



The Rotherham  
NHS Foundation Trust

# Constitution of The Rotherham NHS Foundation Trust

Approved by Council of Governors February 2023

# The Rotherham NHS Foundation Trust Constitution

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## 1. Interpretation and definitions

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

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

**“2006 Act”** means the NHS Act 2006;

**“2012 Act”** means the Health and Social Care Act 2012;

**“Accounting Officer”** means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act;

**“Board of Directors”** means the Board of Directors as constituted in accordance with this Constitution;

**“Chairman”** means the Chairman of the Trust;

**“Co-optee”** means an individual nominated in accordance with the provisions of paragraph 9.0 of Annex 6 of this Constitution and formally appointed by resolution of the Council of Governors to advise the Council of Governors at meetings of the Council of Governors in an advisory and non-voting capacity;

**“Council of Governors”** means the Council of Governors as constituted in accordance with this Constitution;

**“Chief Executive”** means the Chief Executive and Accounting Officer of the Trust;

**“Director”** means a director on the Board of Directors;

**“Executive Director”** means an Executive Director of the Trust appointed in accordance with paragraph 23 of the Constitution;

**“Financial Year”** means the annual twelve-month period beginning on 1<sup>st</sup> April and ending on 31<sup>st</sup> March.

**“Governor”** means a member of the Council of Governors;

**“Local Authority Governors”** means a Member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of an area specified in Annex 1 as an area for a Public Constituency;

**“Member”** means a Member of the Trust;

**“Monitor”** means the body corporate known as Monitor referred to in section 61 of the 2012 Act;

**“Nolan Principles”** means the seven principles of conduct for holders of public office enunciated by the Nolan Committee in its Report on Standards in Public Office;

**“Other Partnership Governors”** means a member of the Council of Governors appointed by a Governor partnership organisation other than a university providing a medical or dental school to the Trust and as specified in Annex 3, paragraph 5.1;

**“Principal Purpose”** means the provision of goods and services for the purposes of the health service in England;

**“Public Governor”** means a member of the Council of Governors elected by the Members of a Public Constituency;

**“Public Constituency”** means the constituency of the Trust constituted in accordance with paragraph 7 of this Constitution;

**“Registered Dentist”** means a dentist within the meaning of the Dentists Act 1984;

**“Registered Medical Practitioner”** means a medical practitioner within the meaning of the Medical Act 1983 who holds a licence to practice under that Act;

**“Rotherham Ethnic Minority Alliance”** means the organisation established to promote positive change for Rotherham's diverse minority ethnic communities;

**“Rotherham Partnership”** means the organisation which is from time to time established as the local accredited partnership for the Rotherham area and which brings together public, private, voluntary and community sector organisations for the benefit of the population of Rotherham;

**“Secretary”** means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;

**“Staff Governor”** means a member of the Council of Governors elected by the Members of a Staff Class;

**“Staff Class”** means those classes of staff as classified by the relevant staff grouping described in paragraph 8;

**“Staff Constituency”** means the constituency of the Trust constituted in accordance with paragraph 8 of this Constitution;

**“Trust”** means The Rotherham NHS Foundation Trust;

**“Vice Chairman”** means the Vice Chairman of the Trust appointed pursuant to paragraph 17.1 of this Constitution;

**“Voluntary Action Rotherham”** means the body established for supporting, developing and promoting the voluntary and community sector in the Borough of Rotherham;

**“Zero Tolerance Policy”** means the Trust’s policy from time to time directed towards discouraging violence towards its staff.

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.2 References in this Constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3 References to legislation include all regulations, statutory guidance or directions.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 Words importing the masculine gender only shall include the feminine gender.
- 1.6 Words importing the singular shall include the plural and vice-versa.
- 1.7 All Annexes referred to in this Constitution form part of it.

## **2. Name**

- 2.1 The name of the foundation trust is The Rotherham NHS Foundation Trust.

## **3. Principal purpose**

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

## **4. Powers**

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

## **5. Membership and constituencies**

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- (i) a public constituency
  - (ii) a staff constituency.
- 5.2 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.

## **6. Application for membership**

- 6.1 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 Members of the Trust who are members of a public constituency, are to be individuals:
- (i) who live in an area specified in the column marked "Area (Wards)" of Table 1 Annex 1 and who have attained the age of 16 years of age at, or before, the time of their application for membership; and
  - (ii) who are not eligible to become a member of the Staff Constituency; and
  - (iii) who have each made application for membership to the Trust.
- 7.2 The minimum number of members in each Public Constituency, as specified in Table 1 in Annex 1, is 10 per each Public Constituency.
- 7.2 For the avoidance of doubt, those individuals who live in an area specified in the Constitution as an area for any Public Constituency, are referred to collectively as a Public Constituency in accordance with paragraph 4(2) of Schedule 7 of the 2006 Act.

## **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:
- (i) he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - (ii) he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.3 At least three members of the Council must be elected by the Staff Constituency, or where there are classes within it, at least one member of the Council must be elected by each class, and at least three members must be elected altogether.

- 8.4 The Staff Constituency shall be divided into 1 class of individuals who are eligible for membership of the Staff Constituency. The description of individuals making up each of the one class is specified within Annex 2 and are referred to as members of a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

## **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 shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

## **10. Restriction on membership**

- 10.1 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.
- 10.2 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.
- 10.3 An individual must be at least 16 years old to become a member of the Trust.
- 10.4 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 9 – Further Provisions.

## **11. Annual Members' Meeting**

- 11.1 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.

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

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 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 3.

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

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules 2014. A copy of the Model Election Rules is attached at Annex 5.
- 13.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution.



- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of the Constitution (amendment of the Constitution).
- 13.4 An election, if contested, shall be by secret ballot.

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

- 14.1 An elected governor may hold office for a period of up to 3 years
- 14.2 An elected governor shall be eligible for re-election at the end that term.
- 14.3 An elected governor may, in exceptional circumstances<sup>1</sup>, serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years maximum – and if contested, such election shall be held by secret ballot.
- 14.4 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of his term, subject to limitations described in paragraphs 4.2 or 5.3 of Annex 3.

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

- 15.1 The following may not become or continue as a member of the Council of Governors:
- 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
- 15.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 15.1.3 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.
- 15.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

## **16. Council of Governors – duties of governors**

- 16.1 The general duties of the Council of Governors are
- 16.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and to represent the interests of the members of the Trust as a whole and the interests of the public.
- 16.1.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

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<sup>1</sup> “Exceptional circumstances” shall be determined by the Council of Governors in a general meeting.

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

- 17.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 23.2.1 below) or, in his absence, the Trust Vice Chair, shall preside at meetings of the Council of Governors.
- 17.2 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 special reasons.
- 17.3 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.
- 17.4 A meeting of the Council of Governors shall be quorate if not less than half of the elected Governors (public and staff) are present.

## **18. Council of Governors – standing orders**

- 18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

## **19. Council of Governors – referral to the Panel for advising NHS foundation trust Governors**

- 19.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing—
  - 19.1.1 to act in accordance with its Constitution, or
  - 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

## **20. Council of Governors - conflicts of interest of governors**

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

## **21. Council of Governors – travel expenses**

- 21.1 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 – additional provisions**

- 22.1 Further provisions with respect to the Council of Governors are set out in Annex 6.

## **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 Chairman
  - 23.2.2 at least five other Non-Executive Directors; and
  - 23.2.3 at least five executive directors.
- 23.3 One of the executive directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer
- 23.5 One of the executive directors shall be the finance director
- 23.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One of the executive directors is to be a registered nurse or a registered midwife.
- 23.8 Notwithstanding the details provided in section 23.2, at least half of the board of directors, excluding the Chairman, shall be Non-Executive 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.

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

- 25.1 A person may be appointed as a Non-Executive Director only if –
  - (i) he is a member of a Public Constituency, and
  - (ii) he is not disqualified by virtue of paragraph 30 below.

## **26. Board of Directors – appointment of Chairman and other Non-Executive Directors**

- 26.1 The Council of Governors shall establish a Nominations Committee whose membership shall comprise the Trust Chairman, two Public Governors, two Staff Governors and two Governors who shall not be from a Public Constituency or a Staff Constituency, to consider candidates for appointment as Non-Executive Directors against an agreed person specification.
- 26.2 The said Nominations Committee shall shortlist from those candidates meeting the specified criteria, those candidates whom it wishes to interview and shall conduct interviews with the said candidates and thereafter make its recommendation as to who should be appointed. This recommendation shall be submitted to a meeting of the Council of Governors for its consideration and decision.
- 26.3 The validity of any act of the Trust shall not be affected by any vacancy among the Directors or by any defect in the appointment of any Director

## **27. Board of Directors – removal of Chairman and other Non-Executive Directors**

27.1 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the total number of members of the Council of Governors.

## **28. Board of Directors – appointment of deputy Chairman**

The Council of Governors at a general meeting of the Council of Governors may appoint one of the Non-Executive Directors as a deputy Chairman (of the Council of Governors).

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

29.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

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

29.3 A committee consisting of the Chairman, the Chief Executive and other Non-Executive Directors shall appoint or remove the other executive directors.

## **30. Board of Directors – disqualification**

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

- (i) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- (ii) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- (iii) 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.
- (iv) in the case of a Non-Executive Director, he no longer satisfies the requirements of paragraph 25.1;
- (v) he is a person whose tenure of office as a Chairman or as a Member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (vi) he has had his name removed from any list prepared pursuant to paragraph 10 of the National Health Service (Performers List), Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had his name included on such a list;
- (vii) he has been dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
- (viii) Monitor has exercised its powers under the 2006 Act to remove that person as a Director of the Trust or any other NHS foundation trust within his jurisdiction or has suspended him from office or has

disqualified him from holding office as a Director of the Trust or of any other NHS foundation trust for a specified period.

- (ix) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- (x) he is registered as a sex offender pursuant to Part I of the Sex Offenders Act 1997;
- (xi) he has been identified as a vexatious complainant and has been notified to the effect by notice in writing given by the Chief Executive;
- (xii) he is a member of the Rotherham Metropolitan Borough Council Health Overview and Scrutiny Committee;
- (xiii) he has been unable to dedicate adequate time to the role and responsibilities of a Director of the Trust; or
- (xiv) he has been identified as a person who has failed to comply with or otherwise contravened the Trust's Zero-Tolerance Policy (as amended from time to time) and has been given notice to that effect by the Chief Executive.

30.2 The Board of Directors may in their discretion appoint a Committee of the Board of Directors to enquire into any such matter as may be raised in connection with paragraph 30.1 above in accordance with terms of reference as determined by the Board of Directors and to make recommendations to the Board of Directors in respect thereof.

### **31. Board of Directors – meetings**

- 31.1 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.
- 31.2 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.

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

- 32.1 The standing orders for the practice and procedure of the Board of Directors, as may be amended from time to time, are attached at Annex 8.

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

- 33.1 The duties that a director of the Trust has by virtue of being a director include in particular –
  - 33.1.1 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.
  - 33.1.2 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.
- 33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if –
  - 33.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2 The matter has been authorized in accordance with the Constitution.
- 33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a

- conflict of interest.
- 33.4 In sub-paragraph 33.1.2, “third party” means a person other than –
- 33.4.1 The Trust, or
- 33.4.2 A person acting on its behalf.
- 33.5 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.
- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8 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.
- 33.9 A director need not declare an interest –
- 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest
- 33.9.2 If, or to the extent that, the other directors are already aware of it;
- 33.9.3 If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
- 33.9.3.1 By a meeting of the Board of Directors, or
- 33.9.3.2 By a committee of the directors appointed for the purpose under the Constitution.

## **34. Board of Directors – remuneration and terms of office**

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.
- 34.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

## **35. Registers**

- 35.1 The Trust shall have:
- 35.1.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 35.1.2 a register of members of the Council of Governors;
- 35.1.3 a register of interests of governors;
- 35.1.4 a register of directors; and
- 35.1.5 a register of interests of the directors.
- 35.1.6 a register of interests for all staff

## **36. Registers – inspection and copies**

- 36.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the

- Trust, if he so requests
- 36.3 So far as the registers are required to be made available:
- 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 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. Documents available for public inspection**

- 37.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 37.1.1 a copy of the current Constitution,
  - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them
  - 37.1.3 a copy of the latest annual report
  - 37.1.4 a copy of the latest information as to its forward planning; and
  - 37.1.5 a copy of any notice given under section 52 of the 2006 Act.
- 37.2 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:
- 37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act
  - 37.2.8 a copy of any final report published under section 65I (administrator's final report),
  - 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act
  - 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

- 37.3 Any person who requests a copy of, or extract from, any of the above documents is to be provided with a copy.
- 37.4 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.

### **38. Auditor**

- 38.1 The Trust shall have an auditor.
- 38.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

### **39. Audit committee**

- 39.1 The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

### **40. Accounts**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 In preparing its annual accounts, the corporation must comply with any directions given by the regulator with the approval of the Treasury as to—
- (a) the methods and principles according to which the accounts must be prepared,
  - (b) the information to be given in the accounts.
- 40.3 The accounts are to be audited by the Trust's auditor.
- 40.4 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

### **41. Annual report, forward plans and non-NHS work**

- 41.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.
- 41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.
- 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
    - 41.5.1.1 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 –
- 41.6.1.1 determine whether it is satisfied that the carrying on of the activity will not, to any significant extent, interfere with the



fulfillment by the Trust of its principal purpose or the performance of its other functions, and

- 41.6.1.2 notify the directors of the Trust of its determination.
- 41.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the Trust voting approve its implementation.

## **42. Presentation of the annual accounts and reports to the governors and members**

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts
  - 42.1.2 any report of the auditor on them
  - 42.1.3 the annual report.
- 42.2 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.
- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

## **43. Instruments**

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

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

- 44.1 The Trust may make amendments of its 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 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.
- 44.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
- 44.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 44.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

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

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

## **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 of the Trust voting, approve entering into the transaction.
- 45.3 "Significant transaction" means:
- 45.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 20% of the value of the Trust's gross assets before the acquisition; or
  - 45.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 20% of the value of the Trust's gross assets before the disposition; or
  - 45.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 20% of the value of the Trust's gross assets before the transaction.
- 45.4 For the purpose of this paragraph 45:
- 45.4.1 "gross assets" means the total of fixed assets and current assets;
  - 45.4.2 in assessing the value of any contingent liability for the purposes of sub-paragraph 45.3.3, the Directors:
    - 45.4.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
    - 45.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and
    - 45.4.2.3 may take account of the likelihood of the contingency occurring.
- 45.5 Where the Trust has a single requirement for goods, services or works, and a number of transactions are to be entered into to fulfil that requirement, the value of the transaction for the purpose of paragraph 45.3 is the aggregate of the value of each of those transactions

# ANNEX 1 - THE PUBLIC CONSTITUENCIES

(Section 7)

**Table 1**

Name of Constituency	Area (Wards)	Minimum Number of Members	Number of Governors
Rotherham	All Rotherham	70	14
All England Area H	The rest of England excluding areas A-G	10	2

**Table 2**



The Public Constituencies of the Trust are therefore constituted in accordance with Table

1 above.

## ANNEX 2 - THE STAFF CONSTITUENCY

(Paragraph 8.0)

- 1.0 The staff constituency shall consist of one class of individuals as follows:
  - (a) the "Staff" Class
- 1.1 Members of the Trust who are Members of the Staff Constituency are to be individuals who are employed under a contract of employment by the Trust; and
  - (a) who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or
  - (b) have been continuously employed by the Trust for at least 12 months;
  - (c) who are qualified for membership under paragraph 8
- 1.2 The minimum number of members required for each Staff Class of the Staff Constituency shall be five.
- 1.3 An individual who is eligible to be a Member of a Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency and may not become or continue as a Member of more than one Staff Class.
- 1.4 For the avoidance of doubt, those individuals who are eligible to be Members of the Staff Constituency are referred to collectively as "the Staff Constituency" in accordance with paragraph 4(3) of Schedule 7 of the 2003 Act.
- 1.5 An individual who is:
  - (a) eligible to become a member of the Staff Constituency; and
  - (b) invited by the Trust to become a member of the appropriate Staff Class of the Staff Constituencyshall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

## **ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS**

(Paragraph 12)

### **1.0 Composition of the Council of Governors**

- 1.1 The Trust shall have a Council of Governors which shall consist of Public Governors, Staff Governors, a Local Authority Governor, and other Partnership Governors.
- 1.2 More than half the members of the Council of Governors shall be elected by Members of the Public Constituency.
- 1.3 The Council of Governors of the Trust shall comprise:
  - 1.3.1 16 Public Governors elected in accordance with paragraph 2 below;
  - 1.3.2 5 Staff Governors elected in accordance with paragraph 3 below;
  - 1.3.3 1 Local Authority Governor appointed in accordance with paragraph 4 below; and
  - 1.3.4 6 Partnership Governors appointed in accordance with paragraph 5 below.

### **2.0 Public Governors**

- 2.1 The Public Constituencies of the Trust are as set out in Annex 1 and each such Public Constituency may elect two Governors.
- 2.2 Members of a Public Constituency may elect any of their number to be a Public Governor.
- 2.3 If contested the election must be by secret ballot.
- 2.4 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is contested) is set out in Annex 5.
- 2.5 A person may not stand for election to the Council of Governors as a Public Governor unless, within the period specified in Annex 2, he has made a declaration in the form specified in Part 4 of that Annex of his qualification to vote as a Member of its Public Constituency for which the election is being held and is not prevented from being a member of the Council of Governors by paragraph 8 to Schedule 7 of the 2006 Act or paragraph 15 of the Constitution ("Disqualification"). It is an offence to knowingly or recklessly make a declaration under section 60 of the 2006 Act which is false in a material particular.
- 2.6 Public Governors:
  - (a) shall hold office for a period of three years;
  - (b) are eligible for re-election at the end of that period;
  - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years; and
  - (d) shall cease to hold office if they cease to be a Member of the Public Constituency by which they were elected as a Public Governor.

### **3.0 Staff Governors**

- 3.1 The Staff Class may elect five of their number to be a Staff Governor for that Staff Class.
- 3.2 If contested, the election must be by secret ballot.
- 3.3 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office and by members as a condition of voting and the process if the election is uncontested) is set out in Annex 5.
- 3.4 Staff Governors
- (a) shall hold office for a period of three years.
  - (b) are eligible for re-election at the end of that period;
  - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years; and
  - (d) shall cease to hold office if they cease to be a Member of the Staff Constituency or cease to be a Member of the relevant Staff Class by which they were elected as a Staff Governor.

### **4.0 Local Authority Governor**

- 4.1 The Rotherham Metropolitan Borough Council is authorised to appoint a Local Authority Governor pursuant to a process agreed between the said local authority and the Trust.
- 4.2 The Local Authority Governor:
- (a) shall hold office for a period of three years;
  - (b) is eligible for reappointment at the end of that period;
  - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-appointment up to a total of 12 years; and
  - (d) shall cease to hold office if the local authority which appointed him withdraws its appointment of him.

### **5.0 Partnership Governors**

- 5.1 The organisations specified as Partnership Organisations that may each appoint a member to the Council of Governors are:
- (a) Rotherham Partnership
  - (b) Voluntary Action Rotherham (VAR)
  - (c) Sheffield University
  - (d) Sheffield Hallam University
  - (e) Barnsley and Rotherham Chamber of Commerce
  - (f) Rotherham Ethnic Minority Alliance (REMA).
- 5.2 The Partnership Governors are to be appointed by the organisations listed in paragraph 5.1 above pursuant to a process agreed by the said Partnership Organisation with the Trust.
- 5.3 The Partnership Governors:
- (a) shall hold office for a period of three years;
  - (b) are eligible for reappointment at the end of that period;
  - (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-appointment up to a total of 12 years; and
  - (d) shall cease to hold office if the Partnership Organisation which appointed him withdraws its appointment of them.

# ANNEX 5 - THE MODEL ELECTION RULES 2014

(Paragraph 13.0)

## **PART 1: INTERPRETATION**

1. Interpretation

## **PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

## **PART 3: RETURNING OFFICER**

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

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

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
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18. Method of election

## **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

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

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

### *The poll*

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone



35. Procedure for remote voting by text message

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

36. Receipt of voting documents  
37. Validity of votes  
38. Declaration of identity but no ballot (public and patient constituency)  
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**PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6  
42. Arrangements for counting of the votes  
43. The count  
STV44. Rejected ballot papers and rejected text voting records  
FPP44. Rejected ballot papers and rejected text voting records  
STV45. First stage  
STV46. The quota  
STV47. Transfer of votes  
STV48. Supplementary provisions on transfer  
STV49. Exclusion of candidates  
STV50. Filling of last vacancies  
STV51. Order of election of candidates  
FPP51. Equality of votes

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

- FPP52. Declaration of result for contested elections  
STV52. Declaration of result for contested elections  
53. Declaration of result for uncontested elections

**PART 8: DISPOSAL OF DOCUMENTS**

54. Sealing up of documents relating to the poll  
55. Delivery of documents  
56. Forwarding of documents received after close of the poll  
57. Retention and public inspection of documents  
58. Application for inspection of certain documents relating to election

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

- FPP59. Countermand or abandonment of poll on death of candidate  
STV59. Countermand or abandonment of poll on death of candidate

**PART 10: ELECTION EXPENSES AND PUBLICITY**

*Expenses*

60. Election expenses  
61. Expenses and payments by candidates  
62. Expenses incurred by other persons

*Publicity*

63. Publicity about election by the corporation

- 64. Information about candidates for inclusion with voting information
- 65. Meaning of “for the purposes of an election”

**PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

- 66. Application to question an election

**PART 12: MISCELLANEOUS**

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. Timetable

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

<b>Proceeding</b>	<b>Time</b>
Publication of notice of election	Not later than the fortieth day before the day of the close of the
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
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of
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
Close of the poll	By 5.00pm on the final day of the election.

### 3. Computation of time

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

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

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

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

**4. Returning Officer**

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

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

**5. Staff**

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

**6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

**7. Duty of co-operation**

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

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

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

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

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

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

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

9.2 The returning officer:

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

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

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

10.1 The nomination form must state the candidate's:

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

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

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

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

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

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

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

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

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



(d) receives a written request by the candidate of their withdrawal from candidacy.

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

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

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

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

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

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

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

- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

**17. Withdrawal of candidates**

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

**18. Method of election**

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

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

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

**20. The ballot paper**

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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

*Action to be taken before the poll*

**22. List of eligible voters**

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

- 22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

**23. Notice of poll**

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

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

(d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

(g) the address for return of the ballot papers,

(h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

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

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

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

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

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

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

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

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

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

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

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

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

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

- (a) require a voter to:
  - (i) enter his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

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

26.5

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

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



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

26.6

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

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

*The poll*

**27. Eligibility to vote**

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

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

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

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

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

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter’s identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoiled text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

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

30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

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

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

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

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

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

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

- (a) the name of the voter,

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

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

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

*Polling by internet, telephone or text*

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

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

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

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

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

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

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

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

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

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

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.

- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (public and patient constituency)<sup>2</sup>**
- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- (a) mark the ID declaration form “disqualified”,
  - (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
  - (c) place the ID declaration form in a separate packet.
- 39. De-duplication of votes**

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<sup>2</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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

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

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

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

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

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

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

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

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,

- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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



**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

## **43. The count**

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

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

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

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

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

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

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

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

## **STV45. First stage**

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

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

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

**STV46. The quota**

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

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

**STV47. Transfer of votes**

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

- (a) according to next available preference given on those ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

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

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

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

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



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

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

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

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

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

## **STV49. Exclusion of candidates**

STV49.1 If:

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

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

- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
  - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

- (d) compare:
  - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
  - (ii) the recorded total of valid first preference votes.

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

#### **STV50. Filling of last vacancies**

STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

#### **STV51. Order of election of candidates**

STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

**FPP51. Equality of votes**

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

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

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

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
  - (b) give notice of the name of each candidate who he or she has declared elected:
    - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chairman of the NHS Trust, or
    - (ii) in any other case, to the Chairman of the corporation; and
  - (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

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

available on request.

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

- STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
  - (b) give notice of the name of each candidate who he or she has declared elected –
    - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chairman of the NHS Trust, or
    - (ii) in any other case, to the Chairman of the corporation, and

- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

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

available on request.

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

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

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

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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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



56.1

Where:

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

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

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

57.1

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

57.2

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

57.3

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

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

58.1

The corporation may not allow:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (d) the constituency, or class within a constituency, to which the election relates.

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

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

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

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

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

## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

### *Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
  - (b) equivalent in size and content for all candidates,
  - (c) compiled and distributed in consultation with all of the candidates standing for election, and
  - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

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

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

- 64.2 The information must consist of:

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

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

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

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

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

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

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

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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



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

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

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

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

# ANNEX 6 - COUNCIL OF GOVERNORS - ADDITIONAL PROVISIONS

(Paragraph 22)

## RELATIONSHIP BETWEEN THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

### 1. Communication and Conflict

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

#### 1.2 Informal Communications

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

1.2.2 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including:

- (a) participation of the Board of Directors in the induction, orientation and training of Governors;
- (b) development of special interest relationships between Non-Executive Directors and Governors;
- (c) discussions/meetings between Governors and the Chairman and/or the Chief Executive and/or Directors facilitated through the office of the Company Secretary. The Governors shall be able to request to meet individually with any member of the Board through the office of the Company Secretary;
- (d) involvement in Membership recruitment and briefing at public events organised by the Trust.

#### 1.3 Formal Communication

1.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

1.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:

- (a) specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;
- (b) any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman. In the event of disagreement, two thirds of the Governors present must approve the request. The Chairman will raise the

matter with the Board of Directors and provide the response to the Council of Governors;

- (c) joint meetings will take place as and when appropriate between the Council of Governors and the Board of Directors.

1.3.3 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.

1.3.4 Communications initiated by the Board of Directors and intended for the Council of Governors will be conducted as follows:

- (a) request the Chairman to seek the view of the Council of Governors on the Board of Directors' proposals for the Strategic Direction/Forward Plans;
- (b) presentation and approval of annual accounts, annual report and auditor's report;
- (c) request the Chairman to seek the view of the Council of Governors on the Board of Directors' proposals for developments;
- (d) request the Chairman to seek the view of the Council of Governors on Trust Performance i.e. finance and quality metrics;
- (e) request the Chairman to seek the view of the Council of Governors for involvement in service reviews and evaluation;
- (f) request the Council of Governors to seek views of the Membership on proposed changes, plans and developments.

1.3.5 Formal communications will normally be conducted as follows:

- (a) attendance by the Board of Directors at a meeting of the Council of Governors;
- (b) formal reports or presentation by Executive Directors to a meeting of the Council of Governors;
- (c) inclusion of minutes for information on the Agenda of a meeting of the Council of Governors;
- (d) reporting the views of the Council of Governors to the Board of Directors through the Chairman, Lead Governor, Vice-Chairman or Senior Independent Director;
- (e) Governors attend meetings in public of the Board of Directors as observers.

1.3.6 Wherever possible and practical, written communications will be conducted by e-mail.

## 1.4 Resolving Conflict

1.4.1 The Council of Governors and the Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of view quickly, through discussion and negotiation.

1.4.2 If as the first step, the informal efforts the Chairman do not achieve resolution of a disagreement or a conflict, the Chairman will follow the process described in paragraphs below. The aim is to resolve the matter at the first available opportunity, and only to escalate to the next step if the step taken fails to achieve resolution.

1.4.3 In the event of a conflict between the Council of Governors and Board of Directors, the following action will be taken, in the sequence shown:

- (a) the Chairman will call a Resolution Meeting of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise of two thirds of the Membership of the Council of Governors and two thirds of the membership of the Board of Directors, otherwise the meeting shall not be quorate and shall not proceed further. The meeting will be held in private. The Agenda and any papers for the meeting shall be issued in accordance with the Standing Orders of the Council of Governors. The aim of the meeting will be to achieve resolution of the conflict. The Chairman, in discussion with the Lead Governor, will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement;
- (b) if a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the matter may be referred to mediation by either party;
- (c) if the Council of Governors consider that the Trust is failing or has failed to act in accordance with its Constitution or to act in accordance with the provisions made by or under Chapter 5 of the 2006 Act, then subject to paragraph 19.0 of this Constitution, they may refer the matter to the panel referred to in paragraph 19.0 of this Constitution.

1.4.4 The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- (a) the Chairman;
- (b) the Chief Executive;
- (c) two thirds of the members of the Council of Governors;
- (d) two thirds of the members of the Board of Directors.

## **DISQUALIFICATION AND REMOVAL OF GOVERNORS (Paragraph 15)**

### **2. Disqualification and removal**

Details are provided below as to the disqualification and removal of Governors.

A person may not become or continue as a member of the Council of Governors of the Trust if:

- (a) in the case of a Staff Governor or a Public Governor, he ceases to be a Member of the constituency or class by which he was elected;
- (b) subject to the provisions of paragraph 3.0 below, in the case of a Staff Governor he has been made the subject of a written disciplinary warning or has been suspended from duty for a period of suspension in excess of 28 days or where he has been absent from his post for a continuous period of not less than four months and no reasonable cause has been given for his absence.
- (c) in the case of a Local Authority Governor, or Partnership Governor, the relevant appointing Authority or Partnership Organisation withdraws its appointment of him;
- (d) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;

- (e) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (f) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (g) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (h) he has within the preceding five years been dismissed by reason of redundancy from the Trust;
- (i) he is a person whose tenure of office as the Chairman or as a Member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non attendance at meetings or for non-disclosure of a pecuniary interest;
- (j) he is an Executive or Non-Executive Director of the Trust, or a Governor, Non-Executive Director, Chairman, Chief Executive Officer of another NHS foundation trust;
- (k) he has had his name removed from any list prepared pursuant to paragraph 10 of the National Health Service (Performers List) Regulations 2004 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had his name included in such a list;
- (l) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- (m) he is registered as a sex offender pursuant to Part 1 of the Sex Offenders Act 1997;
- (n) he has been identified and given notice in writing to that effect by the Chief Executive as a vexatious complainant;
- (o) he has been identified as a person who has failed to comply with or otherwise contravened the Trust's Zero-Tolerance Policy (as amended from time to time) and has been given notice to that effect by the Chief Executive;
- (p) in the case of a Staff Governor, he is employed by the Trust on a temporary contract which contract is or was identified on the face of it as a temporary contract;
- (q) he is a member of the Rotherham Metropolitan Borough Council Health Overview and Scrutiny Committee.

3.0 Where a Staff Governor has been made the subject of a written warning or a period of suspension in excess of 28 days or where he has been absent from his post as an employee of the Trust for a continuous period of not less than four months and no reasonable cause has been given for his absence, his term of office as Governor may be suspended by the Council of Governors (or by a Committee of the Council of Governors or by the Secretary as the Council of Governors may duly authorise) for such period of time as the Council of Governors, Committee or Secretary (as the case may be) deems fit and so as to enable, if necessary, an investigation to be

carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors, Committee or Secretary (as the case may be) as to why he should still be eligible to continue as a Staff Governor but the determination of the Council of Governors, Committee or Secretary as to whether to terminate the Governor's term of office shall be final.

4.0 Where a Governor:

- (a) has given notice of resignation in accordance with paragraph 7.0 below or has had his term of office terminated pursuant to the terms of this Constitution in any manner whatsoever; or
- (b) is otherwise disqualified from holding office pursuant to the Constitution or the 2006 Act, that Governor shall thereupon cease to be a Governor and his name shall be forthwith removed from the Register of Governors.

5.0 Where a person has been elected or appointed to be a Governor and he becomes disqualified for appointment under paragraph 2.0, he shall notify the Chairman in writing of such disqualification as soon as possible.

6.0 If it comes to the notice of the Chairman that a Governor is so disqualified, whether at the time of his appointment or later, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect.

7.0 A Governor who resigns or whose tenure of office is terminated shall not be eligible to stand for re-election for a period of three years from the date of his resignation or termination of office.

## **VACANCIES ON COUNCIL OF GOVERNORS**

### **8. Vacancies**

8.1 Where a Governor's membership of the Council of Governors ceases for one or more of the reasons set out in paragraph 2.0, Public Governors and Staff Governors shall, either be replaced by elections or in accordance with the relevant Electoral Scheme(s) set out in Annex 5, and the Local Authority Governor and the Partnership Governors are to be replaced in accordance with the processes agreed.

8.2 Where an elected Governor ceases to hold office during his term of office the Trust shall offer the candidate who secured the second highest number of votes in the last election for the constituency (or Staff Class, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retired Governor's term of office. If that candidate does not accept to fill the vacancy, it shall then be offered to that candidate who secured the next higher of votes until the vacancy is filled.

8.3 If no candidate is available or is willing to fill a vacancy arising pursuant to paragraphs 8.1 and 8.2 above, the provisions of paragraph 9.0 Cooptee(s) shall apply.

8.4 To avoid doubt where a vacancy remains unfilled notwithstanding the application of the provisions of paragraph 9.0 (Cooptees) such office shall stand vacant until the next scheduled election (unless by so doing this causes the aggregate number

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

## **COOPTYEES TO COUNCIL OF GOVERNORS**

### **9. Coopteers**

- 9.1 Where any vacancy remains unfilled notwithstanding compliance with the procedures described in paragraph 8.0, the Lead Governor shall put forward to the Council of Governors individuals to be Coopteers in accordance with the process agreed by the Secretary. Each such individual shall be a Member of the constituency to which the vacancy relates.
- 9.2 The Council of Governors shall select up to 3 Coopteers from those put forward and recommend them to the Council of Governors for appointment.
- 9.3 The Council of Governors shall make the final decision whether to appoint those recommended.
- 9.4 For the avoidance of doubt, Coopteers shall have no voting rights and shall act in an advisory capacity only

**ANNEX 7 - STANDING ORDERS FOR THE PRACTICE AND  
PROCEDURE OF THE COUNCIL OF GOVERNORS  
(Paragraph 18)**



**ANNEX 8 - STANDING ORDERS FOR THE PRACTICE AND  
PROCEDURE OF THE BOARD OF DIRECTORS**

(Paragraph 32)

# **ANNEX 9 - FURTHER PROVISIONS – BOARD OF DIRECTORS**

(Paragraph 10.4)

# **[ANNEX 10 - ANNUAL MEMBERS MEETING]**

(Paragraph 11)