

# Sheffield Teaching Hospitals NHS Foundation Trust

(A Public Benefit Corporation)

## Trust Constitution

**Amended to reflect the changes to the  
NHS Code of Governance for NHS provider trusts  
effective from 1 April 2023**

### Purpose

This document represents the Constitution of Sheffield Teaching Hospitals NHS Foundation Trust as adopted in accordance with the National Health Service Act 2006 Act as amended by the 2012 Act and the 2022 Act (as defined below).

The Constitution sets out the powers and functions of the Trust.

### Scope and exceptions

This policy applies to:

Setting	Trust-wide
Individuals	All Staff
Speciality	All Specialties

*Note: The Standing Orders for the Practice and Procedure of the Board of Directors are a separate document known as the Standing Orders, Standing Financial Instructions, and Reservation and Delegation of Powers (Scheme of Delegation).*

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## 1. Interpretation and Definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022.

Words importing the singular shall import the plural and vice-versa.

Term	Description
<b>the 2006 Act</b>	is the National Health Service Act 2006.
<b>the 2012 Act</b>	is the Health and Social Care Act 2012.
<b>the 2022 Act</b>	is the Health and Care Act 2022.
<b>Accounting Officer</b>	means the person from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 of the 2006 Act.
<b>Annual Members Meeting</b>	is defined in paragraph 12 of the Constitution
<b>Appointed Governor(s)</b>	means a Governor appointed in accordance with paragraph 15.2 and as set out in Annex 1
<b>Area of the Trust</b>	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency.
<b>Assistant Chief Executive</b>	means the Assistant Chief Executive of the Trust or any other person appointed by the Trust Board to perform the duties of the Assistant Chief Executive or such other person as may be appointed by the Trust Board to perform the functions of a Trust Secretary under this Constitution. Note – the process for the appointment / dismissal of the Trust Secretary is a matter for the whole Board of Directors.
<b>Board of Directors</b>	means the Board of Directors of the Trust as constituted pursuant to this Constitution and the 2006 Act.
<b>Carer</b>	means an individual who has been 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.

<b>Chair</b>	means the Chair of the Trust.
<b>Chief Executive</b>	means the Chief Executive (and Accountable Officer) of the Trust.
<b>Class</b>	means the division of a Membership Constituency by reference to the description of individuals eligible to be Members of it.
<b>Code of Conduct</b>	means any code of conduct published by the Trust and amended from time to time to govern or guide the conduct of Governors, Directors or Officers of the Trust.
<b>Constitution</b>	means this Constitution and all annexes to it.
<b>Council of Governors</b>	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.
<b>Director</b>	means a Director on the Board of Directors.
<b>Elected Governor</b>	means those Governors elected by the Public Constituency, Staff Constituency and Patient Constituency.
<b>Financial Year</b>	means any period of 12 months beginning on 1st April.
<b>Governor</b>	means a person who is a member of the Council of Governors.
<b>Health Service Body</b>	shall have the same meaning as in Section 9(4) of the 2006 Act.
<b>Integrated Care Board</b>	an organisation. Integrated Care Boards (ICBs) are statutory organisations that bring NHS and care organisations together locally improve population health and establish shared strategic priorities within the NHS.
<b>Integrated Care Partnership</b>	an Integrated Care Partnership (ICP) is a formal partnership of organisations which brings together NHS organisations (providers and commissioners), local authorities and key voluntary sector and independent partners, working together to improve the health and care of the whole population they serve.
<b>Integrated Care System</b>	an Integrated Care System (ICS) in England is a statutory partnership of organisations who plan, buy, and provide health and care services in their

	geographical area. These incorporate the ICB and ICP.
<b>Lead Governor</b>	means the lead Governor elected from amongst the Governors in accordance with the process set out in the terms of reference of the Council of Governors.
<b>Licence</b>	means the Trust's Provider Licence granted by Monitor under the 2012 Act, reissued by NHS England in April 2023 to align with modified licence standard conditions.
<b>Local Authority Governor</b>	means a Governor appointed by a local authority whose area includes the whole or part of the area of the Trust.
<b>Member</b>	means a member of the Trust.
<b>Model Election Rules</b>	means the model form rules for the conduct of elections published from time to time by NHS Providers and as currently set out in Annex 2.
<b>Monitor</b>	Means the former body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
<b>NHS England</b>	means the organisational body for oversight of NHS Foundation Trusts, NHS Trusts, as well as independent providers that provide NHS-funded care. The Health and Care Act 2022 merged the former body corporate known as 'Monitor' and the Trust Development Authority into NHS England.
<b>Patient</b>	means an individual who has received care from the Trust within the period commencing on the 1 April 1998.
<b>Patients' Constituency</b>	means those Members of the Patients' Constituency.
<b>Patient Governor</b>	means a Governor elected by Members of the Patients' Constituency in accordance with paragraph 13.3 of the constitution.
<b>Public Constituency</b>	means that part of the Trust's Membership consisting of Members living in an Area of the Trust.
<b>Public Governor</b>	means a Governor elected by Members of the Public Constituency in accordance with paragraph 13.3 of the constitution.
<b>Senior Independent Director</b>	means the senior independent director of the Trust appointed by the Board of Directors in accordance with the Standing Orders for the Practice and Procedure of

	the Board of Directors.
<b>Staff Constituency</b>	means (collectively) those Members of the staff classes comprising the staff constituency as specified in Annex 1.
<b>Staff Governor</b>	means a Governor elected by Members of the Staff Constituency in accordance with paragraph 13.3 of the constitution.
<b>Significant Transaction</b>	is defined in paragraph 45.3.
<b>the Trust</b>	means the Sheffield Teaching Hospitals NHS Foundation Trust.
<b>Trust Hospital</b>	means all or any hospital or other patient care facilities administered by the Trust from time to time and designated by the Trust as falling within this definition.
<b>Vice Chair</b>	means the Vice Chair of the Trust appointed in accordance with paragraph 27 of this constitution.

## 2. Name

The name of the foundation trust is Sheffield Teaching Hospitals NHS Foundation Trust (“the 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, subject to the terms of its Licence, and to promote its long-term sustainability as part of the Integrated Care System (ICS) and wider healthcare system in England, generating value for members, patients service users and the public.
- 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 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, in accordance with its statutory duties and its Licence.

## **4. Powers**

- 4.1 The powers of the Trust are set out in the 2006 Act, subject to the terms of its Licence.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

## **5. Membership and Constituencies**

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

- 5.1 a public constituency
- 5.2 a staff constituency, or
- 5.3 a patients' constituency

## **6. Application for Membership**

An individual who is eligible to become a Member of the Trust may do so on application to the Trust.

## **7. Public Constituency**

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become, or continue as, a Member of the Trust.
- 7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of Members in each Public Constituency is specified in Annex 1.

## **8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become, or continue as, a Member of the Trust provided:



- 8.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become, or continue as, Members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into six descriptions of individuals who are eligible for Membership of the Staff Constituency, each description of individuals being specified within Annex 1 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of Members in each class of the Staff Constituency is specified in Annex 1.

## **9. Automatic Membership by Default - Staff**

- 9.1 An individual who is:
  - 9.1.1 eligible to become a member of the Staff Constituency, and
  - 9.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency, shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

## **10. Patients' Constituency**

- 10.1 Within the period specified below, an individual who has received care from the Trust or has been the carer of a patient may become a member of the Trust.
- 10.2 The period referred to above shall be from 01 April 1998 to the point of application by the patient or carer to become a Member of the Trust.
- 10.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions are referred to collectively as the Patients' Constituency.

10.4 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patients' Constituency.

10.5 The minimum number of Members in the Patients' Constituency is specified in Annex 1.

## **11. Restriction on Membership**

11.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

11.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

11.3 An individual must be at least 12 years old to become a Member of the Trust.

11.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 5.

## **12. Annual Members' Meeting**

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

## **13. Council of Governors – Composition**

13.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

13.2 The composition of the Council of Governors is specified in Annex 1.

13.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 1.

13.4 The organisations referred to in Annex 1 shall be entitled to appoint one individual, as set out in Annex 1 as Appointed Governors in accordance with a process of appointment agreed with the Assistant Chief Executive.

13.5 The Council of Governors shall at all times be constituted so that Governors elected from the Public and the Patient Constituencies are in the majority.

## **14. Council of Governors – Election of Governors**

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

14.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. The Model Election Rules current at the date of the Constitution as last amended are attached at Annex 2.

14.3 A subsequent variation of the Model Election Rules shall not constitute a variation of the terms of this Constitution for the purposes of Paragraph 44 of the Constitution (Amendment of the Constitution).

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

## **15. Council of Governors – Tenure**

15.1 An elected governor:

15.1.1 may hold office for a period of up to three years;

15.1.2 shall cease to hold office if they cease to be a member of the constituency or class by which they were elected;

15.1.3 shall be eligible for re-election at the end of their term, with a maximum of three consecutive terms;

15.1.4 may not stand again for election as Governor until three years has elapsed since they resigned;

15.1.5 may not stand again for election as Governor until three years has elapsed since they completed their maximum three terms as a Governor.

15.2 An appointed Governor:

15.2.1 may hold office for a period of up to three years;

15.2.2 shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her/them;

15.2.3 shall be eligible for re-appointment at the end of their term.

## **16. Council of Governors – Disqualification and Removal**

16.1 The following may not become or continue as a member of the Council of Governors:

16.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

16.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

16.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her/them.

16.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

16.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors and for the removal of Governors are set out in Annex 4.

## **17. Council of Governors – Duties of Governors**

17.1 The general duties of the Council of Governors are:

17.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

17.1.2 to represent the interests of the Members of the Trust as a whole and the interest of the public.

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

## **18. Council of Governors – Meetings of Governors**

18.1 The Chair of the Board of Directors or in their absence the Vice Chair (appointed in accordance with Paragraph 27 of this Constitution) shall preside at meetings of the Council of Governors.

18.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for consideration of confidential business by resolution of the Council of Governors.

18.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

## **19. Council of Governors – Standing Orders**

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 3.

## **20. Council of Governors – Conflicts of Interests of Governors**

20.1 In line with the Trust's Standards of Business Conduct Policy, a Governor shall disclose any material interest held by themselves, a close relative or associate, as soon as the Governor themselves becomes aware of it and record this in the Trust's register of interests.

20.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

## **21. Council of Governors – Travel Expenses**

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust.

## **22. Council of Governors – Further Provisions**

Further provisions with respect to the Council of Governors are set out in Annex 4.

## **23. Board of Directors - Composition**

23.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

23.2 The Board of Directors is to comprise:

23.2.1 a Non-Executive Chair

23.2.2 eight or more other Non-Executive Directors; and

23.2.3 up to eight Executive Directors.

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- 23.3 The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors (excluding the Chair) equals or exceeds the number of Executive Directors.
- 23.4 One of the Executive Directors shall be the Chief Executive.
- 23.5 The Chief Executive shall be the Accounting Officer.
- 23.6 One of the Executive Directors shall be the Chief Finance Officer.
- 23.7 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.8 One of the Executive Directors is to be a registered nurse.
- 23.9 One of the Non-Executive Directors is to exercise functions for the purposes of The University of Sheffield.
- 23.10 One of the Non-Executive Directors is to exercise functions for the purposes of Sheffield Hallam University.
- 23.11 The post of Executive Director may be held by more than one individual on a job share basis (although the Executive Director position of registered medical practitioner or registered dentist and the Executive Director position of registered nurse cannot be shared between two professions) but where such an arrangement is in force the individuals shall only count as one Executive Director and may only exercise one vote between them at any meeting of the Board of Directors.

## **24. Board of Directors – General Duty**

- 24.1 The general duty of the Board of Directors and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the Members of the Trust as a whole and for the public.
- 24.2 The Terms of Reference of the Board of Directors describes the specific duties the Board, which include its role:
- to promote the long-term sustainability of the Trust as part of the Integrated Care System and wider healthcare system in England, generating value for Members, patients, service users and the public.
  - to develop, embody and articulate a clear vision and values for the Trust, with reference to the Integrated Care Partnership's integrated care strategy and the Trust's role within system and place-based partnerships and provider collaboratives.

- to assess and monitor culture and where it is not satisfied seek assurance that corrective action is being taken.

## **25. Board of Directors – Qualification for appointment as a Non-Executive Director**

A person may be appointed as a Non-Executive Director only if:

- 25.1 they are a member of a Public or the Patient Constituency, or
- 25.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university, and
- 25.3 they are not disqualified by virtue of Paragraph 29 below.

## **26. Board of Directors – Appointment and Removal of Chair and Other Non-Executive Directors**

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.
- 26.2 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

## **27. Board of Directors – Appointment of Vice Chair**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors on the recommendation of the Chair as a Vice Chair.

## **28. Board of Directors – Appointment and Removal of the Chief Executive and Other Executive Directors**

- 28.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.
- 28.4 The process for the appointment to (and dismissal from) the post fulfilling the function of Trust Secretary (Assistant Chief Executive) shall be a matter for the whole Board of Directors.

## **29. Board of Directors - Disqualification**

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

- 29.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 29.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it.
- 29.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 29.4 a person who does not satisfy all of the 'fit and proper person' requirements set out in regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

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

- 30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## **31. Board of Directors – Standing Orders**

The standing orders for the practice and procedure of the Board of Directors can be found in a separate Trust Controlled Document.

## **32. Board of Directors – Conflicts of Interests of Directors**

- 32.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
  - 32.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
  - 32.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 32.2 The duty referred to in Paragraph 32.1.1 is not infringed if:



- 32.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 32.2.2 The matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in Paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In Paragraph 32.1.2, “third party” means a person other than:
- 32.4.1 The Trust, or
- 32.4.2 A person acting on its behalf.
- 32.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 32.9 A Director need not declare an interest:
- 32.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.9.2 If, or to the extent that, the Directors are already aware of it;
- 32.9.3 If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
- 32.9.3.1 By a meeting of the Board of Directors, or
- 32.9.3.2 By a committee of the Directors appointed for the purpose under the Constitution.
- 32.10 Any Director who has an interest in a matter to be considered by the Board of Directors that is required to be declared in accordance with paragraph 32 of this Constitution shall declare such an interest to the Board of Directors and:

32.20.1 shall withdraw from the meeting and play no part in the relevant discussion or decision.

32.10.2 shall not vote on the issue (and if by inadvertence they do remain and vote) their vote shall not be counted).

32.11 Details of any such interest shall be recorded in the Register of Interests and the minutes of the meeting.

### **33. Board of Directors – Remuneration and Terms of Office**

33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors on the recommendation of the Council of Governors' Nomination and Remuneration Committee.

33.2 The Board of Directors' Nomination and Remuneration Committee shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

### **34. Registers**

The Trust shall have and maintain:

34.1 a register of Members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;

34.2 a register of members of the Council of Governors;

34.3 a register of interests of members of the Council of Governors;

34.4 a register of members of the Board of Directors; and

34.5 a register of interests of members of the Board of Directors.

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

35.1 The Trust shall make the registers specified in Paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

35.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

35.2.1 any member of the Patients' Constituency; or

35.2.2 any other member of the Trust, if they so request.

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

## **36. Documents available for public inspection**

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

36.1.1 a copy of the current Constitution;

36.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them, and

36.1.3 a copy of the latest Annual Report;

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

36.2.1 a copy of any order made under Section 65D (appointment of Trust Special Administrator); Section 65J (power to extend time); Section 65KC (action following Secretary of State's rejection of final report); Section 65L (trusts coming out of administration); or Section 65LA (trusts to be dissolved) of the 2006 Act.

36.2.2 a copy of any report laid under Section 65D (appointment of Trust Special Administrator) of the 2006 Act.

36.2.3 a copy of any information published under Section 65D (Appointment of Trust Special Administrator) of the 2006 Act.

36.2.4 a copy of any draft report published under Section 65F (Administrator's draft report) of the 2006 Act.

36.2.5 a copy of any statement provided under Section 65F (Administrator's draft report) of the 2006 Act.

36.2.6 a copy of any notice published under Section 65F (Administrator's draft report); Section 65G (consultation plan); Section 65H (consultation requirements); Section 65J (power to extend time), Section 65KA (decision by NHS Improvement [NHSI] decision); Section 65KB (Secretary of State's response to NHSI's decision); Section 65KC (action following Secretary of State's rejection of final report); or Section 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

- 36.2.7 a copy of any statement published or provided under Section 65G (consultation plan) of the 2006 Act.
  - 36.2.8 a copy of any final report published under Section 65I (Administrator's final report) of the 2006 Act.
  - 36.2.9 a copy of any statement published under Section 65J (power to extend time) or Section 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
  - 36.2.10 a copy of any information published under Section 65M (replacement of Trust Special Administrator) of the 2006 Act.
- 36.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 36.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

### **37. Auditor**

- 37.1 The Trust shall have an Auditor and shall provide the Auditor with every facility and all information which they may reasonably require for the purposes of their functions under Chapter 5 of part 2 of the 2006 Act.
- 37.2 A person may only be appointed Auditor if they (or in the case of a firm, each of its members) is a member of one or more of the bodies referred to in Paragraph 23 (4) of Schedule 7 of the 2006 Act.
- 37.3 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.
- 37.4 The Accounting Officer shall ensure that the Auditor carries out their duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS Improvement on standards, procedures and techniques to be adopted.

### **38. Audit Committee**

The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as is appropriate. One of the Non-Executive Director members of the Audit Committee must satisfy the UK Corporate Governance Code requirement of having relevant and recent financial experience. This shall normally be the Chair of the Committee.

## **39. Accounts**

- 39.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 39.2 NHS England (NHSE) may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.
- 39.3 The accounts are to be audited by the Trust's Auditor.
- 39.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England (NHSE) may with the approval of the Secretary of State direct.
- 39.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 41.1 The Trust shall prepare an Annual Report and send it to NHS England (NHSE).
- 41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England (NHSE).
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 41.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about:
  - 41.5.1 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
  - 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1, the Council of Governors must:
  - 41.6.1 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
  - 41.6.2 notify the Directors of the Trust its determination.

- 41.7 If the Trust proposes to increase by five per cent or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of Council of Governors of the Trust voting approve its implementation.

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

- 41.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 41.1.1 the Annual Accounts
  - 41.1.2 any report of the Auditor on them
  - 41.1.3 the Annual Report
- 41.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 41.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

## **42. Instruments**

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

## **43. Dispute Resolution Procedures**

Dispute resolution procedures relating to the Council of Governors and Board of Directors are set out at Annex 5.

## **44. Amendment of the Constitution**

- 44.1 The Trust may make amendments to this Constitution only if:
- 44.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 44.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

- 44.2 The Constitution shall be formally reviewed by the Council of Governors and Board of Directors every three years.
- 44.3 Amendments made under Paragraph 44.1 take effect as soon as the conditions in that Paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 44.4 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 44.4.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
- 44.4.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 44.5 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 44.6 Amendments by the Trust of its Constitution are to be notified to NHS England (NHSE). For the avoidance of doubt, NHSE functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.
- 44.7 Any queries raised by either a Member, a Governor, or a Director on questions regarding the interpretation of the Constitution shall be determined by the Chair in their absolute discretion. In reaching their determination the Chair shall have regard to the views of the Senior Independent Director and the Chief Executive.

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

- 45.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 45.3 "Significant transaction" referred to in Paragraph 45.3 means any transaction where:

- 45.3.1 The gross assets subject to transaction, divided by the gross assets of the Trust, or
- 45.3.2 The income attributable to the assets or the contract associated with the transaction, divided by the income of the Trust, or
- 45.3.3 The gross capital of the company or business being acquired or divested, divided by the total capital of the Trust following completion or the effects on the total capital on the Trust resulting from a transaction exceed 10% (ten per cent).

## **References / standards and statutory legal requirements**

National Health Service Act 2006

Health and Social Care Act 2012

Health and Care Act 2022

## **Associated Trust and external documents**

### **Trust Controlled Documents**

Standing Orders for the Practice and Procedure of the Board of Directors

Reservation of powers to the Board of Directors and Scheme of Delegation

Standards of Business Conduct Policy

### **External**

NHS Constitution, Department of Health and Social Care, 2012 (updated 2023)

Model Election Rules, NHS Providers 2014

Code of Governance for NHS Provider Trusts, NHSE 2022

Addendum to your statutory duties – reference guide for NHS foundation trust governors, NHSE 2022

Guidance on good governance and collaboration

The NHS Provider Licence



## Appendices

Annex 1: The Constituencies of the Trust and Composition of the Council of Governors

Annex 2: Model Election Rules

Annex 3: Standing Orders for the Practice and Procedure of the Council of Governors

Annex 4: Additional Provisions – Council of Governors

Annex 5: Further provisions

Appendix A – Restriction on Membership

Appendix B – Dispute Resolution Procedure

## Document control

Ref	N/A
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Status	Current
TEG sponsor	Sandi Carman, Assistant Chief Executive
Controlled Document Lead / Author*	Judith Green, Corporate Governance Manager
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## Version history

Version	Date issued	Brief summary of changes
1.0	30/06/2004	
1.1	01/03/2005	Amendment
1.2	14/02/2007	Amendment
1.3	03/12/2007	Amendment
2.0	22/02/2013	Material changes to ensure compliance with 2012 Health and Social Care Act Commencement Order Oct 2012

3.0	30/04/2013	Material changes to update v3.0 Constitution in accordance with Monitor's Model Constitution and to ensure compliance with 2012 Health and Social Care Act Commencement Order April 2013.
3.1	17/09/2014	Non-material amendments to the Constitution following annual review: References to the Trust Secretary have been changed to the Assistant Chief Executive; references to the Independent Regulator have been replaced by Monitor and references to Monitor's Licence have been inserted, as appropriate.
3.2	01/09/2015	A material change to v3.1 Constitution to amend the maximum tenure of the Non-Executive Director representing the University of Sheffield and non-material amendments including typos, changing references to Primary and Community Services to Combined Community and Acute Care Group and inserting references to Monitor's License in the Standing Orders appendices.
4.0	06/02/2017	Non-material changes from v3.2 Constitution: Re-format in Trust Controlled Document style; as appropriate, change references from Monitor to NHS Improvement (NHSI) to reflect the launch of NHSI from 1 April 2016; and, reformat the Standing Orders of the Board of Directors which will be separately published and controlled outside the Constitution. Material changes from v 3.2 Constitution: Paragraph inserted to clarify the need to maintain a majority for elected Public/Patient Governors compliant with section 9(1) of Schedule 7 of the NHS Act 2006; and, provision included in Annex 8 to allow the Trust to offer the reserve candidate the opportunity to assume a vacant office of Governor for the unexpired balance of term in the event that an elected Governor ceases to hold office.
5.0	08/01/2018	Non-material changes from v4.0: Updated title for Combined Community and Acute Group and minor typos. Material changes from v4.0: Executive Directors increased from 6 to 7 to reflect the appointment of the Director of Strategy and Planning and number of Non-Executive Directors changed from "up to 7" to "7 or more" to ensure a majority of Non-Executive Directors is maintained; creation of 2 Board committees from Finance, Performance and Workforce Committee i.e. Finance and Performance Committee and Human Resources and Organisational Development Committee; and, clarification of the relationship between the Council of Governors and the Nomination and Remuneration Committee of the Council of Governors to ensure statutory compliance.
5.1	22/05/2018	Sub-divisions of Public Constituencies corrected.
6.0	30/01/2019	Non-material changes from v5.1: changes to nomenclature and addition of points of clarification. Removal of the default use of masculine gender throughout the document, including amending job title nomenclature in respect of the Chair.

		Material Changes from v5.1: Removal of reference to the Independent Panel for advising governors which was disbanded by NHSI in January 2017. Annex 6 updated to reflect 2014 Model Election Rules
7.0	29/11/2019	Non-material changes from v6.0, including changes to nomenclature, paragraph formatting and the addition of points of clarification; Amendment of content reflecting the on-going development of our governance arrangements; Realignment of documents forming annexes to the Constitution; and Bringing arrangements for review in line with the three-year cycle set out within the Trust's Policy for the Development, Approval, Management and Dissemination of Trust Controlled Documents.
7.1	18/02/2020	Non material changes requested by Jan 2020 Board of Directors relating to gender nomenclature
7.2	21/04/2021	Material change to v7.1 to amend reflect changes to the composition of the Board of Directors (23.2)
7.2.1	01/12/2022	Review date extended (next review to reflect provider governance arrangements currently under national consultation)
8	03/10/2023	Non-material changes from v7.2.1, including changes to nomenclature and supplementary content / additional points of clarification to reflect implementation of the Health and Care Act 2022 and to support compliance with the Code of Governance for NHS provider organisations. Standardisation of structure / of document to align with controlled document template. Material changes: <ul style="list-style-type: none"> <li>- Retrospective amendment to Board composition (23.10) to align with other Trust governing documents.</li> <li>- Stepping down of Appointed Governor Seats in the context of stakeholder engagement via system partnership forums.</li> <li>- Redefinition of CoG meeting quoracy to align with peer benchmarking.</li> <li>- Cross referencing of content in relation to Trust policy on declarations of interests.</li> </ul>

## Consultation and review

Groups / persons consulted	Date
Trust Executive Group	06/09/23

## Intended recipients

Essential reading for	Members of the Board of Directors and of the Council of Governors.
Information for	The Constitution and its annexes should be accessible to the public and are available on the Trust's website and the NHS England website. Senior Managers should have an awareness and understanding of its contents.

## Document imprint

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Policy template version 2.4

**Annex 1:****The Constituencies of the Trust and Composition of the Council of Governors**

Trust Constituency	Area / Electoral Ward of the Trust / Staff Class	Minimum number of Members
Public Constituency - North Sheffield	<ul style="list-style-type: none"> <li>• Burngreave;</li> <li>• East Ecclesfield</li> <li>• Firth Park</li> <li>• Shiregreen and Brightside</li> <li>• Southey</li> <li>• West Ecclesfield</li> </ul>	100
Public Constituency – Sheffield South East	<ul style="list-style-type: none"> <li>• Arbourthorne</li> <li>• Beighton</li> <li>• Birley</li> <li>• Darnall</li> <li>• Gleadless Valley</li> <li>• Manor Castle</li> <li>• Mosborough</li> <li>• Richmond</li> <li>• Woodhouse</li> </ul>	100
Public Constituency – Sheffield South West	<ul style="list-style-type: none"> <li>• Beauchief and Greenhill</li> <li>• Dore and Totley</li> <li>• Ecclesall</li> <li>• Fulwood</li> <li>• Graves Park</li> <li>• Nether Edge</li> </ul>	100
Public Constituency – Sheffield West	<ul style="list-style-type: none"> <li>• Broomhill</li> <li>• Central</li> <li>• Crookes</li> <li>• Hillsborough</li> <li>• Stannington</li> <li>• Stocksbridge and Upper Don</li> <li>• Walkley</li> </ul>	100
Public Outside Sheffield	All other electoral wards in England and Wales (i.e. excluding the electoral wards listed above)	100
Staff Constituency: Medical and Dental Staff	Individuals employed by the Trust and working in a role that requires the individual to be registered with either the General Medical Council or the General Dental Council.	20
Staff Constituency: Nursing and Midwifery Staff	Individuals employed by the Trust and working in a role that requires the individual to be registered with the Nursing and Midwifery Council.	20
Staff Constituency: Allied Health Professionals, Scientists and Technicians Staff	Individuals employed by the Trust and working in a role that requires them to be registered with the Council for Healthcare Regulatory Excellence, except those who are doctors, dentists, nurses or midwives	20
Staff Constituency: Administration, Management and Clerical Staff	Individuals employed and designated by the Trust as management, administrative or clerical staff	20
Staff Constituency: Ancillary, Works and Maintenance Staff	Individuals employed and designated by the Trust as ancillary, works or maintenance staff.	20
Staff Constituency: Primary and Community Services	Individuals who are employed by the Trust within the Combined Community and Acute Group.	20
Patients Constituency	See Paragraph 10 of the Constitution	100

<b>Composition of the Council of Governors</b>	
<b>Public Governors (elected)</b>	
North Sheffield Constituency	3
Sheffield South East Constituency	3
Sheffield South West Constituency	3
Sheffield West Constituency	3
Outside Sheffield Constituency	1
<b>Sub total</b>	<b>13</b>
<b>Staff Governors (elected)</b>	
Medical and Dental Staff Constituency	1
Nursing and Midwifery Staff Constituency	1
Allied Health Professionals, Scientists and Technicians Staff Constituency	1
Administration, Management and Clerical Staff Constituency	1
Ancillary, Works and Maintenance Staff Constituency	1
Primary and Community Services Staff Constituency	1
<b>Sub total</b>	<b>6</b>
<b>Patient Governors (elected)</b>	
	<b>7</b>
<b>Appointed Governors (appointed)</b>	
Sheffield Integrated Care Board	1
Sheffield City Council	1
University of Sheffield	1
Sheffield Hallam University	1
Sheffield College	1
<b>Sub total</b>	<b>5</b>
<b>TOTAL</b>	<b>31</b>

**Annex 2:**

**Model Election Rules** (see Paragraph 14 of the Constitution)

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## PART 1: INTERPRETATION

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

“*corporation*” means the public benefit corporation subject to this constitution;

“*council of governors*” means the council of governors of the corporation;

“*declaration of identity*” has the meaning set out in rule 21.1;

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

“*e-voting*” means voting using either the internet, telephone or text message;

“*e-voting information*” has the meaning set out in rule 24.2;

“*ID declaration form*” has the meaning set out in Rule 21.1;

“*internet voting record*” has the meaning set out in rule 26.4(d);

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

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.

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

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

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

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

“*polling website*” has the meaning set out in rule 26.1;

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

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

“*telephone voting facility*” has the meaning set out in rule 26.2;

“*telephone voting record*” has the meaning set out in rule 26.5 (d);

“*text message voting facility*” has the meaning set out in rule 26.3;

“*text voting record*” has the meaning set out in rule 26.6 (d);

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

#### **4. Returning Officer**

4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

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

#### **5. Staff**

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

#### **6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

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

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

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

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail

- address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
  - (g) the contact details of the returning officer
  - (h) the date and time of the close of the poll in the event of a contest.

## **9. Nomination of candidates**

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

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
- (b) is to prepare a nomination form for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

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

10.1 The nomination form must state the candidate's:

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

## **12. Declaration of eligibility**

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

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

### **13. Signature of candidate**

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

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

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

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

14.1 Where a nomination form is received by the returning officer in accordance with these

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

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

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

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

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

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

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

18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to

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

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

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

## **PART 5: CONTESTED ELECTIONS**

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

19.1 The votes at the poll must be given by secret ballot.

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

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
  - (i) configured in accordance with these rules; and
  - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
- (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
  - (i) configured in accordance with these rules; and
  - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
- (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
  - (i) configured in accordance with these rules; and
  - (ii) will create an accurate text voting record in respect of any voter who



casts his or her vote using the text message voting system.

## **20. The ballot paper**

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

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

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

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

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

**22. List of eligible voters**

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

**23. Notice of poll**

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

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

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

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

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

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

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

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

24.3 The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information; for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

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

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

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

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

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

- (a) require a voter to:
  - (i) enter his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

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

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

- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

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

### ***The poll***

## **27. Eligibility to vote**

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

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

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

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

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

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

## **30. Lost voting information**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

36.1 Where the returning officer receives:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**38. Declaration of identity but no ballot paper (public and patient constituency)**

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

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

**39. De-duplication of votes**

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

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

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

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

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

#### 40. Sealing of packets

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

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

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

## PART 6: COUNTING THE VOTES

### STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

*“mark”* means a figure, an identifiable written word, or a mark such as “X”, *“non-transferable vote”* means a ballot document:

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule STV49,

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

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

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

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

“stage of the count” means:

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

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

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

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

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

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

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
  - (i) the use of such software for the purpose of counting votes in the relevant election, and
  - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

### **43. The count**

43.1 The returning officer is to:

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

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

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

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

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

(a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears,



and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

FPP44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and

FPP 44.3 endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

#### **STV45. First stage**

- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

#### **STV46. The quota**

- STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

#### **STV47. Transfer of votes**

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or

- (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub- parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
  - (b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

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

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

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

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

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

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

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

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

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

**STV49. Exclusion of candidates**

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

STV49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

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

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot excluded).

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

- (b) where the number of votes credited to those candidates was equal at all stages, the officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**STV50. Filling of last vacancies**

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

**STV51. Order of election of candidates**

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

**FPP51. Equality of votes**

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

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

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

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

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

FPP52.2 The returning officer is to make:

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

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

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

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



STV52.2 The returning officer is to make:

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

available on request.

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

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

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

## **PART 8: DISPOSAL OF DOCUMENTS**

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

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

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with "rejected in part",
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records, and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

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

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



- (b) the list of spoiled ballot papers and the list of spoiled text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

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

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

## **55. Delivery of documents**

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

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

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

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

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
  - (i) any rejected ballot papers, including ballot papers rejected in part,
  - (ii) any rejected text voting records, including text voting records rejected in part,
  - (iii) any disqualified documents, or the list of disqualified documents,
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage, by any person without the consent of the board of directors of the corporation.

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

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

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

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

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

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

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

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

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

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

FPP59.6 The returning officer is to endorse on each packet a description of:

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

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

### ***Election expenses***

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

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

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

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

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

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

62.1 No person may:

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

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

### ***Publicity***

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

63.1 The corporation may:

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

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

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

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

64.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate,

- for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

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

- 65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

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

**66. Application to question an election**

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

66.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 Monitor may prescribe rules of procedure for the determination of an application including costs.

## **67. Secrecy**

67.1 The following persons:

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

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

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

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

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

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

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

## **69. Disqualification**

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

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

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

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

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

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



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## Annex 3:

### Standing Orders for the Practice and Procedure of the Council of Governors

[See Paragraph 19 of the Constitution]

#### 1. Introduction

These Standing Orders form part of the Constitution of Sheffield Teaching Hospitals NHS Foundation Trust.

#### 2. Interpretation

2.1 The Chair shall be the final authority on the interpretation of the Standing Orders, (on which they should be advised by the Assistant Chief Executive).

2.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in the Constitution.

#### 3. The Trust

All business shall be conducted in the name of the Trust.

#### 4. Meeting of the Council of Governors

##### 4.1 Admission of the public and the press

4.1.1 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 members of the public and representatives of the press 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”.*

4.1.2 The right of attendance referred to in Paragraph 4.1.1 of these Standing Orders carries no right to ask questions or to otherwise participate in the meeting.

4.1.3 The Chair (or other person presiding under the provisions of Paragraph 4.6 of these Standing Orders) shall give such directions as they see fit in regard to the arrangements for meetings and accommodation of members of the public and representatives of the press such as to ensure that the business of the meeting shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the 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 completion of business without the presence of the public”.*

## 4.2 Confidentiality

- 4.2.1 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 Governors' Council.
- 4.2.2 Matters to be dealt with by the Council of Governors following the exclusion of the public shall be confidential to the Governors, Directors and Officers and any employee of the Trust in attendance.
- 4.2.3 Governors, Directors, Officers and any employee of the Trust and external advisers/observers in attendance shall not reveal or disclose the contents of papers marked “In Confidence” or minutes headed “Items taken in Private” outside the Council of Governors meeting, without the express permission of the Council of Governors. This prohibition shall apply equally to the content of any discussion during the meeting of the Council of Governors which may take place on such papers.

## 4.3 Calling meetings

- 4.3.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least four meetings held in any one Financial Year.
- 4.3.2 Meetings of the Council of Governors may be called by the Assistant Chief Executive at any time:
  - 4.3.2.1 by the order of the Chair: or
  - 4.3.2.2 by requisition from at least 10 Governors giving notice in writing to the Assistant Chief Executive specifying the business to be carried out.
- 4.3.3 If the Assistant Chief Executive at refuses to call a meetings after receiving a requisition in accordance with Paragraph 4.3.2.2 of these Standing Orders, or if, without so refusing, the Assistant Chief Executive does not call a meeting within seven clear days after such a requisition has been presented to them, the Chair or the 11 Governors, whichever is the case, may forthwith call a meeting for the purpose of conducting that business.

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- 4.4 Notice of meetings and agenda
- 4.4.1 Agendas, specifying time and location of the meeting, will be made available to members of the Council of Governors electronically, or sent by post as requested, at least seven clear days before the meeting.
- 4.4.1 Failure to serve notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors shall 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.
- 4.4.2 Before each meeting of the Council of Governors, a public notice of the date, time and place of the meeting, and the public part of the agenda, shall be posted on the Trust's website at least seven clear days before the meeting, save in the case of emergency meetings.
- 4.4.3 In the case of a meeting called by Governors in default of the Assistant Chief Executive in accordance with Paragraph 4.3.3 of these Standing Orders, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified on the notice.
- 4.4.4 Supporting papers that are available will be made available to Governors electronically, or sent by post as requested, five clear days before the meeting, save in the case of emergencies. It is the responsibility of the Chair, through the office of the Assistant Chief Executive, to ensure that sufficient information is provided to Governors to ensure that rational discussion can take place.
- 4.4.5 In the event of an emergency giving rise for the need for an urgent meeting, failure to comply with the notice periods referred to in Paragraph 4.4 of these Standing Orders shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.
- 4.5 Setting the agenda
- 4.5.1 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, ("Standing Items").
- 4.5.2 A Governor desiring a matter, other than a Standing Item, to be included on an agenda shall make their request in writing to the Chair at least 10 clear days before the meeting. The request should

state whether the matter is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 clear days before a meeting may be included on the agenda at the discretion of the Chair.

#### 4.6 Chair of meeting

- 4.6.1 At any meeting of the Council of Governors, the Chair, if present, shall preside and shall exercise the right to a casting vote where the number of votes for and against a motion is equal.
- 4.6.2 If the Chair is absent from the meeting or is temporarily absent on the grounds of a declared conflict of interest, the Vice Chair shall preside and he or she shall exercise all rights and obligations of the Chair including the right to a casting vote where the number of votes for and against a motion is equal.
- 4.6.3 If Chair and the Vice Chair are absent from the meeting or temporarily absent on the grounds of a declared conflict of interest, the Council of Governors shall appoint another Non-Executive Director to preside over that meeting and they shall exercise all rights and obligations of the Chair including the right to a casting vote where the number of votes for and against a motion is equal.
- 4.6.4 If any matter for consideration at a meeting of the Council of Governors relates to the conduct or interests of the Chair and Non-Executive Directors, as a class, the Council of Governors shall appoint a Governor to preside over the period of the meeting during which the matter is under discussion and he or she shall exercise all rights and obligations of the Chair including the right to a casting vote where the number of votes for and against a motion is equal.

#### 4.7 Notice of Motion

A Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under Paragraph 4.10 of these Standing Orders. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Paragraph 4.4.4.

#### 4.8 Withdrawal of Motion or Amendments

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

#### 4.9 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 six calendar months shall bear the signature of the Governor(s) who gives notice and also the signature of four other Governors, at least two 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 Chair to propose a motion to the same effect within six months, however the Chair may do so if they consider it appropriate.

#### 4.10 Motions

4.10.1 Where a Governor has requested inclusion of a motion on the agenda in accordance with Paragraph 4.5.2 of these Standing Orders as a matter to be formally proposed for discussion and voting on at a meeting of the Council of Governors the provisions of this Paragraph (Paragraph 4.10 of these Standing Orders) shall apply.

4.10.2 The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto, or to raise a point of order.

4.10.3 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

4.10.3.1 that the motion be withdrawn; or

4.10.3.2 an amendment to the motion; or

4.10.3.3 the adjournment of the discussion or the meeting; or

4.10.3.4 that the meeting proceed to the next item of business on the agenda; or

4.10.3.5 the appointment of an ad hoc committee to deal with a specific item of business; or

4.10.3.6 that the public be excluded from the meeting in relation to discussion concerning the motion under Paragraph 4.1.1 of these Standing Orders

4.10.3.7 that the motion be now put.

4.11 In the case of Paragraph 4.10.3.2 of these Standing Orders, no amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

4.12 In the case of Paragraph 4.10.3.3 of these Standing Orders, the Council of Governors may by resolution adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any

adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.

- 4.13 In the case of Paragraphs 4.10.3.4 or 4.10.3.7 of these Standing Orders, to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate and is eligible to vote.

4.14 Chair's Ruling

Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and subject to Paragraph 2.1 of these Standing Orders, the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

4.15 Voting

4.15.1 If in the opinion of the Chair of the meeting, a vote should be required on a question at a meeting, the result shall be determined by a majority of the votes of the Governors present and voting on the question.

4.15.2 In the case of an equality of votes, the Chair of the meeting shall have a second or casting vote.

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

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

4.15.5 In no circumstances may an absent Governor vote by proxy.

4.15.6 A resolution for the removal of the Chair or a Non-Executive Director shall require the approval of three-quarters of the Council of Governors.

4.16 Quorum

4.16.1 No business shall be transacted at a meeting of the Council of Governors unless one-third of the whole number of the Governors are present.

4.16.2 At the discretion of the Chair, business may be transacted through a teleconference or videoconference provided that all Governors present are able to hear all other parties and where an Agenda has been issued in advance. Participation in a meeting via electronic means shall constitute presence in person at the meeting.

4.16.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest in accordance with Paragraph 6.1 of these Standing Orders they shall no longer count toward the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. The meeting must then proceed to the next business on the agenda.

#### 4.17 Minutes

4.17.1 The minutes of the proceedings of a meeting of the Council of Governors shall be drawn up by the Assistant Chief Executive and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

4.17.2 No discussion shall take place upon the Minutes, except upon their accuracy or where the Chair of the meeting considers discussion appropriate. Any amendments to the minutes shall be agreed and recorded at the next meeting.

4.17.3 Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a meeting held in public, the minutes shall be made available to the public on the Trust's website.

#### 4.18 Record of attendance

The following attendances shall be recorded in the Minutes:

4.18.1 the name of the person(s) chairing the meeting

4.18.2 the names of the Governors present at the meeting; and

4.18.3 the names of Directors, Officers and any employee of the Trust in attendance at the meeting.

#### 4.19 Suspension of Standing Orders

4.19.1 Except where this would contravene any provision of the Constitution or its Licence or any statutory provision or any direction made by NHSI, any one or more of the Standing Orders may be suspended at any meeting of the Council of Governors, provided that at least two-thirds of the Governors are present and that a majority of those present vote in favour of suspension.

4.19.2 A decision to suspend one or more of the Standing Orders shall be recorded in the minutes of the meeting.

4.19.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and the Governors.



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- 4.19.4 No formal business may be transacted while Standing Orders are suspended, where formal business shall include the proposal of motions and the determination of questions and motions by voting or otherwise.
- 4.19.5 The Audit Committee of the Board of Directors shall review every decision of the Council of Governors to suspend these Standing Orders.
- 4.19.6 All decisions taken in good faith at the meeting of the Council of Governors or its committees, as described in Paragraph 4 of these Standing Orders, shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.

## 5 Committees

- 5.1 The Council of Governors may not delegate any of its powers to a committee or sub-committee but it may appoint working groups to assist the Council of Governors in carrying out and properly performing its functions under the Regulatory Framework. The Council of Governors may appoint Governors and may invite Directors or Officers of the Trust and other persons to serve on such committees.
- 5.2 The Nomination and Remuneration Committee of the Council of Governors is constituted as a standing committee of the Council of Governors.
- 5.3 The Nomination and Remuneration Committee of the Council of Governors and any working group constituted by the Council of Governors is authorised by the Council of Governors to act within its terms of reference, as approved by the Council of Governors, in accordance with the Statutory and Regulatory Framework. Such terms of reference shall have effect as if incorporated into these Standing Orders but for the avoidance of doubt, do not form part of these Standing Orders or the Constitution.
- 5.4 The Council of Governors shall approve the appointment of members to the Nomination and Remuneration Committee and any working group which it has formally constituted.
- 5.5 Where the Governors' Council determines that persons, who are neither Governors nor Directors or Officers or employees of the Trust, shall be appointed to the Nomination and Remuneration Committee or a working group formally constituted by the Council of Governors, the terms of such an appointment shall be determined by the Council of Governors subject to the payment of travelling and other allowances as may be determined by the Board of Directors and/or NHS England. For the avoidance of doubt such persons shall not be entitled to exercise voting rights.



- 5.6 The Chair of the Nomination and Remuneration Committee shall be the Chair of the Board of Directors. The Vice Chair of the Nomination and Remuneration Committee shall be elected by a majority vote of the members of the committee, subject to approval by the Council of Governors.
- 5.7 If requested by the Board of Directors and approved by the Council of Governors, the Council of Governors may appoint Governors as members or to attend and/or advise at joint committees of the Board of Directors or committees of the Board of Directors.

## 6 Declarations of Interest and Register of Interests

### 6.1 Declaration of Interests

- 6.1.1 Paragraph 20 of the Constitution requires Governors to declare any actual or potential interest, direct or indirect (as described in Paragraph 6.2 of these Standing Orders) in line with the Trust's Standards of Business Conduct Policy.
- 6.1.2 Such a declaration shall be made either at the time of the Governors' election or appointment, whichever is the case, or as soon thereafter as the interest arises as outlined in the above policy.
- 6.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any manner which is the subject of consideration, they shall disclose the fact as soon as is practicable and shall withdraw from the meeting and play no part in relevant discussion or decision and shall not vote on any question with respect to the matter.
- 6.1.4 If a Governor has any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or the Assistant Chief Executive. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

### 6.2 Register of interests of members of the Council of Governors

In accordance with Paragraph 34.3 of the Constitution, the Assistant Chief Executive shall keep an electronic register of interests of members of the Council of Governors which shall contain the name of each Governor, whether they have declared any interest and if so, the interest declared.

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## 7 Code of Conduct

### 7.1 Code of Conduct

Governors shall comply with the Trust's Council of Governors Code of Conduct, the Trust's Standards of Business Conduct Policy and any guidance and best practice advice issued by NHS England.

### 7.2 Interest of Governors in Contracts

In line with the Trust's Standards of Business Conduct Policy, if it comes to the knowledge of a Governor that a contract in which they have any pecuniary interest not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Assistant Chief Executive of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

### 7.3 Appointments and Recommendations

7.3.1 Canvassing of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph (Paragraph 7.3.1 of these Standing Orders) shall be included in all Trust application forms or otherwise brought to the attention of candidates.

7.3.2 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

7.3.3 Informal discussions, outside nomination or appointment panels, committees or groups, whether solicited or unsolicited, should be declared to the panel, committee or group in question.

### 7.4 Relatives of Governors

7.4.1 A Governor shall disclose to the Assistant Chief Executive any relationship between themselves and a candidate for a role for which the appointment process involves Governors. The Assistant Chief Executive shall discuss with the Trust Chair / Chief Executive the appropriate management of this potential conflict of interest.

7.4.2 On election or appointment, a Governor should disclose to the Assistant Chief Executive whether they are related to any other Governor or holder of any office under the Trust.

- 7.4.3 No formal definition of relationship is made. In considering whether a disclosure is required, influence rather than immediacy of the relationship is more important. If Governors have any doubt about the relevance of a relationship, this should be discussed with the Assistant Chief Executive.
- 7.4.4 Where the relationship of a Governor is disclosed, Paragraph 6.2.5 of these Standing Orders shall apply.

## 8 Miscellaneous

- 8.1 It is the duty of the Assistant Chief Executive to ensure that existing Governors and all new Governors are notified of and understand their responsibilities within these Standing Orders.

## 9 Review of Standing Orders

These Standing Orders shall be reviewed by the Council of Governors at least once every three years and shall be amended subject to the provisions of Paragraph 7.4 of these Standing Orders. The requirement for review extends to all documents having the effect as if incorporated in these Standing Orders.

## 10 Variation and amendment of Standing Orders

These Standing Orders shall be amended only if:

- 10.1 A notice of motion under Paragraph 4.7 of these Standing Orders has been given; and
- 10.2 no fewer than two-thirds of the Council of Governors vote in favour of amendment; and
- 10.3 the variation proposed does not contravene a statutory provision or a direction made by NHS England.

## Annex 4:

### Additional Provisions – Council of Governors *[See Paragraph 22 of the Constitution]*

#### Membership of the Council of Governors - further eligibility provisions

1. In addition to the provisions set out in Paragraph 16.1 of the Constitution, an individual shall not become or continue to be a Governor if:
  - 1.1 they have within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body, a private or independent care commissioner or provider or other public service body;
  - 1.2 they are a person whose tenure of office as Chair, or member, or Governor or Director of a Health Service Body or other public service body has been terminated on the grounds that their appointment is not in the interests of the service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
  - 1.3 they are a Director or the Trust Secretary of the Trust, or a Governor, Director or Secretary of another Health Service Body;
  - 1.4 they have had their name removed or suspended, other than by reason of withdrawal, from any list prepared under the 2006 Act and/or any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession and has not subsequently had their name included in such a list or had their suspension lifted or qualification reinstated;
  - 1.5 they are incapable by reason of mental disorder, illness or injury of carrying out their functions as a Governor and it is anticipated that such incapacity will continue for a period of six months or the remainder of their tenure of office;
  - 1.6 they have within the preceding five years demonstrated aggressive or violent behaviour on Trust premises or another Health Service Body and following such behaviour has been asked to leave, has been removed or excluded from the premises under either the Trust's Policy for Withholding Treatment from Violent and Abusive Patients or Visitors (as amended from time to time) or the Health Service Body's equivalent policy;
  - 1.7 they have been confirmed as a habitual or vexatious complainant in accordance with the Trust's Concerns and Complaints Policy (as amended from time to time);
  - 1.8 they refuse to confirm that they will abide by the Trust's Code of Conduct for Governors (as amended from time to time);

- 1.9 they refuse without reasonable cause to undertake peer review and/or any training which the Trust and/or the Council of Governors requires all Governors to undertake;
- 1.10 they are a member of a local authority Overview and Scrutiny Committee covering health matters;
- 1.11 they are an officer or member of the governing body of Healthwatch or its successor bodies;
- 1.12 they have previously or are currently subject to a Sex Offenders Order and/or their name is included in the Violent and Sex Offenders Register;
- 1.13 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 1.14 they fail to or indicates that they are unwilling to act in the best interests of the Trust in accordance with the Principles of Public Life set out by the Committee on Standards in Public Life and incorporated in the Trust's Code of Conduct for Governors, as amended from time to time. In fulfilling this role, the Trust acknowledges that the Governor is representing the interests of their members or partner organisation in the local health economy. However, acting in the best interests of the Trust and engaging in constructive debate and challenge on behalf of the constituency a governor represents are not mutually exclusive. Only actions deemed by the Council of Governors or the Board of Directors to be malicious or destructive will be viewed as failing to act in the best interests of the Trust;  
or
- 1.15 they fail to abide by the values and behaviours of the Trust.

## 2. **Termination of tenure and removal of a Governor**

- 2.1 A Governor shall cease to hold office if
  - 2.1.1 they resign by giving notice in writing to the Assistant Chief Executive
  - 2.1.2 they fail to attend two consecutive meetings unless the Assistant Chief Executive is satisfied that:
    - 2.1.2.1 the absences were due to reasonable cause; and
    - 2.1.2.2 they will be able to start attending meetings within such a period that other Governors consider reasonable.
- 2.2 A Governor may be removed by the Council of Governors by a resolution by not less than three-quarters of the remaining Governors present at that meeting on the following grounds:

- 2.2.1 they have committed a serious breach of the Code of Conduct for Governors; or
  - 2.2.2 they have acted in a manner detrimental to the interests of the Trust; and
  - 2.2.3 the Council of Governors consider it is not in the best interests of the Trust as defined in Paragraph 1 above, for him/her/them to continue as a Governor.
- 2.3 Where a person has been elected or appointed to be a Governor and becomes disqualified from office under Paragraph 16 of the Constitution or Paragraph 1 above, the individual shall notify the Assistant Chief Executive in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render the Governor disqualified.
- 2.4 If it comes to the notice of the Assistant Chief Executive that the Governor is disqualified at the time of their appointment or later, the Assistant Chief Executive shall immediately declare that the individual in question is disqualified and give notice to them in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. The Assistant Chief Executive's decision is final.

### **3. Council of Governor Vacancies**

- 3.1 Where a Governor's term of office terminates for one of the reasons set out in paragraphs 2.1 or 2.2, Elected Governors may be replaced in accordance with paragraphs 3.2 and 3.3 below. In the case of Appointed Governors, the Trust shall invite the relevant appointing body to appoint a new Governor to hold office for the remainder of the term of office within 30 days of the vacancy having arisen.
- 3.2 At the discretion of the Trust, where an Elected Governor ceases to hold office during their term of office, the Trust may offer the candidate who secured the second highest number of votes in the last election for the Constituency (or Class of Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office of Governor for the unexpired balance of the former Governor's term of office.
- 3.3 If the candidate who secured the second highest number of votes in the last election for the Constituency (or Class of Constituency, as the case may be) in which the vacancy has arisen is not available or willing to fill the vacancy, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within six months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of

Governors who are Public Governors and Patient Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.

- 3.4 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning Officer shall conduct or shall oversee the conduction of the process set out in paragraphs 3.2 and 3.3 above.
- 3.5 No defect in the election or appointment of a Governor, nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

## Annex 5:

### Further provisions

#### Appendix A – Restriction on Membership (See Paragraph 11.4 of the Constitution)

#### 1. Disqualification from membership of the Trust

- 1.1 A person may not be a Member of the Trust if they are under 12 years of age at the time of their application to become a Member.
- 1.2 A person may not become or remain a Member of the Trust if he, she or they are ineligible under paragraphs 7.1, 8.1, or 10.1 of this Constitution to be a Member.
- 1.3 A person may not become or remain a Member of the Trust if during the five years prior to their application, they have demonstrated aggressive or violent behaviour at any Trust Hospital or towards any person working for a Health Service Body and following such behaviour they have been asked to leave, has been removed or excluded from any Trust Hospital or other Health Service Body establishment under either the Trust's Policy for Withholding Treatment from Violent and Abusive Patients or Visitors (as amended from time to time) or other Health Service Body's equivalent policy.
- 1.4 A person may not become or remain a Member of the Trust if they have been confirmed as a habitual or vexatious complainant in accordance with the Trust's Concerns and Complaints Policy (as amended from time to time).
- 1.5 A person may not remain a Member of the Trust if the Council of Governors resolves (in accordance with the procedure for expulsion from membership of the Trust set out at Paragraph 2 below) that for reasonable cause their so doing would, or would be likely to:
  - 1.5.1 prejudice the ability of the Trust to fulfil its principal purpose as defined by this Constitution or otherwise to discharge its duties and/or functions; or
  - 1.5.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods or services; or
  - 1.5.3 adversely affect public confidence in the goods or services provided by the Trust; or
  - 1.5.4 otherwise bring the Trust into disrepute.
- 1.6 It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A Member who becomes aware of their ineligibility shall inform the Assistant Chief



Executive as soon as practicable and that person shall thereupon be removed forthwith from the register of Members and shall cease to be a Member.

- 1.7 Where the Trust has reason to believe that a Member is ineligible for membership under the provisions of this Constitution or may be disqualified for membership under the provisions of this Constitution, the Assistant Chief Executive shall carry out reasonable enquiries to establish if this is the case.
- 1.8 Where the Assistant Chief Executive considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified for membership, they shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within 28 days or such other reasonable period as the Assistant Chief Executive may in their absolute discretion determine. Any representations received shall be considered by the Assistant Chief Executive and they shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonable practicable and shall give notice in writing of that decision to the Member or applicant within 14 days of the decision being taken.
- 1.9 If no such representations are received within the said period of 28 days or longer period (if any) permitted under the preceding paragraph, the Assistant Chief Executive shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him/her/them. The Assistant Chief Executive's decision is final.
- 1.10 Upon a decision being made under the Paragraphs 1.8 or 1.9 above that the Member is ineligible or disqualified for membership, the Member shall be removed from the register of Members immediately and shall thereupon cease to be a Member.
- 1.11 Notwithstanding the foregoing paragraphs, if it appears to the Assistant Chief Executive that an individual no longer wishes to be a Member of the Trust and, after reasonable enquiries made in accordance with a process approved by the Council of Governors the individual fails to demonstrate that they wish to continue to be a Member of the Trust, the individual shall cease to be a Member of the Trust and their name shall be removed from the register of Members of the Trust.

## **2. Expulsion from membership of the Trust**

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 2.1.1 any Member or Director may complain to the Assistant Chief Executive that another Member has acted in a way detrimental to the interests of the Trust, or is otherwise disqualified as set out in Paragraph 1 above.
- 2.1.2 if a complaint is made, the Council of Governors shall itself consider the complaint, having taken such steps as it considers appropriate, to ensure that the Member's and complainant's points of view are heard and may either:
- 2.1.2.1 dismiss the complaint and take no further action; or
- 2.1.2.2 arrange for a resolution of the Council of Governors to expel the Member complained of to be considered at the next meeting of the Council of Governors.

## **3. Termination of membership**

A Member shall cease to be a Member on:

- 3.1 death
- 3.2 resignation by notice in writing to the Assistant Chief Executive
- 3.3 ceasing to fulfil the requirements of paragraphs 7.1, 8.1 or 10.1 of the Constitution, as the case may be
- 3.4 being disqualified pursuant to Paragraph 1 above
- 3.5 being expelled pursuant to Paragraph 2 above.

**Appendix B – Dispute Resolution Procedure (See Paragraph 43 of the Constitution)**

1. The Council of Governors and the Board of Directors are 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.
2. In the event of a dispute arising between the Council of Governors and the Board of Directors, the Chair (or the Vice Chair if the dispute involves the Chair) will endeavour to resolve the dispute informally, through discussions with the Governors and Directors, to the reasonable satisfaction of both parties.
3. Failing resolution under Paragraph 2 of this Annex, the Chair (or the Vice Chair if the dispute involves the Chair) shall appoint and chair a panel comprising the Chief Executive and another Director and two Governors. The Council of Governors shall nominate the two Governors to the panel through the office of the Assistant Chief Executive.
  - 3.1 The panel will review the dispute and make recommendations to the Council of Governors and the Board of Directors.
  - 3.2 The panel may recommend referring the dispute to external mediation, in which case a professional mediator shall be appointed by the Centre for Dispute Resolution or such organisation as the panel shall agree.
    - 3.2.1 All negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence on a without prejudice basis.
    - 3.2.2 The costs and expenses of the mediation will be met by the Trust.
4. If the Council of Governors and the Board of Directors reach agreement on the resolution of the dispute, that agreement shall be made in writing and shall be binding upon both parties.
5. If the Council of Governors and the Board of Directors are unsuccessful in resolving the dispute to the reasonable satisfaction of both parties, the Chair (or the Vice Chair if the dispute involves the Chair) shall refer the dispute to the Board of Directors, whose decision shall be final.
6. Nothing in this procedure shall preclude
  - 6.1 the Lead Governor, on behalf of the Council of Governors approaching NHS Improvement if they believe a matter merits a referral, and
  - 6.2 any party from referring any dispute to a court of competent jurisdiction in England or Walesalthough such actions should be considered a last resort.