

SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST
(A Public Benefit Corporation)

Constitution

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1. **Definitions**

1.1 In this constitution: -

"the 2003 Act"	means the Health and Social Care (Community Health and Standards) Act 2003;
"the 1977 Act"	means the National Health Service Act 1977;
"the 2012 Act"	means the Health and Social Care Act 2012;
"applicant NHS Trust"	means the NHS Trust which made the application to become an NHS foundation trust;
"Monitor"	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act
"area of the Trust"	Means the area specified in Annex 1;
"Board of Directors"	means the Board of Directors as constituted in accordance with this constitution;
"carer"	means an individual who has attended any of the Trust's hospitals as a carer of a patient within the period commencing on the 1 April 1998, other than an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation;
"director"	means a director on 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 st April.
"Council of Governors"	means the Council of Governors as constituted in accordance with this constitution. This is the body referred to as the Council of Governors in the 2012 Act
"Independent Regulator"	means Monitor,
"Local Authority governor"	Means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of an area specified in Annex 1 as an area for a public constituency;
"member"	means a member of the Trust;
"other partnership governor"	means a member of the Council of Governors appointed by a partnership organisation other than a Primary Care Trust or university providing a medical or dental school to the trust specified in paragraph 8.3;
"PCT governor"	means a member of the Council of Governors appointed by a

	Primary Care Trust for which the trust provides goods or services;
“patient”	means an individual who has attended any of the Trust’s hospitals as a patient within the period commencing on the 1 April 1998.
“patient governor”	means a member of the Council of Governors elected by the members of the patients’ constituency;
“public governor”	means a member 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 the relevant class of the staff constituency;
“staff class”	means those classes of the staff constituency being five in number comprising staff whose terms of engagement by the Trust is made on the basis of the following classification: <ul style="list-style-type: none"> (i) medical and dental (“the medical and dental staff class”); (ii) nursing and midwifery (“the nursing and midwifery staff class”); (iii) allied health professions, pharmacist, healthcare scientist or technician group (“the AHP staff class”); (iv) management, administration, clerical (“the A/C staff class”); and (v) ancillary staff, works and maintenance (“the ancillary staff class”)
“the Trust”	means the Sheffield Teaching Hospitals NHS Foundation Trust;
“University governor”	means a member of the Council of Governors appointed by the University of Sheffield which provides a medical and dental school to a hospital of the Trust.

2 Name

2.1 The name of this Trust is to be Sheffield Teaching Hospitals NHS Foundation Trust.

3 Principal purpose

3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.

3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

3.3 The Trust may provide goods and services for any purposes related to

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

3.3.2 the promotion and protection of public health.

3.4 Subject to paragraph 15.7, 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 Trust is to have all the powers of an NHS Foundation Trust set out in the 2003 Act, subject to the terms of its authorisation.

5 Framework

5.1 A Board of Directors will be responsible for the management of the Trust and a Council of Governors will ensure that the Trust takes account of local needs and complies with the terms of its legal framework and the terms of authorisation issued by Monitor. Members of the Council of Governors will be drawn from those membership constituencies described in clause 7 of this Constitution and representatives from organisations closely connected with the services and goods of the Trust.

6 Members

6.1 The Trust is to have 3 membership constituencies, namely-

- (a) a “public constituency”,
- (b) a “staff constituency”, *and*
- (c) a “patients’ constituency”.

6.2 Public constituency

6.2.1 Members of the Trust who are members of the four public constituencies listed in Annex 1 are to be individuals-

- (a) who live in the Area of the Trust. (The area of the Trust is specified in Annex 1)
- (b) who are aged at least 12 years old
- (c) who are not eligible to become a member of the staff constituency and are not Members of any other constituency or otherwise disqualified for membership under paragraph 6.5; and
- (d) who have each made an application for membership to the Trust.

6.2.2 The minimum number of Members required for each of the 4 public constituencies shall be 25.

6.3 Staff constituency

6.3.1.a The staff constituency is to be divided into 5 classes as follows:

- (i) the medical and dental staff class;
- (ii) the nursing and midwifery staff class;
- (iii) the AHP staff class;
- (iv) the A/C staff class; and
- (v) the ancillary staff class.

6.3.1.b The members of the medical and dental practitioners' staff class are individuals who are members of the staff constituency who are fully registered persons within the meaning of the Medicines Act 1956 and, in the case of medical practitioners, who hold a licence to practise.

6.3.1.c The members of the nursing and midwifery staff class are individuals who are members of the staff constituency who are not fully registered persons within the meaning of the Medicines Act 1956, but whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professions established by section 25 of the NHS Reform and Health Care Professionals Act 2002

6.3.1.d The members of the other staff classes as described in paragraphs 6.3.1(a) iii-iv are individuals who are members of the staff constituency who do not come within paragraphs 6.3.1 (b) or 6.3.1 (c) above and who fall within the definitions of the AHP staff class, the A/C staff class and the ancillary staff class as defined in paragraph 1.

All staff are eligible to be a member of one class or another.

6.3.2 Members of the Trust who are members of the staff constituency are to be individuals –

- (a) who are employed under a contract of employment by the Trust; or
- (b) who are not so employed but who nevertheless exercise functions for the purposes of the Trust; and

- (c) who satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 1 to the 2003 Act, that is to say –
 - (i) in the case of individuals described at (a) above
 - (aa) who 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
 - (bb) who 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 do so either under an honorary contract with the Trust and are acknowledged in writing by the Trust as so doing for the purposes of this paragraph or who are the staff of contractors who work full time at the Trust providing services that the Trust would otherwise provide itself; and
- (d) All members of staff of the Trust who satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 1 to the 2003 Act; and who are not disqualified for membership under paragraph 7.5 below; and who have been invited by the Trust to become a member of that constituency (as a member of the appropriate staff class) and have not informed the Trust that they do not wish to do so, will become members of the staff constituency of the Trust.

6.3.3 The minimum number of members required for each class of the staff constituency is to be 20.

6.3.4 A person who is eligible to be a member of the staff constituency (see paragraph 6.3. above) may not become or continue as a member of any constituency other than the staff constituency and may not become or continue as a member of more than one staff class.

6.4 **Patients' Constituency**

6.4.1 The members of the Trust who are members of the patients' constituency are individuals who are:-

- (a) patients who are aged at least 12 years old or carers who are aged at least 18 years old;
- (b) who are not eligible to become a member of the staff constituency and who are not members of any other constituency and are not otherwise disqualified for membership; and
- (c) who have made an application for membership of the Trust.

6.4.2 Members of the patients' constituency may not be members of any other constituency. Members of the Trust who are eligible to be members of the patient constituency and the public constituency will normally default to be public members unless they specifically request by way of an application to that effect that they wish to be regarded as patient members.

6.4.3 The minimum number of members required for the patients' constituency is 100.

6.5 Disqualification for membership

6.5.1 A person may not be a member of the Trust or continue to be a member of the Trust if at the time of their application for membership of the Trust or at any time during the duration of their membership they do not meet the criteria for membership set out in paragraphs 6.2, 6.3 or 6.4.

6.5.2 It is the responsibility of the member to ensure their eligibility and not the Trust, but where the Trust is on notice that a Member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

6.6 Termination of membership

6.6.1 A member shall cease to be a member if he-

- (a) resigns by notice to the Foundation Trust Secretary.
- (b) ceases to fulfil the requirements of paragraph 6.2, 6.3 or 6.4;
- (c) is deemed to be disqualified by the application of paragraph 6.5

6.7 Voting at Governor elections

6.7.1 A person may not vote at an election for a public staff or patient 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 and relevant class for which an election is being held.

6.8. Associates

6.8.1 Each of the following hospitals shall have the right to appoint, upon invitation in writing to do so by the Trust, an Associate:

- 6.8.1.1 Doncaster and Bassetlaw NHS Trust
- 6.8.1.2 Rotherham District General NHS Trust;
- 6.8.1.3 Barnsley District General NHS Trust; and
- 6.8.1.4 Chesterfield and North Derbyshire NHS Trust

6.8.2 Associates shall be eligible to receive information and attend meetings of the Council of Governors and any sub-committees of the same, upon invitation, but they shall not be entitled to vote at any such meeting nor stand for election to the Council of Governors. For the avoidance of doubt the Associates shall not be called Associate Governors nor will they assume any role or duty of that of a Governor.

7 Council of Governors

7.1 The Trust is to have a Council of Governors. It is to consist of public governors, patient governors, staff governors, PCT governors, local authority governors, University governors, and other Partnership governors.

7.2 The Council of Governors of the Trust is to include-

- (a) 12 Public Governors.

- (b) 7 Patient Governors.
- (c) 5 Staff Governors, comprising one staff Governor elected from each of the five staff classes as more particularly described in paragraph 6.3.1 (a) – (d) above.
- (d) 2 Primary Care Trust Governors.
- (e) 2 Local Authority Governors.
- (f) 1 University Governor.
- (g) 8 other Partnership Governors.

7.2.1 The aggregate numbers of members of public governors and patient governors is to be more than half the total membership of the Council of Governors.

7.3 The organisations specified as partnership organisations that may each appoint a member to the Council of Governors are described in the following paragraphs 7.3.1 to 7.3.8. If and to the extent that a partnership organisation fails to make an appointment within three months of being invited to do so by the Trust the Trust may seek an appointment from an alternative partnership organisation which in the Trust's opinion has similar objects or provides similar goods or services to the partnership organisation it shall stand in substitution for:

7.3.1 Sheffield Hallam University

7.3.2 NHS Yorkshire and the Humber Strategic Health Authority

7.3.3 A non-Sheffield Primary Care Trust

7.3.4 Voluntary Action Sheffield (registered charity number 223007)

7.3.5 Sheffield First Partnership and

7.3.6 South Yorkshire Police

7.3.7 Sheffield College of Further Education

7.3.8 Sheffield Care Trust

7.4 **Public Governors**

7.4.1 Members of the public constituency may elect any of their number to be a public governor

7.4.2 If contested, the election must be by secret ballot.

7.4.3 The Election Scheme, including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is uncontested, is set out in Annex 3.

7.4.4 A person may not stand for election to the **Council of Governors** as a public governor unless, within the period specified in Annex 3, he has made a declaration in the form specified paragraph 13 of Annex 3 of his qualification to vote as a member of the public constituency for which the election is being held that he is a member of the public constituency and is not prevented from being a member of the council by paragraph 8 of Schedule 1 to the 2003 Act or paragraph 8.13 below (disqualification). It is an offence to knowingly or recklessly make a declaration under section 36 of the 2003 Act which is false in a material particular.

7.4.5 Paragraph **6.7**. (Voting at Governor elections) applies.

7.5 **Patient Governor**

7.5.1 Members of the patients' constituency may elect any of their number to be a patients' governor.

7.5.2 If contested, the election must be by secret ballot.

7.5.3 The Election Scheme, including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is uncontested, is set out in Annex 3.

7.5.4 A person may not stand for election to the **Council of Governors** as a patient unless, within the period specified in Annex 3 he has made a declaration in the form specified in paragraph 13 of Annex 3 of his qualification to vote as a member of the patient constituency for which the election is being held that he is a member of the patient constituency and is not prevented from being a member of the **Council of Governors** by paragraph 8 of Schedule 1 to the 2003 Act or paragraph **7.13** below (disqualification). It is an offence to knowingly or recklessly make a declaration under section 36 of the 2003 Act which is false in a material particular.

7.5.5 Paragraph **6.7**. (Voting at Governor elections) applies.

7.6 **Staff Governors**

7.6.1 Members of a staff class of the staff constituency may elect any of their number to be a staff governor for that class.

7.6.2 If contested, the election must be by secret ballot.

7.6.3 The Election Scheme, including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is uncontested, is set out in Annex 3.

7.7 **PCT Governors**

7.7.1 The Sheffield Primary Care Trust listed at Annex 4 is authorised to appoint two PCT Governors pursuant to a process agreed with the PCT and the Trust.

Barnsley, Doncaster and Rotherham PCTs listed at Annex 4 are authorised to appoint a single non-Sheffield PCT Governor pursuant to a process agreed between the PCTs and the Trust.

7.8 **Local Authority Governors**

7.8.1 The Local Authority listed in Annex 5 is authorised to appoint 2 Local Authority Governors pursuant to a process agreed by the Local Authority and the Trust

7.9 **University Governors**

7.9.1 A University Governor is to be appointed by the University of Sheffield in accordance with process agreed with the Chief Executive.

7.10 **Other Partnership Governors**

7.10.1 For the remaining Partnership Governors for whom specific arrangements are not set out above these are to be appointed by the organisations listed in paragraphs 7.3.1 – 7.3.8 in accordance with the process agreed with the Chief Executive.

7.11 **Terms of office**

7.11.1 **Public Governors -**

- (a) 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 2 consecutive terms provided that any term which is less than 3 years in duration shall not count; and
- (d) cease to hold office if they cease to be a member of the public constituency or is disqualified from membership under paragraph 6.5 (disqualification).

7.11.2 **Patient Governors -**

- (a) may hold office for a period of three years;
- (b) Are eligible for re-election at the end of that period;
- (c) may not hold office for longer than 2 consecutive terms provided that any term which is less than 3 years in duration shall not count;
- (d) cease to hold office if they cease to be a member of the public constituency or is disqualified from membership under paragraph 6.5 (disqualification).

7.11.3 **Staff Governors -**

- (a) may hold office for a period of three years;
- (b) are eligible for re-election at the end of that period;
- (c) may not hold office for longer than 2 consecutive terms provided that any term which is less than 3 years in duration shall not count; and
- (d) cease to hold office if they cease to be a member of the staff constituency or is disqualified from membership under paragraph 6.5 (disqualification).

7.11.4 **PCT Governors -**

- (a) may hold office for a period of 3 years;

- (b) are eligible for reappointment at the end of that period;
- (c) may not hold office for longer than 2 consecutive terms provided that any term which is less than 3 years in duration shall not count; and
- (d) cease to hold office if the sponsoring primary care trust withdraws its sponsorship of them.

7.11.5 Local Authority Governors -

- (a) may hold office for a period of 3 years;
- (b) are eligible for reappointment at the end of that period;
- (c) may not hold office for longer than 2 consecutive terms provided that any term which is less than 3 years in duration shall not count; and
- (d) cease to hold office if the sponsoring local authority withdraws its sponsorship of them.

7.11.6 University Governor -

- (a) may hold office for a period of 3 years;
- (b) are eligible for reappointment at the end of that period;
- (c) may not hold office for longer than 2 consecutive terms provided that any term which is less than 3 years in duration shall not count; and
- (d) Cease to hold office if the sponsoring university withdraws its sponsorship of them.

7.11.7 Other Partnership Governors -

- (a) may hold office for a period of 3 years;
- (b) are eligible for reappointment at the end of that period; and
- (c) may not hold office for longer than 2 consecutive terms provided that any term which is less than 3 years in duration shall not count; and
- (d) cease to hold office if the sponsoring partnership organisation withdraws its sponsorship of them.

7.11.8 Public governors, patient governors, staff governors and the other governors described in the preceding sub-paragraphs of this paragraph 7.11 shall cease to be governors of the Council of Governors if their tenure is terminated in accordance with paragraph 7.12 or they are disqualified by reason of paragraph 7.13.

7.12 Termination of tenure

7.12.1 A governor may resign from that office at any time during the term of that office by giving notice in writing to the Chief Executive.

7.12.2 If a governor fails to attend 3 consecutive meetings of the Council of Governors, 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.

7.12.3 If the **Council of Governors** determines that a public patient or staff governor is at any time not representative of the constituency or class which they represent having regard to the manifesto of the governor then they may, acting reasonably, terminate, upon notice to him, his tenure of office

7.13 **Disqualification**

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

- (i) he has not reached the age of 18;
- (ii) in the case of a staff governor, public governor or patient governor he ceases to be a member of the constituency he represents;
- (iii) in the case of a PCT Governor, Local Authority Governor, University Governor, or other Partnership Governor, the sponsoring PCT, local authority, university or organisation withdraw their sponsorship of him;
- (iv) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (v) 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;
- (vi) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (vii) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (viii) he is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, or for non-disclosure of a pecuniary interest;
- (ix) he is an executive or non-executive Director of the Trust, or a governor, non-executive director, chairman, chief executive officer of another NHS foundation trust;
- (x) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had his name included in such a list;
- (xi) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs.
- (xii) He is a registered sex offender pursuant to Part 1 of the Sex Offenders Act 1997
- (xiii) He has failed to abide by the Trust's Code of Conduct and accountability and any Code of Values and principles in such form as the Trust may publish from time to time.

- (xiv) He has failed to comply with or otherwise contravened the Trust's zero tolerance policy (as amended from time to time) and has been so notified to that effect by the Chief Executive.

7.13.2 Where a person has been elected or appointed to be a governor and he becomes disqualified for appointment under paragraph 7.13.1, he shall notify the Chief Executive in writing of such disqualification.

7.13.3 If it comes to the notice of the Chief Executive 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.

7.13.4 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.

7.14 **Vacancies**

7.14.1 Where membership of the Council of Governors ceases because he ceases for one of the reasons set out in paragraph 7.11 or 7.13 above, Public, Patient, and Staff Governors shall be replaced in accordance with the relevant Electoral Schemes set out in Annex 3, and PCT Governors, Local Authority Governors, University Governors and other partnership Governors are to be replaced in accordance with the processes agreed pursuant to paragraphs 7.7 to 7.10.

7.15 **Roles and responsibilities of Governors**

The roles and responsibilities of the governors are-

- (a) at a General Meeting -
 - (i) to appoint or remove the chairman and the other non-executive directors. The initial chairman appointed by the Council of Governors is to be the chairman of the applicant NHS trust if s/he wishes to be appointed. The other initial non-executives appointed by the Council of Governors are, so far as possible, to be non-executive directors (other than the chairman) of the applicant trust who wish to be appointed. The removal of a non-executive director requires the approval of three-quarters of the members of the Council of Governors,
 - (ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors,
 - (iii) to appoint or remove the Trust's auditor at a general meeting of the Council of Governors.
 - (iv) to be presented with the annual accounts, any report of the auditor on them and the annual report;
- (b) to approve (by a majority of the Council of Governors voting) an appointment (by the non-executive directors) of the Chief Executive (other than the initial Chief Executive of the Trust appointed in pursuance of paragraph 19(6) of Schedule 1 to the 2003 Act).

- (c) to give the views of the **Council of Governors** to directors for the purposes of the preparation (by the directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to **Monitor**;
- (d) to consider the annual accounts, any report of the auditor on them and the annual report;
- (e) to respond as appropriate when consulted by the directors.
- (f) to act as a source of ideas about how the Trust can provide its services in a way that meets the needs of the communities in its Area.

7.16 **Expenses**

7.16.1 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.

7.16.2 The remuneration and allowances for non-executive Directors set by the governors are also to be published in the Annual Report.

7.17 **Remuneration**

7.17.1 Governors are not to receive remuneration.

7.18 **Meetings**

7.18.1 For the purpose of enabling the proceedings of the **Council of Governors** in the absence of the Chairman, the Chairman will appoint a Vice-Chairman from the Non-Executive Directors after due consultation with the **Council of Governors**.

7.18.2 The Chairman of the Trust or, in his absence, the Vice Chairman is to preside at meetings of the **Council of Governors**.

7.18.3 Meetings of the **Council of Governors** are to be open to members of the public unless they resolve to exclude the public (for either the whole or part of the proceedings) where it considers that publicity would be prejudicial to the Trust by reason of the confidential nature of the business to be transacted or for other exceptional reasons stated in the resolution.

7.18.4 The **Council of Governors** is to meet at least 3 times per year.

7.18.5 At the annual general meeting of the **Council of Governors** which shall take place on or before 30 September in every year the **Council of Governors** are to receive and consider the annual accounts, any report of the auditor on them, and the annual report.

7.18.6 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.

7.18.7 A governor elected to the **Council of Governors** by the public constituency, or the patients' constituency or a class of the staff constituency may not vote at a meeting of the **Council of Governors** unless he has made a declaration in the period commencing with the date of the publicised nomination date and ending with the date of the relevant election for which he has made his nomination, in the form specified in the paragraph below stating which constituency or class he is a member of and is not prevented from being a member of the **Council of Governors** paragraph 7 of Schedule 1 to the 2003.

7.18.8 The form referred to in paragraph 7.17.7 is more particularly described in paragraph 13 of Annex 3 to this Constitution.

7.19 Committees and sub-committees

7.19.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

7.19.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.

7.20 Conflicts of interest of Governors

7.20.1 If a Governor has a pecuniary interest, whether direct or indirect, in any contract or proposed contract or other matter which is under consideration by the Council of Governors, he shall disclose that to the Council of Governors as soon as he is aware of it and retire from the meeting. Interests which should be regarded as “relevant and material” and which for the avoidance of doubt should be included in the register of governors interests, are included at Annex 7.

8 Board of Directors

8.1 The Trust is to have a Board of Directors. It is to consist of executive and non-executive directors

8.2 The board is to include—

(a) the following non-executive directors-

- (i) a chairman,
- (ii) 7 other non-executive directors;

(b) the following executive directors -

- (i) a Chief Executive (and accounting officer),
- (ii) a Finance director,
- (iii) 5 other executive directors, one of who is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and another of whom is to be a registered nurse or registered midwife.

8.3 Subject to paragraph 8.3.1 below only a member of the public constituency or the patients' constituency or an individual exercising functions for the University of Sheffield is eligible for appointment as a non-executive director.

8.3.1 Paragraph 8.3 above does not apply to the appointment of any initial non-executive director in pursuance of paragraph 19 of Schedule 1 of the 2003 Act.

8.4 Subject to the provisions in paragraph 8.5.1 regarding initial appointments, non-executive directors are to be appointed in accordance with a process of open competition outlined as follows:

8.4.1 The **Council of Governors** shall at their first meeting establish an Appointments Committee comprising the Chairman, three public governors, one staff governor and 2 other partner governors to consider candidates for appointment as Non-Executive Directors against an agreed person specification. The Appointments Committee will be advised by a recognised external expert. The Appointments Committee will shortlist those candidates they wish to interview and conduct interviews with the candidates and thereafter make their selection(s) to recommend for appointment. This/These recommendation(s) will be put to the **Council of Governors** who may decide to accept it/them or otherwise and may or may not approve the appointment.

8.4.2 The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

8.5 **Terms of Office**

8.5.1 The Chairman and the non-executive directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the **Council of Governors** at a general meeting. The initial chairman and the other non executive directors are to be appointed for the unexpired period of their respective terms of office as Chairman or (as the case may be) non-executive director of the applicant NHS trust or 12 months whichever is the longer.

8.5.2 The Chief Executive (and accounting officer) and the Finance director shall hold offices for a period in accordance with the terms and conditions of office decided by the relevant committee of non-executive directors or pending the establishment of such a committee in accordance with the terms and conditions decided by the previous NHS Trust Remuneration Committee.

8.5.3 The executive directors, other than the Chief Executive and the Finance Director, shall hold office for a period in accordance with the terms and conditions decided by the relevant committee of non-executive directors or pending the establishment of such a committee in accordance with the terms and conditions decided by the previous NHS Trust remuneration committee.

8.6 **Disqualification**

8.6.1 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 in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (d) in the case of a non-executive Director, he no longer satisfies paragraph **8.3**.
- (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, or for non-disclosure of a pecuniary interest;

- (f) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, 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, from any paid employment with a health service body.

8.7 Roles and Responsibilities

- 8.7.1 The powers of the Trust are to be exercisable by the Board of Directors on its behalf.
- 8.7.2 Any of those powers may be delegated to a committee of directors or to an executive director.
- 8.7.3 A committee of non-executive Directors established as an audit committee is to monitor, review and carry out such other functions in relation to the Auditor as are appropriate.
- 8.7.4 It is for the non-executive Directors to appoint (subject to the approval of the **Council of Governors**) or remove the Chief Executive (and accounting officer). The initial Chief Executive (and accounting officer) is to be the chief officer of the applicant NHS trust if s/he wishes to be appointed.
- 8.7.5 It is for a committee consisting of the Chairman, the Chief executive (and accounting officer) and the other non-executive directors to appoint or remove the executive Directors.
- 8.7.6 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 executive Directors, but pending the establishment of such a committee these matters are to be decided in accordance with such remuneration and allowances, determined by the Remuneration Committee of the Applicant Trust.
- 8.7.7 The Directors, having regard to the views of the **Council of Governors**, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to **Monitor**.
- 8.7.8 The Directors are to present to the **Council of Governors** at a general meeting the annual accounts, any report of the auditor on them, and the annual report.
- 8.7.9 The functions of the Trust under paragraph **14** below are delegated to the Chief Executive as accounting officer.
- 8.7.10 The Directors shall in each year review the provisions, and the effect thereof, of this constitution with the intent of determining, in the interests of the Trust, whether any proposal shall be submitted to the **Council of Governors** for amendment to this constitution which amendment shall be made in accordance with paragraph **19** below.

9 Meetings of Directors

- 9.1 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.

10 Conflicts of interest of Directors

10.1 If a director has a pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the board, he shall disclose that to the rest of the board as soon as he is aware of it. Interests which should be regarded as “relevant and material” and which for the avoidance of doubt should be included in the register of directors’ interests are included at Annex 7.

11 Registers

11.1 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 the **Council of Governors**
- (d) a register of directors;
- (e) a register of interests of the directors.

11.2 The Chief Executive or his nominated officer shall:-

- 11.2.1 admit to the Members Register the name and constituency of a member upon receipt of a signed declaration of the member in the form annexed at Annex 3 confirming their eligibility as a member;
- 11.2.2 remove from the Members Register any member who is no longer eligible to be a member or indicates in writing that they no longer wish to be a member or upon receipt of a notice to that effect from the member’s next of kin or personal representative that the member has died;
- 11.2.3 admit to the Register of Governors the name and constituency of those members who have been elected or appointed as a governor to the Foundation Trust;
- 11.2.4 remove from the Register of Governors those governors who have not been re-elected or who have had their sponsorship withdrawn, notice having been given to the Foundation Trust Secretary to that effect;
- 11.2.5 maintain the respective Registers of Interests of Directors and Governors and undertake a review of the same at least once in every year by notice to that effect to all Directors and Governors.

11.3 The Trust is to send **Monitor** a list of the persons who were first elected or appointed:-

- (a) the members of the **Council of Governors**;
- (b) the directors

12 Public documents

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

- (a) a copy of the current constitution;
- (b) a copy of the current authorisation;

- (c) a copy of the latest annual accounts and of any report of the auditor on them;
- (d) a copy of the latest annual report;
- (e) a copy of the latest information as to its forward planning;
- (f) a copy of any notice given under section 23 of the 2003 Act (Monitor's notice to failing NHS foundation trust).

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

12.3 The registers mentioned in the paragraph 11.1 are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the Public Benefit Corporation (Register of Members) Regulations 2004 and the 2003 Act, and, so far as those registers are required to be available -

- (a) they are to be available free of charge at all reasonable times,
- (b) a person who requests it is to be provided with a copy of or extract from them.

12.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

13 Auditor

13.1 The Trust is to have an auditor and is to provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Part 1 of the 2003 Act.

13.2 A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 1 to the 2003 Act.

13.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 7.15.(a), and monitoring of the auditor's functions by a committee of non-executive directors is covered in paragraph 8.7.3.

13.4 An officer of the Audit Commission may be appointed with the agreement of the Commission.

13.5 The Auditor is to carry out his duties in accordance with Schedule 5 to the 2003 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

14 Accounts

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

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

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

14.4 The following documents will be made available to the Comptroller and Auditor General for

examination at his request–

- (a) the accounts;
- (b) any records relating to them; and
- (c) any report of the auditor on them.

14.5 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.

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

15 Annual report, forward plans and non-NHS work

15.1 The Trust is to prepare annual reports and send them to Monitor.

15.2 The reports are to give -

- 15.2 (a) information on any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its/any public constituency and the patients' constituency is representative of those eligible for such membership; and
- (b) any other information Monitor requires.

15.3 The Trust is to comply with any decision Monitor makes as to –

- (a) the form of the reports;
- (b) when the reports are to be sent to it;
- (c) the periods to which the reports are to relate.

15.4 The Trust is to give information as to its forward planning in respect of each financial year to Monitor. This information is to be prepared by the directors, who must have regard to the views of the Council of Governors (paragraph 8.7.7 above).

15.5 Each forward plan must include information about:

15.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and

15.5.2 the income it expects to receive from doing so.

15.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 15.5.1 the Council of Governors must:

15.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and

15.6.2 notify the directors of the Trust of its determination

15.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the

purposes of the health service in England, the proposal may be implemented only if more than half of the members of the Council of Governors voting approve its implementation.

16 Indemnity

16.1 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 or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

17 Instruments etc.

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

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

18 Dispute Resolution Procedures

18.1 The Trust is to establish appropriate dispute resolution procedures with its employees, contractors and members.

18.2 Dispute resolution procedures relating to members and membership, individual governors and the **Council of Governors** and Board of Directors are set out at Annex 6. These are to be approved by the **Council of Governors**.

19 Amendment of the Constitution

19.1 The Trust may make amendments to this Constitution with the approval of **Monitor**.

19.2 No proposals for amendment of this Constitution will be put to **Monitor** unless it has been approved by no less than three quarters of the **Council of Governors** present and voting at a meeting convened for that purpose.

20 Dissolution of the Trust

20.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2003 Act.

Annex 1

Public Constituency of the Trust

The minimum number of members shall be 100.

The number of governors shall be 12 in total with 3 governors to be elected from each of the 4 constituencies.

Separate elections will be held in each Public Constituency.

The Public Constituency of the Trust shall be divided into 4 constituencies, the area for which shall be determined by the electoral ward boundaries allocated to the Sheffield Primary Care Trust namely North Sheffield, Sheffield South East, Sheffield South West and Sheffield West.

The Constituencies will be:-

North Sheffield covering the electoral wards of Chapel Green, Nether Shire, Southey Green, Brightside, Firth Park, Owlerton and Burngreave.

Sheffield South East covering the electoral wards of Darnall, Manor, Castle, park, Heeley, Intake, Birley, Handsworth and Mosborough.

Sheffield South West covering the electoral wards of Sharrow, Nether Edge, Ecclesall, Hallam, Dore, Beauchief and Norton.

West Sheffield covering the electoral wards of Stocksbridge, South Wortley, Hillsborough, Walkley, Netherthorpe and Broomhill.

Annex 2

Practice and Procedure for Meetings

1.

- 1.1. **Admission of the Public and the Press** – The public and representatives of the press shall be afforded facilities to attend all formal meetings of the **Council of Governors** but shall be required to withdraw upon the **Council of Governors** resolving as follows:

“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”.

- 1.2. The Chairman (or Vice-Chairman) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the **Council of Governors** business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required **to withdraw** upon the **Council of Governors** resolving as follows:

*“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the **Council of Governors** to complete business without the presence of the public”.*

- 1.3. Nothing in these Standing Orders shall require the **Council of Governors** to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without prior agreement of the **Council of Governors**.
- 1.4. Meetings of the **Council of Governors** shall, unless otherwise determined, be held on the first Wednesday of each month or at such other times as the **Council of Governors** may determine and at such places as they may from time to time appoint.
- 1.5. The Chairman may call a meeting of the **Council of Governors** at any time. If he refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of Governors has been presented to him, or if, without so refusing, the Chairman does not call a meeting within seven days after such a requisition has been presented to him, such one third or more members may forthwith call a meeting.
- 1.6. **Notice of Meetings** – Before each meeting of the **Council of Governors**, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every Governor and Associate Member, or sent by post to the usual place of residence of such persons, so as to be available to him at least three clear days before the meeting.
- 1.7. Lack of service of the notice on any person as described in paragraph 1.6 shall not affect the validity of the meeting.
- 1.8. In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified on the notice.

- 1.9. Failure to serve such a notice on more than 6 will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 1.10. **Setting the Agenda** – The **Council of Governors** may determine that certain matters shall appear on every agenda for a meeting of the **Council of Governors** and shall be addressed prior to any other business being conducted.
- 1.11. A Governor desiring a matter to be included on an agenda shall make the request in writing to the Chairman at least 7 clear days before the meeting. Requests made less than 7 days before a meeting may be included on the agenda at the discretion of the Chairman.
- 1.12. **Chairman of Meeting** – At any meeting of the **Council of Governors**, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Vice-Chairman, if there is one and he is present, shall preside. If the Chairman and the Vice-Chairman are absent such Governor as the Governors present shall choose shall preside.
- 1.13. If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice-Chairman, if present, shall preside. If the Chairman and the Vice-Chairman are absent, or disqualified from participating, such Governor as the Governors present shall choose shall preside.
- 1.14. **Notices of Motion** – A Governor of the **Council of Governors** desiring to move or amend a motion shall send a written notice thereof at least 7 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to preceding provisions
- 1.15. **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 1.16. **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Governors who gives it and also the signature of 4 other Governors at least 2 of whom shall be as Public Governors. When any such motion has been disposed of by the Trust, it shall not be competent for any Governor other than the Chairman to propose a motion to the same effect within 6 months, however the Chairman may do so if he considers it appropriate.
- 1.17. **Motions** – The mover of a motion shall have the right of reply at the close of any discussions on the motion or any amendment thereto.
- 1.18. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor
- 1.19. to move:
 - An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceed to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

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

Chairman's Ruling - The decision of the Chairman of the meeting on the question of order, relevancy and regularity shall be final. The Chairman of the Trust shall be the final authority in the interpretation of these standing orders on which he shall be advised by the Chief Executive

- 1.20. **Voting** – Every question at a meeting will be determined by a majority of the votes of the Governors present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second or casting vote.
- 1.21. All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 1.22. If a Governor so requests his vote shall be recorded by name upon any vote (other than by paper ballot).
- 1.23. **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and entered in a book kept for that purpose and shall be signed at the next ensuing meeting by the person presiding at it.
- 1.24. No discussion shall take place upon the minutes, except upon their accuracy, or where the Chairman considers discussion appropriate. Any amendments to the minutes shall be agreed and recorded at the next meeting.
- 1.25. Minutes shall be circulated in accordance with governor's wishes. Where providing a record of a public meeting the minutes shall be made available to the public (required by Code of Practice on Openness in the NHS).

2. **Committees**

- 2.1. **Appointment of Committees** – Subject to paragraph 2.7 below and such directions as may be given by the Independent Regulator, the **Council of Governors** may and, if directed by him, shall appoint committees of the **Council of Governors**, consisting wholly or partly of Governors of the **Council of Governors**.
- 2.2. A committee appointed under paragraph 2.1 may, subject to such directions as may be given by Monitor or the **Council of Governors** appoint sub-committees consisting wholly or partly of members of the committee
- 2.3. The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the **Council of Governors**.
- 2.4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the **Council of Governors**), as the **Council of Governors** shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

- 2.5. Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the **Council of Governors**.
- 2.6. The **Council of Governors** shall approve the appointments to each of the committees which it has formally constituted. Where the **Council of Governors** determines that persons, who are neither Governors nor directors or officers, shall be appointed to a committee, the terms of such an appointment shall be determined by the **Council of Governors** subject to the payment of travelling and other allowances being in accordance with such sum as may be determined by the Trust and /or the Independent Regulator
- 2.7. Where the **Council of Governors** is required to appoint persons to a committee and/or to undertake statutory functions as required by **Monitor**, and where such appointments are to operate independently of the **Council of Governors** and /or the Trust such appointment shall be made in accordance with the any regulations laid down by the Secretary of State or any directions or guidance issued by **Monitor** from time to time
- 2.8. **Confidentiality** – A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the **Council of Governors** or shall otherwise have concluded on that matter.
- 2.9. A Governor of the Trust or a member of a committee shall not disclose any matter reported to the **Council of Governors** or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the **Council of Governors** or committee shall resolve that it is confidential.

Annex 3

Conduct of Elections

Elections for Public Governors, Staff governors and Patient Governors will be conducted in accordance with the schedule of elections as set out below:-

THE MODEL ELECTION RULES

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Part 1 – Interpretation

1. Interpretation

- (1) In these rules, unless the context otherwise requires –
- corporation** means the public benefit corporation subject to this constitution;
- election** means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the board of governors;
- the Regulator** means the Independent Regulator for NHS foundation trusts; and
- the 2006 Act** means the National Health Service Act 2006

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

Part 2 – Timetable for election

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll
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

- (1) In computing any period of time for the purposes of the timetable -
- a Saturday or Sunday;
 - Christmas day, Good Friday, or a bank holiday, or
 - a day appointed for public thanksgiving or mourning,
- shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.
- (2) In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

Part 3 – Returning officer

4. Returning officer

- (1) Subject to Rule 64, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

Subject to Rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

The corporation is to pay the returning officer -

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

7. Duty of co-operation

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

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election

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

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

9. Nomination of candidates

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer -
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation,but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars

- (1) The nomination paper must state the candidate's -
 - (a) full name,
 - (b) contact address in full, and
 - (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

The nomination paper must state –

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

12. Declaration of eligibility

The nomination paper must include a declaration made by the candidate–

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

13. Signature of candidate

The nomination paper must be signed and dated by the candidate, indicating that –

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

14. Decisions as to the validity of nomination –

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-
 - (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.

- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -
 - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.

- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show –
 - (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board of governors, then –
 - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

19. Poll to be taken by ballot

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) Every ballot paper must specify –
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid

Action to be taken before the poll

22. List of eligible voters

- (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

Part 5 – Contested elections

23. Notice of poll

The returning officer is to publish a notice of the poll stating –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,

- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer

- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters –
 - (a) a ballot paper and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

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

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

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

28. Spoilt ballot papers

- (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –
 - (a) is satisfied as to the voter’s identity, and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –
 - (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original ballot paper, and
 - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) –

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration –
 - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
 - (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter’s signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents –

- (1) Where the returning officer receives a –
 - (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of Rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –
 - (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.

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

33. Validity of ballot paper

- (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –
 - (a) put the declaration of identity if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –
 - (a) mark the ballot paper “disqualified”,
 - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
 - (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) –

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

35. Sealing of packets –

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

36. Interpretation of Part 6 -

In Part 6 of these rules –

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

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

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

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

non-transferable vote means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule 44(4) below,

preference as used in the following contexts has the meaning assigned below–

- (a) **first preference** means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) **next available preference** means a preference which is the second, or as the case maybe, 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 41 below,

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

stage of the count means –

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

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

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

transfer value means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

37. Arrangements for counting of the votes –

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

38. The count -

- (1) The returning officer is to –
 - (a) count and record the number of ballot papers that have been returned, and
 - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

39. Rejected ballot papers –

- (1) Any ballot paper –
 - (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
 - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d) which is unmarked or rejected because of uncertainty,shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.
- (2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

40. First stage –

- (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.
- (2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.
- (3) The returning officer is to also ascertain and record the number of valid ballot papers.

41. The quota –

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- (3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of Rule 44 has been complied with.

42. Transfer of votes –

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub- parcels so that they are grouped –
 - (a) according to next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.
- (3) The returning officer is, in accordance with this rule and Rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –
 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped –
 - (a) according to the next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (6) The returning officer is, in accordance with this rule and Rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.
- (7) The vote on each ballot paper transferred under paragraph (6) shall be at –
 - (a) a transfer value calculated as set out in paragraph (4)(b) above, or

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

whichever is the less.

- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- (11) This rule does not apply at an election where there is only one vacancy.

43. Supplementary provisions on transfer –

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule 42 above –
- (a) record the total value of the votes transferred to each candidate,
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total,
 - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
 - (d) compare -
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

- (3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.
- (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44. Exclusion of candidates –

- (1) If -
 - (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
 - (b) subject to rule 45 below, one or more vacancies remain to be filled,
the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).
- (2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as -
 - (a) ballot papers on which a next available preference is given, and
 - (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).
- (3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub- parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballot papers in the sub-paragraph of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-paragraph of ballot papers with the next highest value and so on until he has dealt with each sub-paragraph of a candidate excluded under paragraph (1) above.
- (10) The returning officer shall after each stage of the count completed under this rule—
 - (a) record –
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare -
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.
- (12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest -
 - (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

45. Filling of last vacancies –

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

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

46. Order of election of candidates –

- (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for Rule 42(10) above.
- (2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- (3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections –

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to -
 - (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Sheffield Teaching Hospitals 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.
- (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 39(1), available on request.

48 . Declaration of result for uncontested elections –

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

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll –

- (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –
 - (a) the counted ballot papers,
 - (b) the ballot papers endorsed with “rejected in part”,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of –
 - (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoiled ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of –
 - (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.

50. Delivery of documents -

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

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

Where –

- (a) any voting documents are received by the returning officer after the close of the poll, or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

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

52. Retention and public inspection of documents –

- (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- (3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –
 - (a) any rejected ballot papers, including ballot papers rejected in part,
 - (b) any disqualified documents, or the list of disqualified documents,
 - (c) any counted ballot papers,
 - (d) any declarations of identity, or
 - (e) the list of eligible voters,by any person without the consent of the Regulator.
- (2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- (3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
 - (a) persons,
 - (b) time,
 - (c) place and mode of inspection,
 - (d) production or opening,and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- (4) On an application to inspect any of the documents listed in paragraph (1),
 - (a) in giving its consent, the Regulator, and
 - (b) and making the documents available for inspection, the corporation,

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

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

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –
 - (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to Rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses –

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

56. Expenses and payments by candidates –

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

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

57. Election expenses incurred by other persons –

- (1) No person may -
 - (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation –

- (1) The corporation may –
 - (a) compile and distribute such information about the candidates, and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.
- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –
 - (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59. Information about candidates for inclusion with voting documents -

- (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- (2) The information must consist of –
 - (a) a statement submitted by the candidate of no more than [250] words, and
 - (b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” –

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

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election –

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by -
 - (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must –
 - (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
 - (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
 - (b) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
 - (c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy –

- (1) The following persons –
 - (a) the returning officer,
 - (b) the returning officer's staff,must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –
 - (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
 - (ii) the unique identifier on any ballot paper,

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

- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

63. Prohibition of disclosure of vote –

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

64. Disqualification – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –

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

65. Delay in postal service through industrial action or unforeseen event –

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

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

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll with the agreement of the Regulator.

Annex 4

List of Primary Care Trusts Authorised for the Purpose of Appointing PCT Governors

Sheffield Primary Care Trust – Authorised for the purpose of appointing two PCT Governors

Barnsley Primary Care Trust, Doncaster Primary Care Trust, Rotherham Primary Care Trust – Authorised jointly to appoint one non-Sheffield PCT Governor.

Annex 5

List of Local Authorities Authorised for the Purpose of Appointing Local Authority Governors

Sheffield City Council

Annex 6

Dispute Resolution Procedure

1. Summary

This annex describes the processes intended to ensure a successful and constructive relationship between the **Council of Governors** and the Board of Directors. It emphasises the importance of informal and formal communication and confirms the formal arrangements for communication within the Foundation Trust. It suggests an approach to informal communications and sets out the formal arrangements for resolving conflicts between the **Council of Governors** and the Board of Directors.

2. Informal Communications

Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Foundation Trust and the services it provides.

The Chairman of the **Council of Governors** and the Board of Directors will encourage informal methods of communicating including:-

- Participation of the Board of Directors in the induction, orientation and training of Governors.
- Development of special interest links between Non-Executive Directors and Governors.
- Discussions between Governors and the Chairman, the Chief Executive or a Director, through the office of the Secretary to the Board.
- Involvement in membership recruitment and briefings at public events organised by the Foundation Trust.

3. Formal Communication

Some aspects of communication are defined by the constitutional roles and responsibilities of the **Council of Governors** and the Board of Directors respectively. Communications initiated by the **Council of Governors**, and intended for the Board of Directors, will be conducted as follows:-

- Specific requests by the **Council of Governors** will be made through the Chairman, to the Board of Directors;
- Any Governor has the right to raise specific issues at a duly constituted meeting of the **Council of Governors** through the Chairman. In the event of a disagreement, two thirds of the Governors present must approve the request. The Chairman will raise the matter with the Board of Directors and provide the response to the **Council of Governors**;
- Annual joint meetings will take place between the **Council of Governors** and the Board of Directors.

The Board of Directors will request the Chairman to seek the views of the **Council of Governors**:-

- on the Board of Directors proposal for the Strategic Direction and the Annual Patient Services Plan.
- on the Board of Directors proposals for developments.

- on Foundation Trust performance.
- on their involvement in service reviews and evaluation.
- on proposed changes, plans and developments for the Foundation Trust.

The Board of Directors will also present for the approval of the **Council of Governors** the Annual Accounts, Annual Report and Auditors report.

The following formal methods of communication will also be used:-

- Attendance by the Board of Directors at a meeting of the **Council of Governors**.
- Provision of formal reports or presentations by Executive Directors to a meeting of the **Council of Governors**.
- Inclusion of Minutes for information on the Agenda of a meeting of the **Council of Governors**.
- Reporting the views of the **Council of Governors** to the Board of Directors through the Chairman or Vice Chairman.

4. Resolving Conflict

- 4.1 The **Council of Governors** and the Board of Directors must be committed to develop and maintain a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

If through informal efforts the Chairman cannot achieve resolution of a disagreement or conflict, the Chairman will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve resolution:

- a) The Chairman will call a resolution Meeting of the members of the **Council of Governors** and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise two thirds of the membership of the **Council of Governors** and two thirds of the membership of the Board of Directors. The meeting will be held in private. The Agenda and any papers for the meeting will be issued in accordance with Annex 2. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement.
- b) If a Resolution Meeting of the members of the **Council of Governors** and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
- c) If following the formal Resolution Meeting, and the decision of the Board of Directors, the **Council of Governors** considers that implementation of the decision will result in the Foundation Trust failing to comply with the Terms of Authorisation, the **Council of Governors** will refer the specific issue of non-compliance to the Independent regulator of NHS Foundation Trusts.

d) The right to call a Resolution Meetings rests with the following, in the sequence of escalation shown:

- i) The Chairman
- ii) The Chief Executive
- iii) Two thirds of the members of the Council of Governors
- iv) Two thirds of the members of the Board of Directors

4.2 Any dispute touching and concerning membership of a Constituency or the right to membership of the Foundation Trust shall be first referred to the Secretary for him to seek resolution. If the Secretary is unwilling or unable to resolve the dispute he shall refer the matter of the dispute to an Appeals Panel comprising no less than two Non-Executive Directors'; a Governor of the relevant Constituency and the Chief Executive whose decision in the matter shall be final.

4.3 Any dispute which is raised by a Governor and which does not comprise a matter of dispute between him or her and the Board of Directors shall first be referred to the Chairman for resolution. If the Chairman is unable or unwilling to resolve the dispute the matter of the dispute shall be referred to a Governors' Panel comprising no less than four Governors and the Chief Executive, or any Director nominated by him for that purpose, whose decision on the matter shall be final.

Annex 7

Register of Directors' and Governors' Interests

Pursuant to Section 20 of Schedule 1 of the Health and Social Care (Community Health and Standards Act 2003), a Register of Directors' and Governors' interests must be kept by each NHS Foundation Trust.

A. Declaration of Interests

1. All existing Directors (including for the purposes of this document, Non-Executive Directors) and Governors should declare relevant and material interests. Any Directors or Governors appointed or elected subsequently should do so on appointment or election.
2. Interests which should be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the Register are:
 - (a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - (b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.
 - (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - (d) A position of Authority in a charity or voluntary organisation in the field of health and social care.
 - (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
 - (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
3. If Directors or Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman.
4. At the time the interests are declared, they should be recorded in the Board Minutes or **Council of Governors** meeting minutes as appropriate. Any changes in interests should be officially declared at the next Board Meeting or **Council of Governors** meeting as appropriate following the change occurring. It is the obligation of the Director or Governor to inform the Chief Executive or his nominated officer in writing within 7 days of becoming aware of the existence of a relevant material interest. The Chief Executive or his nominated officer will amend the Register upon receipt within 3 working days.
5. Directors directorships of companies in 2(a) above or in companies likely or possibly seeking to do business with the NHS 2(b) above should be published in the Board's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
6. During the course of a Board Meeting or **Council of Governors** meeting, if a conflict of interest is established, the Directors or Governors concerned should withdraw from the Meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is any dispute as to whether a conflict of interest does exist, majority will resolve the issue with the Chairman having the casting vote.

7. There is no requirement for the interests of Directors' or Governors' spouses or partners to be declared.

B. Register of Interests

1. The details of Directors' and Governors' interests recorded in the Register will be kept up to date by means of a regular review as necessary of the Register by the Chief Executive or his nominated officer during which any changes of interests recently declared will be incorporated.
2. Subject to contrary regulations being passed, the Register will be available for inspection by the public free of charge. The Chairman will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register must be provided to Members of the NHS Foundation Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-Members for copies or extracts from the Register.