of Public Governors, Staff Governors, NHS stakeholder Governors, Local Authority Governors, a University Governor and other Partnership Governors.

- 8.2 The Council of Governors of the Trust is to comprise:-

- (a) 17 Public Governors;
- (b) 6 Staff Governors from the following classes:
  - (i) Acute clinical staff – two staff
  - (ii) Acute non-clinical staff – two staff
  - (iii) Community Health and Social Care Staff – two staff
- (c) 1 South Devon and Torbay Clinical Commissioning Group Governor;
- (d) 4 Local Authority Governors;
- (e) 2 University Governors;
- (f) 2 Other Partnership Governors;

- 8.3 The organisations specified as other partnership organisations who may appoint the other partnership governors referred to in paragraph 8.2(f) are:-

- (a) Devon Partnership NHS Trust;
- b) One governor suggested by Devon Carers Strategy Board and/or Torbay Carers Strategy Steering Group who shall agree between themselves who shall be entitled to appoint a governor of the Council of Governors. In default

of agreement the Trust shall nominate one of the two bodies to exercise this function. This process shall be carried out afresh in relation to each new appointment of a governor of the Council of Governors.

#### **8.4 Public Governors**

- 8.4.1 Members of the public constituencies may elect any of their number to be a Public Governor.
- 8.4.2 If contested, the election must be by secret ballot.
- 8.4.3 The election scheme, including the specified forms of and periods for declarations to be made by candidates standing for office and Governors as a condition of voting and the process if the election is uncontested, is set out in Annex 5.
- 8.4.4 A person may not stand for election to the Council of Governors as a Public Governor unless, within the period specified in Annex 5 he has made a declaration in the form specified in that Part of that Annex of his qualification to vote as a member of the public constituency for which the election is being held and is not prevented from being a member of the Council by paragraph 8 to Schedule 7 of the 2006 Act or paragraph 12 below (disqualification and removal). It is an offence to knowingly or recklessly make a declaration under section 60 of the 2006 Act which is false in a material particular.
- 8.4.5 Paragraph 6.6.1 (voting at governor elections) applies.
- 8.4.6 Elections will be held annually, such that, for South Hams and Plymouth constituency, one seat will become vacant each year. For Torbay and Teignbridge constituencies, over a three-year period, two seats will become vacant at the end of years one and two and three seats will become vacant at the end of year three. In all constituencies, for the first three years of operation, seats will become vacant on the basis of the number of votes cast for sitting Public Governors. The seat(s) in each constituency held by the Governors with the lowest number of votes will become vacant at the end of year one. The seat(s) in each constituency held by the remaining Governors with the next lowest number of votes will become vacant at the end of year two. The remaining seat(s) in each constituency will become vacant at the end of year three. In the event of a tie between relevant Governors the choice of who should vacate their position will be determined by lot.

#### **8.5 Staff Governors**

- 8.5.1 Staff Governors are to be elected by members of their class of the Staff Constituency.
- 8.5.2 If contested, the election must be by secret ballot.
- 8.5.3 The election scheme including the process if the election is uncontested, is set out in Annex 5.
- 8.5.4 Elections will be held annually, such that over a three-year period, one seat will become vacant at the end of years one and two and two seats will become vacant at the end of year three. For the first three years of

operation, seats will become vacant on the basis of the number of votes cast for sitting Staff Governors. The seat held by the governor with the lowest number of votes will become vacant at the end of year one. The seat held by the remaining governor with the next lowest number of votes will become vacant at the end of year two. The remaining two seats will become vacant at the end of year three. In the event of a tie between relevant Governors the choice of who should vacate their position will be determined by lot.

## **8.6 South Devon and Torbay Clinical Commissioning Group Governor**

- 8.6.1 South Devon and Torbay Clinical Commissioning Group (CCG) may appoint one governor. The appointment shall be made in writing addressed to the Secretary and Signed by the Chief Executive of the CCG.

## **8.7 Local Authority Governors**

- 8.7.1 Each of the Devon County Council, South Hams District Council, Teignbridge District Council and Torbay Unitary Authority may appoint a Local Authority Governor. The appointment shall be made in writing addressed to the Secretary and Signed by the Chief Executive of the Council.

## **8.8 University Governors**

- 8.8.1 University of Exeter Medical School and Plymouth University Peninsula School of Medicine and Dentistry may appoint one University Governor each. The appointment shall be made in writing by the Dean of each University.

## **8.9 Other Partnership Governors**

- 8.9.1 The other partnership Governors are to be appointed by the organisations listed in paragraph 8.3, in writing signed by the Chief Officer or equivalent of the organisation.

## **8.10 Appointment of Lead Governor of the Council of Governors**

- 8.10.1 The Council of Governors may appoint annually one of the publicly elected Governors to be Lead Governor of the Council of Governors. The appointee shall ex-officio undertake the functions referred to in paragraph 18.2 and 21.4.3 below and such other duties as may be assigned from time to time, but will not Chair the Council of Governors other than in the circumstances described in paragraph 17.1 below.

# **9 Council of Governors – Election of Governors**

- 9.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

- 9.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules are attached at Annex 5.

9.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 44 of the constitution (amendment of the constitution).

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

## **10 Council of Governors - Tenure**

10.1 Public Governors:-

- (a) Subject to paragraph 8.4.6, may hold office for a period of up to three years;
- (b) Are eligible for re-election at the end of that period;
- (c) May not hold office for longer than nine consecutive years;
- (d) Cease to hold office if they cease to be a member of a public constituency.

10.2 Staff Governors:-

- (a) Subject to paragraph 8.5.4, may hold office for a period of up to three years;
- (b) Are eligible for re-election at the end of that period;
- (c) May not hold office for longer than nine consecutive years;
- (d) Cease to hold office if they cease to be a member of one of the classes of the Staff Constituency.

10.3 Appointed Governors:-

- (a) May hold office for a period of up to three years;
- (b) Are eligible for reappointment at the end of that period;
- (c) May not hold office for longer than nine consecutive years;
- (d) Cease to hold office if the sponsoring organisation withdraws its sponsorship of them.

## **11 Council of Governors - Termination of Tenure**

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

11.2 If a governor fails to attend two meetings in any financial year, his tenure of office is to be immediately terminated unless the other Governors are satisfied that:-

- (a) The absence was due to a reasonable cause; and
- (b) He will be able to start attending meetings of the Trust again within such a period as they consider reasonable.

## **12 Council of Governors - Disqualification and Removal**

12.1 A person may not become or continue as a governor of the Trust if:-

- (a) In the case of a Staff Governor or Public Governor, he ceases to be a member of the constituency he represents;
- (b) In the case of a South Devon and Torbay CCG Governor, Local Authority Governor, University Governor or Other Partnership Governor, the sponsoring organisation withdraw their sponsorship of him;
- (c) He is a person in relation to whom a moratorium period under debt relief order applies (under Part 7A of the Insolvency Act 1986);
- (d) He is a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- (e) He has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (f) He has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (g) He is the subject of a sex offenders order;
- (h) He is under sixteen years of age;
- (i) He has been excluded from the Trust's premises on the grounds of having been violent and/or abusive towards staff, patients or visitors or is subject to an anti-social behaviour order;
- (j) He has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body;
- (k) He is a person whose tenure of office as the Chairman or as a member or Director of any health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- (l) He is an elected or appointed governor of the Trust and is also executive or non-executive director of the Trust, or a governor, non-executive director (including Chairman), executive director (including the Chief Executive) of another Foundation Trust or other such organisation as the Council of Governors may decide (after consultation with the Board of Directors;
- (m) He has had his name removed, by a direction under section 151 of the 2006 Act from any relevant list and has not subsequently had his name included in such a list;
- (n) He is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- (o) He is an elected member of the Devon County Council, South Hams District Council, Teignbridge District Council or Torbay Unitary Authority save where appointed under paragraph 8.7;

- (p) Being a member of the public, he was entitled to be a member of one of the classes of the Staff Constituency within the preceding two years.

12.2 Where a person has been elected or appointed to be a governor and he becomes disqualified for appointment under paragraph 12.1, he shall notify the Secretary to the Trust in writing of such disqualification.

12.3 If it comes to the notice of the Secretary to the Trust at the time of his appointment or later that the governor is so disqualified, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect.

12.4 Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a governor.

### **13 Council of Governors - Vacancies**

13.1 Where membership of the Council of Governors ceases for one of the reasons set out in paragraphs 11 or 12 above, public and Staff Governors shall be replaced in accordance with the following procedure:-

- (a) In the case of elected governors replacement will be by selecting the person with the next highest allocation of votes in the previous election for the constituency or class represented. The replacement governor will serve the remainder of the three-year term of the individual removed from office. If there is no such person, then replacement will be by by-election, in accordance with the electoral scheme set out in Annex 5.
- (b) South Devon and Torbay CCG Governor, Local Authority Governors, University Governor and Other Partnership Governors are to be replaced in accordance with the processes agreed pursuant to paragraphs 8.6 to 8.9.

### **14 Council of Governors – Duties of Governors**

14.1 The general duties of the Council of Governors are:-

- (a) To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors.
- (b) To represent the interests of the members of the Trust as a whole and the interests of the public.

14.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

### **15 Council of Governors - Expenses**

15.1 The Trust may pay travelling and other expenses to governors at such rates as it decides. These are to be published in the annual report.

15.2 The remuneration and allowances for non-executive directors set by the governors are also to be published in the annual report.

### **16 Council of Governors - Remuneration**

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

## **17 Council of Governors - Meetings**

- 17.1 The Chairman of the Trust or, in his absence, the Vice-Chairman of the Trust, or in their absence one of the other non-executive directors is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors will chair that part of the meeting.
- 17.2 Meetings of the Council of Governors are to be open to members of the public except in the following circumstances:-
- (a) Where the Council of Governors by resolution decides otherwise for reasons of commercial confidentiality or on other proper grounds.
  - (b) The person chairing may exclude a member of the public if they are interfering with or preventing the proper conduct of the meeting.
- 17.3 The Council of Governors will normally meet no more than four times during the financial year.
- 17.4 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 2.
- 17.5 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

## **18 Council of Governors - Committees and Sub-Committees**

- 18.1 The Council of Governors will appoint four standing committees:
- (a) A Non-Executive Directors' Remuneration Committee.
  - (b) A Nominations Committee.
  - (c) A Quality and Compliance Committee.
  - (d) A Mutual Development Group.
- 18.2 The Non-Executive Directors' Remuneration Committee shall be chaired by the Lead Governor of the Council of Governors and will include three Public Governors drawn from each of the three public constituencies and one other member of the Council of Governors.
- 18.3 The Nominations Committee shall be chaired by the Chairman, or in his absence the Lead Governor of the Council of Governors and consist of members as outlined in its Terms of Reference.
- 18.4 The Chair of the Quality and Compliance Committee (Q&CC) will be elected by and from the members of the Q&CC Committee on an annual basis. In the Chair's absence, one of the publicly-elected members shall Chair the meeting.

- 18.5 The Chair of the Mutual Development Group (MDG) will be elected by and from the members of the Mutual Development Group on an annual basis or in their absence, one of the publicly-elected members.
- 18.6 The Council of Governors may appoint additional committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 18.7 These committees or sub-committees may call upon outside advisers to help them in their tasks.

## **19 Referral to the Panel by the Council of Governors**

- 19.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing -
- (a) to act in accordance with the constitution, or
  - (b) to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 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.

## **20 Conflicts of Interest of Members of the Council of Governors**

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

## **21 Board of Directors - Composition**

- 21.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 21.2 The Board of Directors is to comprise:–
- (a) a non-executive Chairman;
  - (b) not less than five and no greater than eight other non-executive directors.
  - (c) a Chief Executive and not less than four and no more than seven executive directors; and
  - (d) at least half of the Board of Directors, excluding the Chairman, should be non-executive directors.
- 21.2.1 One of the executive directors will be the Chief Executive.
- 21.2.2 The Chief Executive shall be the Accounting Officer.



- 21.2.3 One of the executive directors shall be the Finance Director.
- 21.2.4 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 21.2.5 One of the executive directors is to be a registered nurse or a registered midwife.
- 21.2.6 The Board of Directors may determine that other Trust officers may attend meetings of the Board of Directors as and when required to provide operational advice and support to the Board to assist the Board in the discharge of their responsibilities. For the avoidance of doubt, such an officer attending will not be a Director for the purpose of the 2006 Act, nor will they be able to vote and will bear no responsibility or liability for any action or decision of the Board of Directors.

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

## **22 Board of Directors – General Duty**

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

## **23 Board of Directors – Qualification for Appointment as a Non-Executive Director**

- 23.1 A person may be appointed as a non-executive director only if –
  - (a) he is a member of the Public Constituency, and
  - (b) he is not disqualified by virtue of paragraph 27 below.
- 23.2 Subject to paragraph 25 below, only a member of the public constituency or an individual exercising functions for the University of Exeter Medical School or Plymouth University Peninsula School of Medicine and Dentistry is eligible for appointment as a non-executive director.

## **24 Board of Directors – Appointment and Removal of Chairman and other Non-Executive Directors**

- 24.1 A Nominations Committee shall be established to make recommendations to the Council of Governors in respect of appointments made under this provision, taking into account the policy set out at 24.3, the needs of the Trust as identified by the Board of Directors and ensuring the selection process provides the Council of Governors with reasonable choice. The Council of Governors shall, at a general meeting of the Council of Governors, appoint or remove the Chairman of the Trust and the other non-executive directors.
- 24.2 Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 24.3 The Council of Governors will maintain a policy for the composition of the 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.

24.4 The initial Chairman and the initial non-executive directors are to be appointed in accordance with paragraph 25 below.

**25 Board of Directors – Appointment of the Initial Chairman and Initial Other Non-Executive Directors**

25.1 The Council of Governors shall appoint the Chairman of the applicant NHS Trust as the initial Chairman of the Trust, if he wishes to be appointed.

25.2 The power of the Council of Governors to appoint the other non-executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

25.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 23 above (other than disqualification by virtue of paragraph 28 below) do not apply to the appointment of the initial Chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

25.4 An individual appointed as the initial Chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

**26 Board of Directors - Appointment and Removal of the Chief Executive and Other Executive Directors**

26.1 The non-executive directors shall appoint or remove the Chief Executive.

26.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

26.3 The initial Chief Executive is to be appointed in accordance with paragraph 27 below.

26.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

**27 Board of Directors – Appointment and Removal of Initial Chief Executive**

27.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he wishes to be appointed.

27.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

**28 Board of Directors – Appointment of Vice Chair and Senior Independent Director**

28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as Vice Chair.

28.2 The Board of Directors should appoint one of the independent non-executive directors to be the Senior Independent Director in consultation with the Council of Governors.

## **29 Board of Directors – Disqualification**

A person may not become or continue as a member of the Board of Directors if they do not comply with the requirements of the Company Directors' Disqualification Act.

29.1.1 A person may not be a Director of the Trust if:–

- (a) He has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (b) He has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (c) He has within the preceding five years been convicted anywhere in the world of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (d) In the case of a non-executive director, he no longer satisfies paragraph 23;
- (e) He is a person whose tenure of office as a Chairman or as a member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- (f) He has had his name removed, by a direction under section 151 of the 2006 Act from any relevant list, and has not subsequently had his name included on such a list;
- (g) He has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body;
- (h) He is the subject of a sex offender's order.

## **30 Board of Directors - Meetings**

- 30.1 The Board of Directors, in consultation with the Council of Governors, is to adopt standing orders covering the proceedings and business of its meetings. These are to include setting a quorum for meetings, both of executive and non-executive directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.
- 30.2 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 33.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## **31 Board of Directors - Conflicts of Interest of Directors**

- 31.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- (a) a duty to avoid a situation in which the Director has (or can have) direct or indirect, interest that conflicts (or possibly may conflict) with the interests of the Trust.
  - (b) a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 31.2 The duty referred to in sub paragraph 31.1(a) is not infringed if:
- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - (b) the matter has been authorised in accordance with the constitution.
- 31.3 The duty referred to in sub-paragraph 31.1(b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 31.4 In sub-paragraph 31.1(b) – ‘third party’ means a person other than:
- (a) The Trust, or
  - (b) A person acting on its behalf.
- 31.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 31.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 31.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 31.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 31.9 A Director need not declare an interest:
- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - (b) if, or to the extent that, the Directors are already aware of it;
  - (c) if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
    - i) by a meeting of the Board of Directors, or
    - ii) by a committee of the Directors appointed for the purpose under the constitution.
- 31.10 A matter shall be authorised’ for the purposes of paragraph 31.2(b) if

- (a) the Board of Directors by majority disapples the provision of the constitution which would, otherwise prevent a Director from being counted as participating in the decision making process.
- (b) the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- (c) the Director's conflict of interest arises from a permitted cause (as determined by the Board of Directors') from time to time.

## **32 Board of Directors – Remuneration and Terms of Office**

- 32.1 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.
- 32.2 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.

## **33 Registers**

- 33.1 The Trust is to have –
  - (a) a register of members showing, in respect of each member, the constituency and where there are classes within it, the class to which he belongs;
  - (b) a register of members of the Council of Governors;
  - (c) a register of interests of members of the Council of Governors;
  - (d) a register of Directors;
  - (e) a register of interests of the Directors.

## **34 Registers – Admission to and Removal from the Registers**

- 34.1 Any person entitled to be a Member who, as appropriate, applies or is invited to become a Member, shall have their name added to the register of Members. Such person's membership of the Trust shall commence from the date of their name being added to the register of Members.
- 34.2 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member or is disqualified, or if the member is deceased.
- 34.3 The register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted (which may be the Secretary).
- 34.4 The register of interests of Governors shall contain the names of each governor, whether he has declared any interests and, if so, the interests declared in accordance with this constitution or the standing orders for Governors.
- 34.5 The register of Directors shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted (which may be the Secretary).

- 34.6 The register of interests of Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this constitution on the standing orders for Directors.

### **35 Registers – Inspection and Copies**

- 35.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 35.2 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 in writing.
- 35.3 So far as the registers are required to be made available:
- (a) they are to be available for inspection free of charge at all reasonable times; and
  - (b) a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 35.4 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.

### **36 Documents Available for Public Inspection**

- 36.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- (a) a copy of the current constitution;
  - (b) a copy of the latest annual accounts and of any report of the auditor on them;
  - (c) a copy of the latest annual report.
- 36.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- (a) a copy of any order made under section 65D (appointment of trust special administrator, 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
  - (b) a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - (c) a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - (d) a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

- (e) a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- (f) a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- (g) a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- (h) a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
- (i) a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- (j) a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

36.4 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.

### **37 Auditor**

37.1 The Trust shall have an auditor.

37.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

### **38 Audit Committee**

38.1 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

### **39 Accounts**

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

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

39.3 The accounts are to be audited by the Trust's auditor.

39.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

39.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

## **40 Annual Reports, Forward Plans and Non-NHS Work**

- 40.1 The Trust shall prepare an annual report and send it to Monitor.
- 40.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 40.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 40.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 40.5 Each forward plan must include information about:-
- (a) 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
  - (b) the income it expects to receive from doing so.
- 40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5(a) the Council of Governors must:
- (a) 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
  - (b) notify the directors of the Trust and its determination.
- 40.7 A Trust which proposes to increase by five per cent 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 health service in England may implement the proposal only if more than half of the members of Council of Governors of the Trust voting approve its implementation.

## **41 Presentation of the Annual Accounts and Reports to the Governors and Members**

- 41.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- (a) the annual accounts;
  - (b) any report of the auditor on them; and
  - (c) the annual report.
- 41.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 41.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

## **42 Indemnity**

- 42.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability



which is incurred in the execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

- 42.2 The Trust may purchase and maintain for members of the Council of Governors and Board of Directors insurance in respect of directors' and officers' liability, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

### **43 Instruments**

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

### **44 Dispute Resolution Procedures**

- 44.1 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 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.
- 44.2 In the event of dispute between the Council of Governors and the Board of Directors the Chairman on advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute.
- 44.3 In any other dispute, the Council of Governors or the Board of Directors (as appropriate) shall seek to resolve the dispute.

### **45 Amendment of the Constitution**

- 45.1 The Trust may make amendments of its constitution only if:-
- (a) more than half of the members of the Council of Governors of the Trust voting approve the amendments and
  - (b) more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 45.2 Amendments made under paragraph 45.1 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.
- 45.3 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):-
- (a) at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - (b) the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 45.4 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.

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

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

- 46.1 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.
- 46.2 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.
- 46.3 'Significant transaction' means a transaction which meets the following criteria:-

<b>Criteria</b>	<b>Material Transaction</b>	<b>Significant Transaction</b>
Proportion of annual operating income as defined in the annual accounts	5%	7.5%

- 46.4 'Significant transaction' excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services.

- 46.5 The Board of Directors will involve the Council of Governors on other transactions as defined by the following local criteria:-

<b>Local Criteria</b>	<b>Other Transaction</b>
Divestment or disposal of assets	£2m
Change in the volume of any category of clinical activity.  There are five categories of clinical activity; defined as elective admissions, non-elective admissions, out-patient attendances, A&E attendances and community contacts. For this purpose, activity is defined as the total count across all clinical services in each category.	5% of any single category

## **Annex 1**

### **Public Constituencies of the Trust**

Name of constituency	Area	Minimum no. of Members	Number of Governors
Torbay	All of the area covered by Torbay Unitary Authority	500	Seven
Teignbridge	All of the area covered by Teignbridge District Council	500	Seven
South Hams and Plymouth	the following postcodes apply: TQ3 1 (part), TQ5 0 (part), TQ6, TQ7, TQ8, TQ9 5, TQ9 6 (part), TQ10, TQ11 0 (part), TQ12 5 (part), TQ13 7 (part), PL7, PL8, PL9, PL20 6 (part), PL21	500	Three

## **Annex 2**

### **Council of Governors Standing Orders (SOs)**

#### **1. Authority**

These SOs shall be agreed at the first meeting of the Council of Governors. Subsequent amendments will be made in accordance with Rule 18.

#### **2. Meetings**

Full Council of Governors Meetings will normally be held in **April, July, September and December** of each financial year. The Company Secretary will publish the dates, times and locations of meetings for the year six months in advance. Other, or emergency, Governor meetings may be called giving at least 14 days notice.

#### **3. Agendas and Papers**

Agendas and supporting papers will normally be issued to arrive with Governors no later than seven days in advance of the meeting. Draft minutes of the previous meeting will be circulated with these papers for approval as a specific agenda item.

#### **4. Reports from the Executive Directors**

A Governor may ask any question through the Chairman without notice upon a report from an Executive Director, or other officer of the Trust, when that item is being received or under consideration by the Council of Governors.

Unless the Chairman decides otherwise:-

- a) No statements will be made other than those which are strictly essential to define the question, which should last no longer than three minutes;
- b) A Governor who has put such a question may also put one supplementary question, but only if the supplementary question arises directly out of the reply given;
- c) At the discretion of the Chairman
  - i) He may reject any question from any Governor if in his or her opinion the question is substantially the same as a question which has already been put to that meeting or a previous meeting of Council of Governors;
  - ii) Questions may be asked of the Executive Directors by members of the Trust/public.

#### **5. Questions on Notice at Council of Governors Meetings**

Questions on notice are defined as questions from Governors about matters which are directly in relation to matters over which the Council of Governors has powers or duties or which affect the services provided by the Trust. Subject to paragraph 6 a Governor of the Council of Governors may ask questions of:-

- the Chairman;
- another Governor;
- an Executive Director;
- the Chair of any Council of Governors Sub-Committee or Working Group present.

## **6. Notice Of Questions Not Relating To The Agenda**

A Governor may ask a question which is not related to items on the forthcoming Council of Governors Agenda, provided they have given at least 14 days notice in writing to the Company Secretary to allow for an appropriate response to be made at the meeting. For the purposes of this Procedure Rule, receipt of any such questions via electronic means is considered acceptable.

## **7. Speaking Rules**

This rule applies to all forms of speech/debate by Governors or members of the public in relation to the motion or question under discussion.

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

Approval to speak will be given by the Chairman. Governors will be heard first, and after their debate is complete the Chairman will ask for any questions/comments from members of the public. Speeches must be directed to the matter, motion or question under discussion or to a personal explanation or point of order. Unless in the opinion of the Chairman it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature complexity or importance, **no proposal speech, nor any reply, may exceed three minutes**. In the interests of time the Chairman may limit the number replies which are heard.

### **7.2 When a person may speak again**

A person who has spoken on a motion may not speak again whilst it is the subject of debate, except:-

- a) In exercise of a right of reply;
- b) On a point of order.

### **7.3 Identification**

All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

## **8. Response**

An answer may take the form of:-

- a) a direct oral answer;
- b) where the desired information is in a publication of the Trust or other published work, a reference to that publication; or
- c) where the reply cannot conveniently be given orally, a written answer circulated later to the questioner and to the Council of Governors with the agenda for the next meeting;
- d) a brief oral answer supplemented by a written answer circulated later to the questioner and to the Council of Governors with the agenda at the next meeting.

## **9. Supplementary Question**

Supplementary questions for clarification may be asked at the discretion of the Chairman.

## **10. Motions, Amendments or Alterations or Withdrawals Of Motions – General Provisions**

The rules which follow in relation to the moving, amendment, alteration or withdrawal of motions shall in no way operate at any time to avoid or circumvent compliance with any other approved rules of Committee and therefore shall be construed accordingly.

## **11. Motions on Notice**

### **11.1 Notice**

Motions may only be submitted by Governors and must be received by the Company Secretary in writing at least two weeks prior to the meeting at which they are to be considered, together with any relevant supporting paper. Except for motions which can be moved without notice under Rule 12, written notice of every motion signed or transmitted by at least 2 Governors, is required. For the purposes of this Procedure Rule, receipt of any such motions via electronic means is considered acceptable. All motions will be acknowledged by the Company Secretary.

### **11.2 Scope**

Motions must be about matters for which the Council of Governors has a responsibility or which affect the services provided by the Trust.

## **12. Motions without Notice**

The following motions may be moved without notice:-

- a) in relation to the accuracy of the minutes;
- b) to change the order of business in the agenda;
- c) to refer something to an appropriate body or individual;
- d) to appoint a Working Group arising from an item on the agenda for the meeting;
- e) to receive reports or adopt recommendations made by the Board of Directors;
- f) to withdraw a motion;
- g) to amend a motion (but not to substantially change the intention of the motion);
- h) to proceed to the next business;
- i) that the question be now put;
- j) to adjourn a debate;
- k) to adjourn a meeting;
- l) to suspend a particular Council of Governors Procedure Rule; a rule may be suspended by motion on notice or without notice if at least one half of the whole number of Governors of the Council of Governors are present. Suspension can only be for the duration of the meeting;

- m) to exclude the public and press. The motion shall read 'To exclude the press and public from the remainder of the meeting, owing to the confidential nature of the business to be transacted';
- n) to not hear further a Governor, or to exclude them from the meeting. If a Governor persistently disregards the ruling of the Chairman by behaving improperly or offensively or deliberately obstructs business, the Chairman may move that the Governor be not heard further. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chairman may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion; and
- o) to give the consent of the Council of Governors where its consent is required by the Constitution.

### **13. Urgent Motions**

Urgent motions may only be submitted by a Governor and must be received by the Company Secretary **in writing** before the commencement of the meeting.

### **14. Any Other Business**

There will **not** be an agenda item entitled "Any Other Business". Instead, there will an item for "Motions or Questions on Notice", which are subject to Rules 6 and 10 above. There will be another item for "Urgent Motions or Questions", which are subject to Rules 6 and 12.

### **15. Attendance**

Governors who are unable to attend the Council of Governors meeting should advise the Company Secretary in advance of the meeting so that their apologies may be submitted.

### **16. Quorum**

The quorum necessary for the transaction of business shall be twelve Governors.

### **17. Chair**

The Council of Governors will be chaired in accordance with the Constitution. If the Council of Governors is dealing with matters of succession of the Chairman, then the Lead Governor of the Council of Governors will preside. If the Lead Governor is not available the meeting will be chaired, for that part of the meeting **only**, by a public Governor selected among those present.

### **18. Amendments to Standing Orders**

These SOs may only be amended at a Council of Governors Meeting or at a meeting specially convened for the purpose. A motion to change the SOs must be signed by a majority of Governors and submitted to the Company Secretary in writing at least 21 days before the meeting.

**19. Decisions without Meetings**

Provision for the approval of decisions without meetings (except for amendments under rule 18) where all Governors have been notified of the proposal and a majority of those eligible to vote have approved the resolution in writing within not less than four days.

**20. Dispute between the Council of Governors and the Board of Directors**

In situations where any conflict arises between the Board of Directors and the Council of Governors the 'policy for resolving differences between the Council of Governors and the Board of Directors' will be followed.



## **Annex 3**

### **Annual Members Meeting Standing Orders (SOs)**

#### **1. Authority and Amendment of these SOs**

These SOs will need to be approved by the Council of Governors at their first meeting for use at Members' Meetings. They may only be amended at the Annual Members Meeting (AMM). Suggested amendments are to be made in writing to the Torbay and South Devon NHS Foundation Trust Secretary at least 21 days in advance of the AMM.

#### **2. Members' Meetings**

Members' meetings shall be held in accordance with the Constitution. The Council of Governors shall determine the times and places of such meetings which may be held at one or more locations at the same or different times or dates. In the event of a Members' meeting being held in more than one location, the conclusion of the final meeting shall be determined to be the conclusion of the meeting. In determining the meeting arrangements, the Council of Governors shall take into account accessibility issues for Members.

#### **3. Eligibility to Attend**

Every Member registered by the Torbay and South Devon NHS Foundation Trust shall be entitled to participate in an Annual Members' Meeting subject to providing proof of membership to the satisfaction of the Company Secretary or their representative. Where the meeting takes place at more than one location no Member shall attend more than one meeting (except for the purpose of moving or seconding a motion or amendment which stands in the Member's name upon the Agenda). Governors of the Council of Governors, officials, and such other persons as may be authorised by the Board of Directors may attend more than one such meeting provided that no Member shall vote at more than one meeting.

#### **4. Notice of Meeting**

Formal notice of any Members' meeting shall set out the agenda for the meeting and shall be posted to Members or displayed in conspicuous places within the Trust not less than fourteen days before the date of such meetings. Formal Notice of such meetings shall also be given by such other means as the Council of Governors shall from time to time determine. In addition informal notice of meetings and the timetable for submitting motions and amendments shall be published in Members' publications wherever possible in order to give Members as much advance notice as possible.

#### **5. Quorum**

In accordance with the Constitution, a Members' meeting may proceed to business if 20 individual Members not all of whom are Employees, are present within 30 minutes after the time fixed for the meeting. No such meeting shall become incompetent to transact business by lack of a quorum arising after the chair has been taken.

#### **6. Voting**

In accordance with the Constitution every Member registered who is present shall have one vote. Except in the case of elections for governors on the Council of Governors, where voting shall be by secret ballot, voting shall be by show of hands unless one-third of the Members present demand a ballot or the Council of Governors shall so decide after giving due notice of its intention. No proxies shall be admissible.

## **7. Chairman**

The Chairman of the Council of Governors, or their authorised Vice Chair, shall act as Chairman at the Annual Members' Meetings. The ruling of the Chairman on any matter of procedure or a point of order shall be final.

## **8. Agenda**

The Agenda shall set out the business to be conducted at the meeting. The agenda for the annual meeting will be discussed at the preceding July meeting of the Council of Governors. No business other than that set out in the Agenda, subject to any Members' motions being received, shall be considered at any Members' meeting. Draft minutes of the previous meeting will be circulated with meeting papers for approval as a specific agenda item.

## **9. Order of Voting**

Where Members' meetings are held in more than one location, the meeting at each location shall vote upon any amendment to an original motion appearing on the Agenda and, if there is more than one amendment to any motion, in the order in which such amendments appear on the Agenda, and shall then vote upon the original motion. The issue shall be decided by a majority of the total votes cast at all meetings and if there be a majority in favour of the motion and/or one or more amendments, that which receives the highest number of votes in favour shall be declared carried.

## **10. Motions**

### **a. Submission**

Any motion for consideration at any Members' meeting shall be received in writing signed by five Members submitted to the Secretary at the Trust's registered office by 1600 hours, 21 days prior to the Annual Members' Meeting, or any special Members' Meeting. It shall be included in the notices as set out in paragraph 4 above. Any amendment to any motion shall be signed in the same way and shall be received by the Secretary at the registered office by 1600 hours, 10 working days prior to the meeting. An amended Agenda shall be circulated at the meeting.

### **b. Proposal and Seconding**

A motion or amendment should be formally proposed and seconded at the meeting. Any of the signatories may propose or second the motion or amendment at any meeting where it appears on the Agenda. In the event of such a Member not being available to attend such a meeting the Member may appoint another Member to propose or second.

## **11. Rejection of Motions and Amendments**

Acceptance of motions or amendments shall be at the discretion of the Council of Governors, and may be disqualified if they might:-

- (a) Result in publicity which could unjustifiably diminish confidence in the Trust or
- (b) Are defamatory or infer censure of any group or individual or
- (c) Concern matters of day-to-day management which lie within the discretion of management or the Board of Directors or
- (d) Do not relate directly to the affairs of the Foundation Trust or

- (e) Are in substantially the same terms as a motion which has been considered at a meeting held during the preceding eighteen months.

No amendment shall be accepted which is not relevant to the motion and no Member shall propose or second more than one amendment to any motion.

In the event of rejection a Member may appeal to the Council of Governors. The Council of Governors may at its discretion submit an amendment for the consideration of Members to any motion received.

## **12. Reports from Member Representatives and Directors**

A Member may ask a Member Representative or Director any question through the Chairman without notice upon a report from a Member Representative or Director, or other officer of the Trust, when that item is being received or under consideration by the Members. Unless the chairman decides otherwise no statements will be made other than those which are strictly essential to define the question, which should last no longer than 3 minutes. A Member who has put such a question may also put one supplementary question but only if the supplementary question arises directly out of the reply given. The chairman may reject any question from any Member if in his or her opinion the question is substantially the same as a question which has already been put to that meeting or a previous meeting of Members.

## **13. Speaking Rights**

When discussing any other motions, no mover of a proposal shall speak for more than 5 minutes except by prior agreement with the Chair (to be arranged through the Foundation Trust Company Secretary). No speaker apart from the mover of a proposal shall speak more than once on the same question. A maximum of two Members, in addition to the mover, may speak in support of the motion if required. These speakers must be drawn from the Members who have submitted the motion in accordance with Rule 10a.

## **14. Right of Reply**

A reply is allowed to the mover of an original motion, but not to the mover of an amendment. After the mover has commenced his/her reply, no other Member shall speak to the question.

## **15. Scrutineers**

At least two Members shall be appointed at the beginning of the meeting to act as scrutineers in the event of any voting.

## **Annex 4**

### **Board of Directors Standing Orders**

The standing orders for the Board of Directors must provide for:-

- A minimum notice period for meetings and the agenda and supporting papers of not less than 3 clear days, save with the consent of a majority of those entitled to be present and actually present at the meeting;
- Provision for the conduct of meetings including:-
  - Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions;
  - Voting, which may not provide for voting otherwise than on the basis of one vote for each Director apart from the Chairman of the meeting;
  - Provision for proxies;
  - Chairing the meeting in the absence of the Chairman;
  - Powers of the Chairman to determine the conduct of the meeting;
  - Circumstances where persons other than Directors may be allowed to speak at meetings;
  - Quorum;
  - Provision for a record of attendance and the requirement for minutes of the meetings to be kept;
  - Provision for the approval of decisions without meetings;
  - Provision for meetings to be held using telephone or electronic means;
- Provision for the establishment of Committees, sub-committees and working groups which must include:-
  - An Audit and Assurance Committee comprising non-executive directors
  - An Executive Nominations and Remuneration Committee, comprising the Chief Executive and non-executive directors
  - A Charitable Funds Committee
- Provision requiring the declarations of interests and providing for the conduct of Directors when an interest is material
- Provision requiring the adherence to the NHS standard for Business conduct as published from time to time
- Provisions governing the procurement of works, goods and services, and tendering and contracting procedures
- Provision regarding the use of the seal of the Trust and the execution of documents.

# **Torbay and South Devon NHS Foundation Trust (Council of Governors) Model Election Rules 2014**

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**1. Interpretation**

**1.1** In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;  
“*corporation*” means the public benefit corporation subject to this constitution;  
“*council of governors*” means the council of governors of the corporation;  
“*declaration of identity*” has the meaning set out in rule 21.1;  
“*election*” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;  
“*e-voting*” means voting using either the internet, telephone or text message;  
“*e-voting information*” has the meaning set out in rule 24.2;  
“*ID declaration form*” has the meaning set out in Rule 21.1; “*internet voting record*” has the meaning set out in rule 26.4(d);  
“*internet voting system*” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;  
“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.  
“*list of eligible voters*” means the list referred to in rule 22.1, containing the information in rule 22.2;  
“*method of polling*” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;  
“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

“*numerical voting code*” has the meaning set out in rule 64.2(b)  
“*polling website*” has the meaning set out in rule 26.1;  
“*postal voting information*” has the meaning set out in rule 24.1;  
“*telephone short code*” means a short telephone number used for the purposes of submitting a vote by text message;  
“*telephone voting facility*” has the meaning set out in rule 26.2;  
“*telephone voting record*” has the meaning set out in rule 26.5 (d);  
“*text message voting facility*” has the meaning set out in rule 26.3;  
“*text voting record*” has the meaning set out in rule 26.6 (d);  
“*the telephone voting system*” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;  
“*the text message voting system*” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;  
“*voter ID number*” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,  
“*voting information*” means postal voting information and/or e-voting information

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



## PART 2: TIMETABLE FOR ELECTIONS

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

**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**

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

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

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

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

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

9.2 The returning officer:

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

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

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

10.1 The nomination form must state the candidate's:

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

**11. Declaration of interests**

11.1 The nomination form must state:

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

**12. Declaration of eligibility**

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

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

**13. Signature of candidate**

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

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

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

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

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;

- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

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

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

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

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

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

**17. Withdrawal of candidates**

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

**18. Method of election**

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
  - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

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

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

**20. The ballot paper**

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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



*Action to be taken before the poll*

**22. List of eligible voters**

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

**23. Notice of poll**

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

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

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
  - (b) the ID declaration form (if required),
  - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - (d) a covering envelope;
- ("postal voting information").
- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter's voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,
- ("e-voting information").
- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
  - (b) only be sent e-voting information; or
  - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

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

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

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

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement

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

26.5

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

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

- (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
  - (f) prevent any voter from voting after the close of poll.

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

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

#### *The poll*

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

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

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

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

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

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

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

**30. Lost voting information**

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter’s identity,

- (b) has no reason to doubt that the voter did not receive the original voting information,
- (c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

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

34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

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

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

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

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

**36. Receipt of voting documents**

36.1 Where the returning officer receives:

- (a) a covering envelope, or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

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

36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

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



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

**37. Validity of votes**

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

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

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

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

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

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

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

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

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

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

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

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

**39. De-duplication of votes**

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

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

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (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.

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

**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.

**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

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

or

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

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

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

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

(c) in this context, a *“second preference”* is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

*“stage of the count”* means:

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

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

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

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

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

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

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

## **43. The count**

- 43.1 The returning officer is to:
  - (a) count and record the number of:
    - (iii) ballot papers that have been returned; and
    - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

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

**STV44.1 Any ballot paper:**

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

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

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

**STV44.3 Any text voting record:**

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

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

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

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

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

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,

- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

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

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.8 A text voting record on which a vote is marked:

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

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

FPP44.9 The returning officer is to:

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

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

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

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

## **STV45. First stage**

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

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

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

## **STV46. The quota**

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



- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.
- STV47. Transfer of votes**
- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or

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

whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

STV47.11 This rule does not apply at an election where there is only one vacancy.

#### **STV48. Supplementary provisions on transfer**

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

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

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
  - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
  - (ii) the recorded total of valid first preference votes.

- STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.
- STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.
- STV49. Exclusion of candidates**
- STV49.1 If:
- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
  - (b) subject to rule STV50, one or more vacancies remain to be filled,
- the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).
- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
  - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
  - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**STV50. Filling of last vacancies**

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

**STV51. Order of election of candidates**

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

**FPP51. Equality of votes**

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

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

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

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
  - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

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

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
  - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2      The returning officer is to make:

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

available on request.

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

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

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

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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or



- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

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

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1 The corporation may not allow:
  - (a) the inspection of, or the opening of any sealed packet containing –
    - (i) any rejected ballot papers, including ballot papers rejected in part,
    - (ii) any rejected text voting records, including text voting records rejected in part,
    - (iii) any disqualified documents, or the list of disqualified documents,
    - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
    - (v) the list of eligible voters, or
  - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,by any person without the consent of the board of directors of the corporation.
- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

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

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

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

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

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

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

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

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

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

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
  - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
  - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
- FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

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

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

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

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

## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

#### **60. Election expenses**

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

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

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

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

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

- 62.1 No person may:

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

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

### *Publicity*

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

- 63.1 The corporation may:

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

as it considers necessary.

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and

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

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

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

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

64.2 The information must consist of:

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

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

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

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

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

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

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

**67. Secrecy**

67.1 The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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



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

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

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

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