

WHITTINGTON HEALTH NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION¹

KEY:

BLACK TEXT – This text is included as a requirement of either the National Health Service Act 2006 or is included in Monitor’s Model Core Constitution

GREEN TEXT – These are provisions that are not mandatory, but we recommend are included

RED TEXT – These are provisions that the National Health Service Act 2006 gives an option to include

BLUE TEXT – These are provisions where the Trust has discretion (e.g. time frames in certain circumstances, etc)

¹ Please note that this draft is a pre-consultation draft. The Trust is required to consult the public and other specific persons listed in Section 35(5) of the NHS Act 2006 on, inter alia, its governance proposals and therefore this version is subject to the outcome of that consultation process (see Section 4.3.2 of the Guide for Applicants (November 2008) (Monitor and the Department of Health)).

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PREAMBLE

An NHS Foundation Trust is a Public Benefit Corporation which is authorised under the National Health Service Act 2006 to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate which is constituted in accordance with Schedule 7 of the 2006 Act. The Constitution provides, inter alia, for the Foundation Trust to have Members, Governors and Directors, and determines who may be eligible for membership and how Governors and Directors are appointed and defines their respective roles and powers. Further, Members of the Foundation Trust may attend and participate at Members' meetings, vote in elections to, and stand for election for, the Council of Governors, as provided in this Constitution.

1 Definitions and interpretation

- 1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 1.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.5 All annexes and appendices referred to in this Constitution form part of it.
- 1.6 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated or the context otherwise so requires.
- 1.7 In this Constitution:

"2006 Act"

means the National Health Service Act 2006;

"Accounting Officer"

means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

"Annual Accounts"

means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

"Annual Members' Meeting"

shall have the meaning ascribed to it in paragraph 3.1 of Appendix 2 of Annex 6 of this Constitution;

"Annual Report"

means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Applicant Trust"

means the Whittington Hospital NHS Trust;

"Appointed Governors"

means a PCT Governor, a Local Authority Governor, a University Governor, or a Partnership Governor;

"Area of the Trust"

means the area, consisting of all the areas, specified in Annex 1, as an area for a Public Constituency;

"Audit Committee"

means a committee of the Board of Directors as established pursuant to paragraph 37 of this Constitution;

"Auditor"

means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 36 of this Constitution;

"Authorisation"

means the authorisation issued to the Trust by the Independent Regulator under Section 35 of the 2006 Act and the phrase "terms of Authorisation" shall be construed accordingly;

"Board of Directors"

means the Board of Directors of the Trust as constituted in accordance with this Constitution;

"Camden and Islington NHS Foundation Trust"

means the NHS foundation trust of that name whose registered office is located at St Pancras Hospital, St Pancras Way, London NW1 0PE and which was authorised by the Independent Regulator on 1 March 2008;

"Carer"

means an individual who provides or was providing a substantial amount of care to a Patient, other than an individual providing care in pursuance of a contract (including a contract of employment) or as a Volunteer or as a volunteer for a Voluntary Organisation and who attended a Hospital in that capacity in the period of 5 years immediately preceding the date of an application made by them to become a Member of the Trust and who meets the continuing eligibility criteria set out in paragraph 10.2.3 of this Constitution;

"Certificate of Clearance"

has the meaning ascribed to it in paragraph 3 of Appendix 1 of Annex 6 of this Constitution;

"Chairman"

means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chairman" shall be deemed to include the Deputy Chairman or any other Non-Executive Director appointed if the Chairman and/or Deputy Chairman is absent from the meeting or is otherwise unavailable;

"Chief Executive"

means the Chief Executive of the Trust;

"Clear Day"

means a day of the week not including a Saturday, Sunday or public holiday;

"Constitution"

means this Constitution together with the annexes and appendices attached hereto;

"Council of Governors"

means the Council of Governors as constituted in this Constitution, which has the same meaning as the "Board of Governors" in paragraph 7 of Schedule 7 to the 2006 Act;

"Criminal Records Bureau"

means the Executive Agency of the Home Office to whom the Secretary of State has delegated his functions under Part V of the Police Act 1997 in relation to applications for criminal record certificates and enhanced criminal record certificates;

"Deputy Chairman"

means the Deputy Chairman of the Trust appointed pursuant to paragraph 25 of this Constitution;

"Deputy Chief Executive"

means an Executive Director appointed pursuant to paragraph 27.3 of this Constitution;

"Designated Organisation"

means an organisation and/or individuals registered as such in the Trust's register of Designated Organisations in accordance with paragraph 33.6 of this Constitution, whose employees or, in the case of an individual, who exercise functions for the purpose of the Trust;

"Director"

means a member of the Board of Directors;

"Directors' Code of Conduct"

means the Code of Conduct for Directors of the Trust, as adopted by the Applicant Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to;

"Elected Governor"

means a Public Governor, Staff Governor or a Patient Governor;

"Executive Director"

means an executive member of the Board of Directors of the Trust;

"Finance Director"

means the Finance Director of the Trust;

"Financial Year"

means:

- (a) a period beginning with the date on which the Trust is authorised as an NHS foundation trust and ending with the next 31 March; and
- (b) each successive period of twelve months beginning with 1 April;

"Forward Plan"

means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;

"Governor"

means a member of the Council of Governors;

"Governors' Code of Conduct"

means the Code of Conduct for Governors of the Trust, as adopted by the Applicant Trust and as amended from time to time by the Board of Directors, which all Governors must subscribe to;

"Haringey Candidates"

shall have the meaning ascribed to it in paragraph 13.12.2 of this Constitution;

"Haringey Teaching Primary Care Trust"

means the organisation of that name established by the Haringey Teaching Primary Care Trust (Establishment) Order 2001 (SI 2001/239) as amended by the Haringey Primary Care Trust (Change of Name) Amendment Order 2003 (SI 2003/1501);

"Haringey London Borough Council"

means Haringey London Borough Council of Civic Centre, High Road, Wood Green, London N22 8LE;

"Health Overview and Scrutiny Committee"

means a local authority overview and scrutiny committee established pursuant to section 21 of the Local Government Act 2000;

"Health Service Body"

shall have the meaning ascribed to it in Section 65(1) of the 2006 Act;

"Hospital"

means those premises set out in Article 3(2) of the Whittington Hospital NHS Trust (Establishment) Order 1992 (SI 1992/2510), and all associated hospitals and facilities at which the Applicant Trust or, (as the case may be), the Trust provides and/or manages the provision of goods and/or services;

"Immediate Family Member"

means either a:

- (a) spouse;
- (b) person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004;
- (c) child, step child or adopted child;
- (d) sibling; or
- (e) parent;

"Independent Regulator"

means the regulator of NHS foundation trusts established pursuant to Section 31 of the 2006 Act and the term "Monitor" shall be construed accordingly;

"Initial Elected Governors"

means those Elected Governors who are elected under the transitional provisions set out in paragraph 5 of Appendix 2 of Annex 6 as Governors in the Initial Elections;

"Initial Elections"

means the first elections held by the Applicant Trust pursuant to this Constitution, which for the avoidance of doubt includes an election held pursuant to the powers contained in Section 33(4) of the 2006 Act;

"Islington Candidates"

shall have the meaning ascribed to it in paragraph 13.12.1 of this Constitution;

"Islington London Borough Council"

means Islington London Borough Council of the Town Hall, Upper Street, London N1 2UD;

"Islington Primary Care Trust"

means the organisation of that name established by the Islington Primary Care Trust (Establishment) Order 2002 (SI 2002/1002);

"Local Authority Governor"

means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the Area of the Trust;

"Local Authority Partnership Agreement"

means an agreement made under section 75 of the 2006 Act;

"Local Involvement Network"

means any Local Involvement Network established pursuant to the Local Government and Public Involvement in Health Act 2007;

"Medical and Dental Staff Category"

shall have the meaning ascribed to it in paragraph 13.6.1 of this Constitution;

"Member"

means a Member of the Trust and the term "membership" shall be construed accordingly;

"Model Rules for Elections"

means the election rules set out in Annex 4 of this Constitution;

"NHS Constitution"

means the document entitled "The NHS Constitution" published by the Secretary of State for Health on 21 January 2009 or any revised version of that document published under Sections 3 or 4 of the Health Act 2009;

"NHS Foundation Trust Code of Governance"

means the best practice advice published by the Independent Regulator on 11 March 2010, and as may be amended, varied or replaced by the Independent Regulator from time to time;

"Nominated Officer"

means an Officer charged with the responsibility for discharging specific tasks within the SOs, the SFIs, or the Scheme of Delegation;

"Nominations Committee"

means a committee appointed pursuant to paragraphs 1.1.5 or 1.1.6 of Appendix 3 of Annex 9 of this Constitution;

"Non Clinical Staff Category"

shall have the meaning ascribed to it in paragraph 13.6.4 of this Constitution;

"Non-Executive Director"

means a non-executive member of the Board of Directors of the Trust;

"Nursing, Midwifery and Health Care Assistants Staff Category"

shall have the meaning ascribed to it in paragraph 13.6.2 of this Constitution;

"Other Clinical Staff Category"

shall have the meaning ascribed to it in paragraph 13.6.3 of this Constitution;

"Officer"

means an employee of the Trust or any other person holding a paid appointment or office with the Trust;

"Partnership Governor"

means a member of the Council of Governors other than: a Public Governor; Staff Governor; Patient Governor; PCT Governor; University Governor; or Local Authority Governor;

"Partnership Organisation"

means an organisation that may appoint Partnership Governors and which is listed at paragraph 2.3 of Annex 3 of this Constitution;

"Patient"

means an individual who has attended and received treatment at a Hospital in that capacity in the period of 5 years immediately preceding the date of an application made by them to become a Member of the Trust and who meets the continuing eligibility criteria set out in paragraph 10.2.2 of this Constitution;

"Patients' Constituency"²

has the meaning ascribed to it in paragraph 10.3 of this Constitution;

"Patient Governor"

means a member of the Council of Governors elected by the members of the Patients' Constituency;

"PCT Governor"

means a member of the Council of Governors appointed by a Primary Care Trust for which the Trust provides goods or services;

"Public Constituency"

has the meaning ascribed to it in paragraph 8.2 of this Constitution;

"Public Governor"

means a member of the Council of Governors elected by the members of one of the Public Constituencies;

"Registered Dentist"

means a fully registered person within the meaning of the Dentists Act 1984 who holds a license to practice under that Act;

² Client to consult on whether this should be called "Service Users' Constituency". If it is, references are to change throughout.

"Registered Medical Practitioner"

means a fully registered person within the meaning of the Medicines Act 1983 who holds a license to practice under that Act;

"Registered Midwife"

means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

"Registered Nurse"

means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

"Regulatory Framework"

means the 2006 Act, the Constitution and the terms of Authorisation;

"Replacement Governor"

has the meaning ascribed to it in paragraph 2.3 of Appendix 2 of Annex 6 of this Constitution;

"Returning Officer"

means the person appointed pursuant to Part 3 of the Model Rules for Election;

"Scheme of Delegation"

means the Trust's Reservation of Powers to the Board of Directors and Delegation of Powers;

"Secretary"

means the secretary of the Applicant Trust or (as the case may be) the Trust any other person other than a Governor, the Chief Executive or the Finance Director of the Trust, appointed by the Applicant Trust or (as the case may be) the Trust to perform the roles and responsibilities of the Secretary as set out in Appendix 5 of Annex 9 of this Constitution and Appendix A of the NHS Foundation Trust Code of Governance;

"Sex Offenders Order"

means either:

- (a) a Sexual Offences Prevention Order made under either Section 104 or Section 105 of the Sexual Offences Act 2003; or
- (b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- (c) a Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- (d) an Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003;

"Sex Offenders Register"

means the notification requirements set out in Part 2 of the Sexual Offences Act 2003, commonly known as the Sex Offenders Register;

"Staff Constituency"

has the meaning ascribed to it in paragraph 9.3 of this Constitution;

"Staff Governor"

means a member of the Council of Governors elected by the members of the Staff Constituency;

"SFIs"

means the Trust's Standing Financial Instructions, which regulate the conduct of Directors and Nominated Officers in relation to all financial matters with which they are concerned;

"Standing Orders for the Board of Directors"

means the Standing Orders set out in Annex 8 of this Constitution and the term "SO" when used in Annex 8 shall be construed accordingly;

"Standing Orders for the Council of Governors"

means the Standing Orders set out in Annex 7 of this Constitution and the term "SO" when used in Annex 7 shall be construed accordingly;

"Trust"

means the Whittington Health NHS Foundation Trust;

"Trust Headquarters"

means the Whittington Health NHS Foundation Trust, Magdala Avenue, London N19 5NF;

"University"

means the University College London of Gower Street, London WC1E 6BT, established by Royal Charter dated 15 November 1977;

"University Governor"

means a member of the Council of Governors appointed by the University;

"Voluntary Organisation"

means a body other than a public or local authority, the activities of which are not carried on for profit;

"Volunteer"

means a person who provides goods or services to the Applicant Trust or (as the case may be) the Trust, but who is not employed to do so by the Applicant Trust or (as the case may be) the Trust;

"Whittington North" means the public constituency covering the electoral ward areas specified in the table in Annex 1 adjacent to the box marked "Whittington North"; and

"Whittington South" means the public constituency covering the electoral ward areas specified in the table in Annex 1 adjacent to the box marked "Whittington South";

2 Name

The name of the Trust is to be "The Whittington Health NHS Foundation Trust".

3 Principal purpose

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

4 Powers and functions

- 4.1 The Trust is to have all the powers of an NHS foundation trust set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 4.2 In the exercise of its powers, the Trust shall have regard to the NHS and Trust principles as set out in paragraphs 1 and 2 of Appendix 1 of Annex 9 of this Constitution.
- 4.3 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.4 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 4.5 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.5 Where the Trust is exercising functions of managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an Executive Director of the Trust, nor an employee of the Trust.
- 4.6 In performing its NHS functions the Trust shall have regard to the NHS Constitution. For the purposes of this paragraph, "NHS functions" means functions under an enactment which is a function concerned with, or connected to, the provision, commissioning or regulation of NHS services and "NHS services" means health services provided in England for the purposes of the health service under Section 1(1) of the 2006 Act.

5 Other purposes

- 5.1 The purpose of the Trust is to provide goods and services, including education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and the terms of its Authorisation.
- 5.2 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 5.3 The Trust may fulfil the social care functions of any local authority as specified by an agreement made under Section 75 of the 2006 Act.
- 5.4 The Trust may also undertake activities other than those mentioned in paragraphs 5.1 to 5.3 above subject to any restrictions in the terms of Authorisation. These activities must be for the purpose of making additional income available in order to carry out the Trust's principal purpose better.

6 Membership and constituencies

- 6.1 The Trust shall have Members, each of whom shall be a member of one of the following constituencies:
- 6.1.1 the Public Constituency; or
 - 6.1.2 the Staff Constituency; or
 - 6.1.3 the Patients' Constituency.

7 Application for membership

- 7.1 Subject to paragraph 9.7 below, an individual who is eligible to become a Member of the Trust may do so on application to the Trust as set out in paragraphs 8, 9 and 10 below.
- 7.2 Subject to paragraph 9.7 below, applicants for membership of the Trust must complete and sign an application in the form prescribed by the Chief Executive or his delegated Officer.

8 Public Constituency

- 8.1 Subject to the provisions of paragraph 11 below and paragraphs 1 to 3 of Appendix 2 to Annex 9, an individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.
- 8.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the "Public Constituency".
- 8.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.
- 8.4 An eligible individual shall become a Member upon entry to the Trust's register of Members pursuant to an application by them. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 8.5 The Secretary shall, normally within 7 days of receipt of an application for membership, and subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Trust's register of Members.

9 Staff Constituency

- 9.1 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:
- 9.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 9.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 9.2 Individuals who are employed by a Designated Organisation and who otherwise exercise functions for the purposes of the Trust otherwise than under a contract of employment with the Trust may become or continue as members of the Staff

Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, this excludes Volunteers and individuals who assist or provide goods or services to the Trust on a voluntary or not for profit basis and subject to paragraph 9.10 below excludes Voluntary Organisations.

- 9.3 Those individuals who are eligible for membership of the Trust by reason of the provisions of paragraph 9.1 and 9.2 above are referred to collectively as the "Staff Constituency".
- 9.4 The minimum number of Members of the Staff Constituency is specified in Annex 2.
- 9.5 For the purposes of paragraphs 9.1 and 9.2 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has exercised functions for the purposes of the Trust as it applies for the purposes of that Act.
- 9.6 The Staff Constituency shall not be divided into descriptions of individuals who are eligible for membership of the Staff Constituency.
- 9.7 An individual who is eligible to become a member of the Staff Constituency under paragraph 9.1 above and who is invited by either the Applicant Trust or the Trust (as the case may be) 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 Applicant Trust (or as the case may be) the Trust, that he does not wish to do so.
- 9.8 Any individual who is eligible to become a Member of the Staff Constituency under paragraph 9.2 above shall become a Member upon entry to the Trust's register of Members pursuant to an application by them.
- 9.9 On receipt of an application for membership as described in paragraph 9.8 above, and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered into the Trust's register of members.
- 9.10 The Trust shall designate individuals and/or organisations as Designated Organisations who exercise functions for the purposes of the Trust for the purpose of paragraph 9.2 above, and the Secretary shall maintain a register of Trust Designated Organisations.

10 Patients' Constituency

- 10.1 An individual:
 - 10.1.1 whose name is recorded as a patient on the Applicant Trust's, or (as the case may be) the Trust's patient administration system or other record maintained by the Applicant Trust or the Trust for the purpose of identifying patients and who has, within the periods specified below, attended the Applicant Trust or (as the case may be) the Trust as a patient; or
 - 10.1.2 who (subject to the provisions of paragraph 10.11 and 10.12 below) has, within the periods specified in paragraph 10.2 below, attended the Applicant Trust, or (as the case may be) the Trust as the Carer of a Patient,

may become or continue as a Member of the Trust.

- 10.2 The periods referred to in paragraphs 10.1.1 and 10.1.2 above shall be:
- 10.2.1 the period of 5 years immediately preceding the date of an application by the individual to become a Member of the Trust as a member of the Patients' Constituency; and
 - 10.2.2 to continue to be eligible to be a member of the Patients' Constituency as a Patient the Member concerned must have at all times used the Hospital within a period of 5 years; and
 - 10.2.3 to continue to be eligible to be a Member of the Patients' Constituency as a Carer the Member concerned must have at all times provided a substantial amount of care to a Patient and have attended a Hospital in that capacity within a period of 5 years.
- 10.3 Those individuals who are eligible for membership of the Trust by reason of paragraphs 10.1 and 10.2 above are referred to collectively as the "Patients' Constituency".
- 10.4 The Patients' Constituency shall not be divided into descriptions of individuals who are eligible for membership of the Patients' Constituency.
- 10.5 The minimum number of Members in the Patients' Constituency is specified in Annex 3.
- 10.6 An eligible individual shall become a Member on entry to the Trust's register of Members pursuant to an application by him. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 10.7 The Secretary shall, normally within 7 days of receipt of an application for membership and subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Trust's register of Members.
- 10.8 Where an individual is eligible for admission to both the Public Constituency and the Patients' Constituency, he may specify which constituency he wishes to belong to either in his application or subsequently in writing (but once he has made such a specification he shall not be entitled to subsequently change constituencies unless he shall cease to be a member of the constituency of which he has chosen to be a member).
- 10.9 If such an individual does not specify, in accordance with paragraph 10.8 above, or his specification is unclear, he will be allocated to either the Public Constituency or the Patients' Constituency at the absolute discretion of the Secretary, until such time as he shall make a clear specification.
- 10.10 An individual shall not be eligible to apply to become or continue as a Member of the Trust as a Carer, if the Patient (on whose behalf he is a Carer):
- 10.10.1 is ineligible to be a Member;
 - 10.10.2 is disqualified or expelled from membership;

10.10.3 resigns as a Member; or

10.10.4 has died.

10.11 Not more than two Carers may be registered as a Member in relation to each Patient.

11 Restriction on Membership

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

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

11.3 All membership is individual and there shall be no facility for corporate membership.

11.4 Save as provided for under paragraph 19 below, Members are not entitled to receive payments or dividends from the Trust and no Member is entitled to preferential receipt of any goods or services provided by the Trust.

11.5 Save as provided for in this Constitution, no Member may represent himself in writing or verbally as belonging to an category of membership of the Trust:

11.5.1 in a manner which might associate the Trust with the personal opinions expressed by the Member in question; and

11.5.2 save for members of the Staff Constituency, and subject to the provisions of paragraph 33.2.3 below, no Member shall designate the Trust as his personal or professional postal address in any published work or any communication to the media.

11.6 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 Appendix 2 of Annex 9.

12 Council of Governors – composition

12.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.

12.2 The composition of the Council of Governors is specified in Annex 4.

12.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.

12.4 The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

13 Council of Governors – election of Governors

13.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time, and as are attached at Annex 5. Elections for Elected Governors shall be conducted using the First Past the Post

system. Thus, where appropriate, the alternative rules marked "FPP" (First Past the Post) should be used.

- 13.2 The Model Rules for Elections, as published from time to time by the Department of Health, form part of this Constitution. The Model Rules for Elections current at the date of the Trust's Authorisation are attached at Annex 5.
- 13.3 A subsequent variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 3 of Appendix 4 of Annex 9 (Amendments to the Constitution) of the Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.
- 13.4 An election, if contested, shall be by secret ballot.
- 13.5 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the forms specified in paragraphs 6.1 and/or 6.2 (as appropriate) of Appendix 2 of Annex 6 of this Constitution. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

Election of Staff Governors

- 13.6 Candidates for Staff Governors will be allocated to one of the following occupational categories:
 - 13.6.1 those listed in the Register of Medical Practitioners maintained by the General Medical Council, including, where appropriate, those with provisional registration and those listed in one of the registers maintained by the General Dental Council ("Medical and Dental Staff Category");
 - 13.6.2 those who are listed in the statutory register maintained by the Nursing and Midwifery Council and those who are employed or engaged by the Trust as health care assistants ("Nursing, Midwifery and Health Care Assistants Staff Category");
 - 13.6.3 those who are either subject to professional registration with the Council for the Regulation of Healthcare Professionals, or who are employed or engaged by the Trust in a technical or scientific capacity, or those who are otherwise not included in either the Medical and Dental Staff Category or the Nursing, Midwifery and Health Care Assistants Staff Category, but who nevertheless perform a clinical role ("Other Clinical Staff Category"); and
 - 13.6.4 those who do not fall within the categories set out in paragraphs 13.6.1 to 13.6.3 above ("Non Clinical Staff Category").
- 13.7 The Staff Governor seats shall be reserved as follows:
 - 13.7.1 one seat shall be reserved to the Medical and Dental Staff Category; and

- 13.7.2 one seat shall be reserved to the Nursing, Midwifery and Health Care Assistants Staff Category; and
 - 13.7.3 one seat shall be reserved to the Other Clinical Staff Category; and
 - 13.7.4 one seat shall be reserved to the Non Clinical Staff Category.
- 13.8 Only those eligible to take up the seat for which an election is held may stand as candidates in that election. All candidates for the seats reserved to a particular staff category listed in paragraphs 13.6.1 to 13.6.4 above must provide evidence to the Returning Officer with their nomination papers to establish their right to hold the particular seat.
- 13.9 The constraint will apply to all four Staff Governors, regardless of the number of Staff Governors being elected at any particular time. In any election for a Staff Governor, all eligible members of the Staff Constituency may vote.
- 13.10 Save while a vacancy exists, the election and the composition of the Staff Governors who sit on the Council of Governors shall at all times be subject to paragraphs 13.6 to 13.8 above.

Election of Public Governors

- 13.11 Candidates for Public Governors will be allocated to one of the following areas of the Public Constituency:
- 13.11.1 Whittington North; or
 - 13.11.2 Whittington South,
- as defined in Annex 1 of the Constitution, on the basis of the candidate's address contained in the Trust's register of Members.
- 13.12 The Public Governor seats shall be reserved as follows:
- 13.12.1 at least two seats shall be reserved for candidates resident in the London Borough of Islington (the "Islington Candidates"); and
 - 13.12.2 at least two seats shall be reserved for candidates resident in the London Borough of Haringey (the "Haringey Candidates").
- 13.13 The two Islington Candidates with the highest number of votes will be declared elected for the Whittington South area of the Public Constituency and the remaining two Public Governor seats for the Whittington South area of the Public Constituency will be filled by the two candidates of those remaining with the highest number of votes.
- 13.14 The two Haringey Candidates with the highest number of votes will be declared elected for the Whittington North area of the Public Constituency and the remaining two Public Governor seats for the Whittington North area of the Public Constituency will be filled by two candidates of those remaining with the highest number of votes.
- 13.15 Only those eligible to take up the seat for which an election is held may stand as candidates in that election. All candidates for the seats reserved to a particular area

must provide evidence to the Returning Officer with their nomination papers to establish their right to hold the particular seat.

13.16 The constraint will apply to all eight Public Governors, regardless of the number of Public Governors being elected at any particular time.

13.17 Save while a vacancy exists, the election and the composition of the Public Governors who sit on the Council of Governors shall at all times be subject to paragraphs 13.11 to 13.15 above.

14 Council of Governors - tenure

14.1 Elected Governors

14.1.1 An Elected Governor may hold office for a period of up to **4 years**.

14.1.2 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.

14.1.3 Subject to paragraph 14.1.4 below, an Elected Governor shall be eligible for re-election at the end of his term.

14.1.4 An Elected Governor may hold office for a maximum of **8 consecutive years**.

14.2 The transitional provisions of paragraph 5 of Appendix 2 of Annex 6 relating to the Council of Governors shall apply in relation to the initial Governors.

14.3 Appointed Governors

14.3.1 An Appointed Governor may hold office for a period of up to **4 years**.

14.3.2 An Appointed Governor shall cease to hold office if the relevant sponsoring organisation withdraws its sponsorship of him by notice in writing to the Secretary.

14.3.3 An Appointed Governor shall cease to hold office if he ceases to be employed by or associated with the relevant sponsoring organisation.

14.3.4 Subject to paragraph 14.3.5 below, an Appointed Governor shall be eligible for re-appointment at the end of his term.

14.3.5 An Appointed Governor may hold office for a maximum of **8 consecutive years**.

14.4 For the purposes of the tenure provisions set out in paragraph 14.1 and 14.3 above, a "year" means a period of 12 consecutive months commencing immediately on the date of Authorisation and each successive period of 12 months thereafter.

14.5 The appointment of Appointed Governors is subject to the veto provisions contained at paragraph 3 of Annex 4

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 sequestrated 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;
- 15.2 Governors must be at least **18 years** of age at the date they are nominated for election or appointment.
- 15.3 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary with effect from the date of the notice
- 15.4 Subject to paragraph 14.5, if a Governor fails to attend 2 consecutive meetings of the Council of Governors in any Financial Year, his tenure of office is to be terminated immediately unless the Council of Governors is satisfied by a 75% majority of those members of the Council of Governors present and voting at a meeting of the Council of Governors that:
- 15.4.1 the absence was due to a reasonable cause; and
 - 15.4.2 he will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.
- 15.5 Notwithstanding the provisions of paragraph 15.4 above, if a Governor fails to attend 2 out of 3 consecutive meetings of the Council of Governors and he has previously been the subject of a decision in his favour under paragraph 15.4 above, that Governor's tenure of office is to be terminated immediately.
- 15.6 If a Governor is considered to have acted in a manner inconsistent with:
- 15.6.1 the NHS and Trust principles, as set out in paragraphs 1 and 2 of Appendix 1 of Annex 9, or in a manner detrimental to the interests of the Trust; or
 - 15.6.2 the Authorisation; or
 - 15.6.3 the Standing Orders for the Council of Governors; or
 - 15.6.4 the Governor's Code of Conduct; or
 - 15.6.5 he has failed to declare an interest as required by this Constitution or the Standing Orders for the Council of Governors, or he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Standing Orders for the Council of Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

he is adjudged to have so acted by a majority of not less than 75% of the members of the Council of Governors present and voting at a meeting of the Council of Governors then the Governor shall vacate his office immediately.

- 15.7 The Standing Orders for the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.
- 15.8 A Governor who resigns from that office under paragraph 15.3 above, or whose office is terminated under paragraphs 15.5 or 15.6 above shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of 3 years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of, whichever is later.
- 15.9 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 Appendix 1 of Annex 6.

16 Council of Governors – meetings of Governors

- 16.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 23.1 or 24.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 25 below), shall preside at meetings of the Council of Governors and the person chairing the meeting shall have a casting vote.
- 16.2 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 by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.

17 Council of Governors – standing orders

The Standing Orders for the Council of Governors are attached at Annex 7.

18 Council of Governors - conflicts of interest of Governors

- 18.1 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.
- 18.2 The Standing Orders for Governors 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.

19 Council of Governors – travel and other expenses

Subject to any Trust policy on the payment of expenses, the Trust may pay travelling and other costs and expenses to members of the Council of Governors at such rates as the Board of Directors decides from time to time in its absolute discretion.

20 Council of Governors – further provisions

20.1 Further provisions with respect to the Council of Governors are set out in Annex 6. These include:

- 20.1.1 Eligibility to be on the Council of Governors;
- 20.1.2 Remuneration;
- 20.1.3 Vacancies;
- 20.1.4 Meetings;
- 20.1.5 Committees, sub-committees and joint committees;
- 20.1.6 Transitional provisions for the initial Governors; and
- 20.1.7 Council of Governors: declarations.

21 Board of Directors – composition

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

21.2 The Board of Directors is to comprise:

- 21.2.1 a Non-Executive Director Chairman; and
- 21.2.2 up to a maximum of 6 other Non-Executive Directors; and
- 21.2.3 up to a maximum of 6 Executive Directors.

21.3 One of the Executive Directors shall be the Chief Executive.

21.4 The Chief Executive shall be the Accounting Officer.

21.5 One of the Executive Directors shall be the Finance Director.

21.6 One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist.

21.7 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

21.8 In the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in his absence, the Deputy Chairman), shall have a second and casting vote at meetings of the Board of Directors in accordance with the Standing Orders for the Board of Directors.

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

21.10 Subject to the provisions of paragraphs 21.3 to 21.7 above, the Board of Directors shall determine any change in the number of Directors, provided that:

20.10.1 any change in the number of Directors is within the range set out in paragraph 21.2 above; and

20.10.2 there shall be a majority of Non-Executive Directors (including the Chairman).

21.11 The post of an Executive Director may be held by two individuals on a job-share basis (save that the posts held by a Registered Medical Practitioner or a Registered Dentist under paragraph 21.6 above and a Registered Nurse or Registered Midwife under paragraph 21.7 above cannot be shared between these professions) but where such an appointment is in force the two individuals may only exercise one vote between them at meetings of the Board of Directors.

22 Board of Directors – qualification for appointment as a Non-Executive Director

22.1 Subject to the provisions of paragraph 24.3 below, a person may be appointed as a Non-Executive Director only if:

22.1.1 he is a member of the Public Constituency; or

22.1.2 he is a member of the Patients' Constituency; or

22.1.3 he exercises functions for the purposes of the University; and

22.1.4 he is not disqualified by virtue of paragraph 28 below.

23 Board of Directors – appointment, suspension and removal of Chairman and other Non-Executive Directors

23.1 Subject to paragraph 23.2 below and the provisions of paragraphs 1 and 2 of Appendix 3 of Annex 9, the Council of Governors at a general meeting of the Council of Governors shall appoint, suspend (in a case where there may be grounds to remove) or remove the Chairman of the Trust and the other Non-Executive Directors.

23.2 During any general meeting of the Council of Governors at which the Chairman may be suspended or removed, the Deputy Chairman shall preside, or if the Deputy Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director, as shall be appointed by the Council of Governors, shall preside.

23.3 Suspension or removal of the Chairman or another Non-Executive Director shall require a resolution to be submitted by 1 Governor and be seconded by not less than 10 Governors and requires the resolution in question to be approved by three-quarters of the members of the Council of Governors.

23.4 The Governor sponsoring the resolution mentioned in paragraph 23.3 above shall provide written reasons in support of the resolution to the Chairman or other Non-Executive Director in question, who shall be given the opportunity to respond to such reasons at the meeting of the Council of Governors which the resolution is to be considered and voted upon. If the individual in question fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to

proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.

- 23.5 In making any decision to remove either the Chairman or a Non-Executive Director under paragraph 23.3 above, the Council of Governors shall take into account the results of the annual appraisal concerning the Chairman (or, as the case may be) the Non-Executive Director in question.
- 23.6 If any resolution to remove either the Chairman or a Non-Executive Director is not approved at a meeting of the Council of Governors in accordance with paragraph 23.3 above, no further resolution can be put forward to remove such Non-Executive Director, or the Chairman which is based on the same reasons within 12 calendar months of the meeting of the Council of Governors at which the resolution mentioned in paragraph 23.3 above was considered.
- 23.7 The initial Chairman and the initial Non-Executive Directors are to be appointed in accordance with paragraph 24 below.
- 23.8 Subject to the provisions of paragraph 24 below, the process for appointing new Non-Executive Directors and the Chairman will be as set out in Appendix 3 of Annex 9 of this Constitution.

24 Board of Directors – appointment of initial Chairman and initial other Non-Executive Directors

- 24.1 The Council of Governors shall appoint the chairman of the Applicant Trust shall as the initial Chairman of the Trust, if he wishes to be appointed.
- 24.2 The power of the Council of Governors to appoint the other Non-Executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the non-executive directors of the Applicant Trust (other than the chairman) who wish to be appointed.
- 24.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 22 above (other than disqualification by virtue of paragraph 28 below) do not apply to the appointment of the initial Chairman and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph 24.
- 24.4 An individual appointed as the initial Chairman or as an initial Non-Executive Director in accordance with the provisions of this paragraph 24 shall be appointed for the unexpired period of his term of office as chairman or (as the case may be) non-executive director of the Applicant Trust, but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

25 Board of Directors – appointment of Deputy Chairman

- 25.1 The Chairman may after consultation with the Board of Directors appoint one of the Non-Executive Directors as a Deputy Chairman for such period not exceeding his term of office as a Non-Executive Director. Any Non-Executive Director so appointed under this paragraph 25.1 may at any time resign from the office of Deputy Chairman by giving notice in writing to the Secretary. The Chairman may thereupon appoint another Non-Executive Director in accordance with this paragraph 25.1.
- 25.2 If the Chairman is unable to discharge his functions as Chairman of the Trust, the Deputy Chairman will be the "acting chairman" of the Trust until such time as the

Chairman is able to discharge his functions as Chairman, or a new Chairman is appointed by the Council of Governors in accordance with paragraph 23 above.

26 Board of Directors - appointment and removal of the Chief Executive and other Executive Directors

- 26.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 26.2 Subject to the provisions of paragraph 27.2 below, the appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.
- 26.3 The initial Chief Executive is to be appointed in accordance with paragraph 27 below.
- 26.4 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

27 Board of Directors – appointment and removal of initial Chief Executive

- 27.1 The Non-Executive Directors shall appoint the chief officer of the Applicant Trust as the initial Chief Executive of the Trust if he wishes to be appointed.
- 27.2 The appointment of the chief officer of the Applicant Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.
- 27.3 The Chief Executive may nominate by way of written resolution, an Officer to be the Deputy Chief Executive.

28 Board of Directors – disqualification

- 28.1 The following may not become or continue as a member of the Board of Directors:
 - 28.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 28.1.2 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;
 - 28.1.3 a person who within the preceding five years has been convicted of any offence **anywhere in the world** and 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;
 - 28.1.4 a person whose tenure of office as a chairman or 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;
 - 28.1.5 a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list and due to such

- reasons, he is considered by the Trust to be unsuitable to be a Director;
- 28.1.6 a person who has within the preceding two years been dismissed otherwise than by reason of redundancy or ill health, from any paid employment with a local authority or a Health Service Body;
- 28.1.7 a person who is a member of the Council of Governors, an executive director, non-executive director or a governor of another NHS foundation trust, or an executive director or non-executive director, chairman, chief executive officer of another Health Service Body (unless they are appointed by a Partnership Organisation which is a Health Service Body), or a body corporate whose business includes the provision of health care services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Trust;
- 28.1.8 a person who is a member of a Local Involvement Network;
- 28.1.9 a person who is a member of a local authority Health Overview and Scrutiny Committee;
- 28.1.10 a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 28.1.11 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 28.1.12 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 28.1.13 a person who is an Immediate Family Member of a Director or a Governor;
- 28.1.14 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 28.1.15 a person who by reference to information revealed by a Criminal Records Bureau check is considered by the Trust to be inappropriate on the grounds that his appointment may adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 28.1.16 a person who has demonstrated aggressive or violent behaviour (such as verbal assault, physical assault, violence or harassment at any NHS hospital, NHS premises or other NHS establishment or against any of the Applicant Trust's or (as the case may be) the Trust's employees or other persons who exercise the functions for the purposes of the Trust, whether or not in circumstances leading to his removal or exclusion from any NHS hospital, premises or establishment; or
- 28.1.17 subject to the provisions of paragraph 3 of Appendix 1 of Annex 6, a person who is incapable by reason of mental disorder, illness or injury of managing and/or administering his property and/or his affairs.

29 Board of Directors – Standing Orders

The Standing Orders for the Board of Directors are attached at Annex 8.

30 Board of Directors - conflicts of interest of Directors

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

31 Board of Directors – remuneration and terms of office

- 31.1 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, **but pending its decision on such matters, these matters are to continue in accordance with the remuneration and allowances and the other terms and conditions of office of the respective individuals as engaged by the Applicant Trust.**
- 31.2 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, **but pending the establishment of such a committee and its decisions, these matters are to continue in accordance with the remuneration and allowances and other terms and conditions of office of the respective individuals as employed by the Applicant Trust.**

32 Registers

- 32.1 The Trust shall have:
- 32.1.1 a register of Members;
 - 32.1.2 a register of members of the Council of Governors;
 - 32.1.3 a register of interests of the members of the Council of Governors;
 - 32.1.4 a register of members of the Board of Directors; and
 - 32.1.5 a register of interests of the members of the Board of Directors.
- 32.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
- 32.2.1 any Member of the Patients' Constituency; or
 - 32.2.2 any other Member of the Trust, if the Member so requests.

- 32.3 So far as the registers are required to be made available:
- 32.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 32.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 32.4 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.

33 Admission to and removal from the registers

33.1 Register of Members

The Secretary shall maintain the register of Members in two parts:

- 33.1.1 Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency and where there are classes within it, the class to which they belong.
- 33.1.2 Part two shall contain all the information from the application referred to in paragraph 7 above and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party (save to the extent that copies or extracts from it be made available to any third party appointed by the Trust to maintain the register of the Members and to conduct elections in accordance with the provisions of paragraph 13 above).
- 33.1.3 Notwithstanding the provisions of paragraphs 33.1.1 and 33.1.2 above, the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Public Constituency and Patients' Constituency are representative of those eligible for membership and for the administration of the provisions of this Constitution.

33.2 Register of members of the Council of Governors

The register of members of the Council of Governors shall list:

- 33.2.1 the name of each Governor;
- 33.2.2 their category of membership of the Council of Governors (public, staff, patients', primary care trust, university, local authority, or partnership organisation); and
- 33.2.3 an address through which they may be contacted which may be the Secretary.

33.3 Register of interests of the members of the Council of Governors

The register of interests of the members of the Council of Governors shall contain:

- 33.3.1 the name of each Governor;
- 33.3.2 whether he has declared any interests and, if so, the interests declared in accordance with this Constitution and the Standing Orders for the Council of Governors.

33.4 Register of the members of the Board of Directors

The register of the members of the Board of Directors shall list:

- 33.4.1 the names of Directors;
- 33.4.2 their capacity on the Board of Directors; and
- 33.4.3 an address through which they may be contacted which may be the Secretary.

33.5 Register of interests of members of the Board of Directors

The register of interests of members of the Board of Directors shall contain:

- 33.5.1 names of each Director;
- 33.5.2 whether he has declared any interests and, if so, the interests declared in accordance with this Constitution and the Standing Orders for the Board of Directors.

33.6 Register of Designated Organisations

- 33.6.1 The register shall contain the names of each Designated Organisation which is designated by the Trust for the purposes of membership of the Trust.

34 Registers – inspection and copies

- 34.1 The Trust shall make the registers specified in paragraphs 33.1 to 33.6 above available for inspection by members of the public, except in the circumstances set out above in paragraph 32.2 or as otherwise prescribed by regulations including, for the avoidance of doubt, the Public Benefit Corporation (Register of Members) Regulations 2004 (SI2004/539).
- 34.2 So far as the registers are required to be made available:
 - 34.2.1 they are subject to paragraphs 32.4 above and 34.3 below to be available for inspection free of charge at all reasonable times; and
 - 34.2.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 34.3 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

35 Documents available for public inspection

- 35.1 Subject to paragraph 35.3 below, the Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times [as well as on the Trust's website](#):
- 35.1.1 a copy of the current Constitution;
 - 35.1.2 a copy of the current terms of Authorisation;
 - 35.1.3 a copy of the latest Annual Accounts and of any report of the Auditor on them;
 - 35.1.4 a copy of the latest Annual Report;
 - 35.1.5 a copy of the latest Forward Plan; and
 - 35.1.6 a copy of any notice given under Section 52 of the 2006 Act.
- 35.2 Subject to paragraph 35.3 below, any person who requests a copy of or extract from any of the documents listed in paragraphs 35.1.1 to 35.1.6 above is to be provided with a copy, or extract.
- 35.3 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

36 Auditor

- 36.1 The Trust is to have an Auditor.
- 36.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.
- 36.3 In appointing the Auditor, the Council of Governors shall have regard to the recommendations (if any) of the Audit Committee.
- 36.4 The Accounting Officer shall ensure that the Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any guidance or best practice advice issued by the Independent Regulator on standards, procedures and techniques to be adopted.
- 36.5 The Board of Directors may resolve that an "external consultant" be appointed to review and publish a report on any other aspect of the Trust's performance. Any such "external consultant" is to be appointed by the Board of Directors.

37 Audit Committee

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

38 Accounts

- 38.1 The Trust shall keep accounts in such form as the Independent Regulator may with the approval of HM Treasury direct.

- 38.2 The accounts are to be audited by the Auditor.
- 38.3 The Trust shall prepare in respect of each Financial Year, Annual Accounts in such form as the Independent Regulator may with the approval of the HM Treasury direct.
- 38.4 The functions of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

39 Annual Report and Forward Plans

- 39.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.
- 39.2 The Trust shall give the Forward Plan to the Independent Regulator each Financial Year.
- 39.3 The Forward Plan shall be prepared by the Board of Directors.
- 39.4 In preparing the Forward Plan, the Board of Directors shall have regard to the views of the Council of Governors.

40 Meeting of Council of Governors to consider Annual Accounts and reports

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

- 40.1 the Annual Accounts;
- 40.2 any report of the Auditor on them; and
- 40.3 the Annual Report.

41 Instruments

- 41.1 The Trust shall have a seal.
- 41.2 The seal shall not be affixed except under the authority of the Board of Directors as set out in the Standing Orders for the Board of Directors.

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraph 8)

1 Public Constituency of the Trust

| NAME OF CONSTITUENCY | AREA | MINIMUM NUMBER OF MEMBERS | MINIMUM NUMBER OF GOVERNORS |
|--------------------------|---|---------------------------|-----------------------------|
| Whittington North | <p>All the electoral wards within the area of the London Borough of Haringey; and</p> <p>The following electoral wards within the area of the London Borough of Barnet:</p> <ul style="list-style-type: none"> ○ East Barnet; ○ High Barnet; ○ Underhill; ○ Oakleigh; ○ East Finchley; ○ West Finchley; ○ Finchley Church End; ○ Garden Suburb; ○ Brunswick Park; ○ Coppetts; ○ Totteridge; ○ Woodhouse; ○ Childs Hill; ○ Golders Green; ○ Hendon; ○ West Hendon; ○ Hale; ○ Mill Hill; and ○ Collindale; and <p>The following electoral wards within the area of the London Borough of Enfield:</p> <ul style="list-style-type: none"> ○ Bush Hill Park; ○ Hazelbury; ○ Edmonton Green; ○ Lower Edmonton; ○ Upper Edmonton; ○ Jubilee; ○ Southgate Green; ○ Winchmore Hill; ○ Palmers Green; ○ Bowes; ○ Southgate; ○ Cockfosters; ○ Grange; and ○ Highlands. | 250 | 4 |

| | | | |
|--------------------------|--|------------|----------|
| Whittington South | <p>All the electoral wards within the following areas:</p> <ul style="list-style-type: none"> • London Borough of Islington; • London Borough of Camden; • London Borough of Hackney; and <p>The following electoral wards within the area of the City of London Corporation:</p> <ul style="list-style-type: none"> ○ Cheap; ○ Aldersgate; ○ Farringdon Without; ○ Farringdon Within; ○ Bishopsgate; ○ Walbrook; ○ Bassishaw; ○ Coleman Street; ○ Cripplegate; ○ Broad Street; and ○ Cornhill; and <p>The following electoral wards within the area of the Westminster City Council:</p> <ul style="list-style-type: none"> ○ West End; ○ Marylebone High Street; ○ Bryanston and Dorset Square; ○ Church Street; ○ Regents Park; and ○ Abbey Road. | <p>250</p> | <p>4</p> |
| Totals | Minimum Membership | 500 | |
| | Public Governors | | 8 |

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 9)

1 Staff Constituency

- 1.1 The minimum number of members of the Staff Constituency shall be 1,500.
- 1.2 The number of Governors in the Staff Constituency shall be 4.

ANNEX 3

THE PATIENTS' CONSTITUENCY

(Paragraph 10)

1 Patients' Constituency

- 1.1 The minimum number of Members of the Patients' Constituency shall be 300.
- 1.2 The number of Governors in the Patients' Constituency shall be 5.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 12)

The composition of the Council of Governors shall be as follows:

1 Composition

- 1.1 The Council of Governors shall comprise:
 - 1.1.1 **8 Public Governors;**
 - 1.1.2 at least 4 being elected from Whittington North (including 2 Haringey Candidates); and
 - 1.1.3 at least 4 being elected from Whittington South (including 2 Islington Candidates).
 - 1.1.4 **4 Staff Governors:**
 - 1.1.4.1 1 being elected from the Medical and Dental Staff Category;
 - 1.1.4.2 1 being elected from the Nursing, Midwifery and Health Care Assistants Staff Category;
 - 1.1.4.3 1 being elected from the Other Clinical Staff Category; and
 - 1.1.4.4 1 being elected from the Non Clinical Staff Category,
 - 1.1.5 **5 Patient Governors;**
 - 1.1.6 **2 PCT Governors;**
 - 1.1.7 **2 Local Authority Governors;**
 - 1.1.8 **1 Partnership Governor;** and
 - 1.1.9 **1 University Governor.**
- 1.2 The aggregate number of Public Governors and Patient Governors is to be more than half of the total membership of the Council of Governors.
- 1.3 The organisations currently specified as Partnership Organisations that may appoint members of the Board of Governors are:
 - 1.3.1 Camden and Islington NHS Foundation Trust.
- 1.4 The organisations listed in paragraphs 1.3 above may be varied from time to time by the Trust with the consent of the Independent Regulator.

2 Appointed Governors

2.1 PCT Governors

2.1.1 Islington Primary Care Trust may appoint 1 (one) PCT Governor by notice in writing signed by the chairman of Islington Primary Care Trust and delivered to the Secretary. The appointee must be a general medical practitioner who represents the GP practices within Islington Primary Care Trust's area.

2.1.2 Haringey Teaching Primary Care Trust may appoint 1 (one) PCT Governor by notice in writing signed by the chairman of Haringey Teaching Primary Care Trust and delivered to the Secretary. The appointee must be a general medical practitioner who represents the GP practices within Haringey Teaching Primary Care Trust's area.

2.2 Local Authority Governors

2.2.1 Islington London Borough Council or its successor organisation may appoint 1 (one) Local Authority Governor by notice in writing signed by the leader of the council or a member of the council executive, and delivered to the Secretary.

2.2.2 Haringey London Borough Council or its successor organisation may appoint 1 (one) Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council executive, and delivered to the Secretary.

2.3 Partnership Governors

Camden and Islington NHS Foundation Trust may appoint 1 (one) Partnership Governor by notice in writing signed by the Chief Executive of Camden and Islington NHS Foundation Trust and delivered to the Secretary.

2.4 University Governors

The University or its successor organisation may appoint 1 (one) University Governor by notice in writing signed by the designated accountable officer before Parliament for the University and delivered to the Secretary.

3 Veto

Notwithstanding the provisions of paragraphs 2.1 to 2.4 above, the Chairman may veto the appointment of an Appointed Governor by serving notice in writing to the relevant organisation where he believes that the appointment in question is unreasonable, irrational or otherwise inappropriate.

ANNEX 5 –THE MODEL RULES FOR ELECTIONS

(Paragraph 13)

Model Rules for Elections to the Board of Governors³

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 consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

³ References in this Annex 5 to "Board of Governors" shall bear the same meaning as "Council of Governors" in the Constitution.

Part 5 – Contested elections

- 19. Poll to be taken by ballot
- 20. The ballot paper
- 21. The declaration of identity

Action to be taken before the poll

- 22. List of eligible voters
- 23. Notice of poll
- 24. Issue of voting documents
- 25. Ballot paper envelope and covering envelope

The poll

- 26. Eligibility to vote
- 27. Voting by persons who require assistance
- 28. Spoilt ballot papers
- 29. Lost ballot papers
- 30. Issue of replacement ballot paper
- 31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

- 32. Receipt of voting documents
- 33. Validity of ballot paper
- 34. Declaration of identity but no ballot paper
- 35. Sealing of packets

Part 6 - Counting the votes

- STV36. Interpretation of Part 6
- 37. Arrangements for counting of the votes
- 38. The count
- STV39. Rejected ballot papers
- FPP39. Rejected ballot papers
- STV40. First stage
- STV41. The quota
- STV42. Transfer of votes

STV43. Supplementary provisions on transfer

STV44. Exclusion of candidates

STV45. Filling of last vacancies

STV46. Order of election of candidates

FPP46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

FPP47. Declaration of result for contested elections

STV47. Declaration of result for contested elections

48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

50. Delivery of documents

51. Forwarding of documents received after close of the poll

52. Retention and public inspection of documents

53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

FPP54. Countermand or abandonment of poll on death of candidate

STV54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

55. Expenses incurred by candidates

56. Expenses incurred by other persons

57. Personal, travelling, and administrative expenses

Publicity

58. Publicity about election by the corporation

59. Information about candidates for inclusion with voting documents

60. Meaning of "for the purposes of an election"

Part 11 – Questioning elections and irregularities

61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64. Disqualification
- 65. Delay in postal service through industrial action or unforeseen event

Part 1 – Interpretation

1. **Interpretation** – (1) In these rules, unless the context otherwise requires –

"corporation" means the public benefit corporation subject to this constitution;

"election" means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Board of Governors;

"the regulator" means the Independent Regulator for NHS foundation Trusts; and

"the 2006 Act" means the National Health Service Act 2006.

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

Part 2 – Timetable for election

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

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

3. **Computation of time** - (1) In computing any period of time for the purposes of the timetable –

- (a) 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.

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

Part 3 – Returning officer

4. Returning officer – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

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

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

6. Expenditure - The corporation is to pay the returning officer –

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

(b) such remuneration and other expenses as the corporation may determine.

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

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

(b) the number of members of the Board of Governors to be elected from that constituency, or class within that constituency,

(c) the details of any nomination committee that has been established by the corporation,

(d) the address and times at which nomination papers may be obtained;

(e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,

(f) the date and time by which any notice of withdrawal must be received by the returning officer

(g) the contact details of the returning officer, and

(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

(a) is to supply any member of the corporation with a nomination paper, and

(b) is to prepare a nomination paper for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper must state –

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

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

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

13. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

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

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds –
- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

(a) the name, contact address, and constituency or class within a constituency of each candidate standing, and

(b) the declared interests of each candidate standing, as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers –

(1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

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

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Board of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

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

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Board of Governors, then –

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

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

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the Board of Governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

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

24. Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

- (a) a ballot paper and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

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

The poll

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

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

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

28. Spoilt ballot papers – (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.

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

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

(a) is satisfied as to the voter's identity, and

(b) has ensured that the declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers") –

(a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

(a) is satisfied as to the voter's identity,

(b) has no reason to doubt that the voter did not receive the original ballot paper, and

(c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers") –

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper.

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

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers") –

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) - (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

(b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

(a) covering envelope, or

(b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

(a) the candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

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

33. Validity of ballot paper – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

(a) put the declaration of identity if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

(a) mark the ballot paper "disqualified",

(b) if there is a declaration of identity accompanying the ballot paper, mark it as "disqualified" and attach it to the ballot paper,

- (c) record the unique identifier on the ballot paper in a list (the "list of disqualified documents"); and
- (d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

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

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

Part 6 - Counting the votes

STV36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

"deemed to be elected" means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll, "mark" means a figure, an identifiable written word, or a mark such as "X",

"non-transferable vote" means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule STV44(4) below,

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

- (a) "first preference" means the figure "1" or any mark or word which clearly indicates a first (or only) preference,
- (b) "next available preference" means a preference which is the second, or as the case 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
- (b) 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 STV41 below,

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

"stage of the count" means –

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

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

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

"transfer value" means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule STV42 below.

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

38. The count – (1) The returning officer is to –

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

STV39. Rejected ballot papers – (1) Any ballot paper –

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

FPP39. Rejected ballot papers – (1) Any ballot paper –

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which 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 paragraphs (2) and (3) below, be rejected and not counted.

(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.

(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.

(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 paragraph (2) or (3) above, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.

(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.

STV40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

STV41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

STV42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

(a) according to next available preference given on those papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value ("the transfer value") which –

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

(b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

(a) according to the next available preference given on those papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

(a) a transfer value calculated as set out in paragraph (4)(b) above, or

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

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

STV43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

(a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule STV42 above –

(a) record the total value of the votes transferred to each candidate,

(b) add that value to the previous total of votes recorded for each candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes,

And

(d) compare—

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

(3) All ballot papers transferred under rule STV42 or STV44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule STV42 or STV44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV44. Exclusion of candidates – (1) If—

(a) all transferable papers which under the provisions of rule STV42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

(a) ballot papers on which a next available preference is given, and

(b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule STV43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule STV45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

(a) record –

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

(b) add that total to the previous total of votes recorded for each candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare—

(i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule STV42 and rule STV43.

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

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

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

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

STV45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

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

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

STV46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV42(10) above.

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

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

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

FPP46. Equality of votes – 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

FPP47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

(a) declare the 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 Board 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 Applicant Trust by section 33 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.

(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 FPP39(5), available on request.

STV47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

(a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

(b) give notice of the name of each candidate who he or she has declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on the Applicant Trust by section 33 of the 2006 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation, and

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

(2) The returning officer is to make –

(a) the number of first preference votes for each candidate whether elected or not,

(b) any transfer of votes,

(c) the total number of votes for each candidate at each stage of the count at which such transfer took place,

(d) the order in which the successful candidates were elected, and

(e) the number of rejected ballot papers under each of the headings in rule STV39(1), available on request.

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

(a) declare the candidate or candidates remaining validly nominated to be elected,

(b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll – (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

(a) the counted ballot papers,

(b) the ballot papers endorsed with "rejected in part",

(c) the rejected ballot papers, and

(d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of –

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

(3) The returning officer must endorse on each packet a description of –

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

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

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

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters, by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

(4) On an application to inspect any of the documents listed in paragraph (1), –

(a) in giving its consent, the regulator, and

(b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

(i) that his or her vote was given, and

(ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

FPP54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

(a) countermand notice of the poll, or, if ballot papers have 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.

(2) Where a new election is ordered under paragraph (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.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

(a) count and record the number of ballot papers that have been received, and

(b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

STV54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

(a) publish a notice stating that the candidate has died, and

(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –

(i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and

(ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

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

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

(a) personal expenses,

(b) travelling expenses, and expenses incurred while living away from home, and

(c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

57. Election expenses incurred by other persons – (1) No person may –

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

(b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation – (1) The corporation may –

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

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

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

59. Information about candidates for inclusion with voting documents - (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than 250 words, and

(b) [where the candidate so decides, a photograph of the candidate.

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

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by –

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

(a) the returning officer,

(b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –

(i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

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

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

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

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

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

(a) a member of the corporation,

(b) an employee of the corporation,

(c) a director of the corporation, or

(d) employed by or on behalf of a person who has been nominated for election.

65. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in –

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraphs 15 and 20)

Appendix 1:

Eligibility to be on the Council of Governors

1 Eligibility

A person may not become or continue as a Governor of the Trust if:

- 1.1 in the case of an Elected Governor, he ceases to be a member of the constituency or (where relevant) the class of the constituency he represents;
- 1.2 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of him or the sponsoring organisation ceases to exist;
- 1.3 he has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a local authority or a Health Service Body;
- 1.4 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 interest of the health service;
- 1.5 he is a Director of the Trust, the Auditor of the Trust (including, for the avoidance of doubt, any member of the audit team) or a governor, executive director, non-executive director, chairman, chief executive officer of another Health Service Body (unless they are appointed by a Partnership Organisation which is a Health Service Body), or a body corporate whose business involves the provision of health care services, including, for the avoidance of doubt those who have a commercial interest in the affairs of the Trust or whose business involves the provision of goods or services to the Trust;
- 1.6 he has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list and due to such reasons he is considered by the Trust to be unsuitable to be a Governor;
- 1.7 he is a member of a Local Independent Network
- 1.8 subject to the provisions of paragraph 3 below, he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- 1.9 he has refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
- 1.10 he is a member of a local authority Health Overview and Scrutiny Committee;
- 1.11 he is the subject of a Sex Offenders Order and /or his name is included in the Sex Offenders Register;
- 1.12 he is an Immediate Family Member of a Governor or Director of the Trust;

- 1.13 he has failed to repay (without good cause) any amount of monies properly owed to the Applicant Trust or the Trust;
- 1.14 he has failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct;
- 1.15 he has demonstrated aggressive or violent behaviour at any Hospital and following such behaviour he has been asked to leave, has been removed or excluded from any Hospital or other healthcare facility in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients;
- 1.16 he has been confirmed as a 'vexatious complainant' in accordance with the relevant Applicant Trust or (as the case may be) the Trust policy for handling complaints;
- 1.19 he is a person who is subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 1.20 he is a person who by reference to information revealed by a Criminal Records Bureau check is considered by the Trust to be inappropriate on the grounds that his appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 1.21 he has failed to make or has falsely made any declaration as required by paragraph 13.5 of the Constitution;
- 1.22 he has not obtained, prior to standing for election, a Certificate of Clearance, in accordance with paragraph 3 of this Appendix 1 of Annex 6; or
- 1.23 he has made any material misstatement in the declarations made to the Trust for the purposes of obtaining a Certificate of Clearance.

2 Notification

- 2.1 Where a person has been elected or appointed to be a Governor and he becomes disqualified or is removed from office under paragraph 15 of the Constitution or paragraph 1.1 of this Appendix 1 of Annex 6, he shall notify the Secretary in writing of such disqualification and/or (as the case may be) removal. If it comes to the notice of the Secretary at the time of his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon despatch of any such notification:
 - 2.1.1 that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor; and
 - 2.1.2 The Secretary shall inform the Chair of the actions taken in respect of the person in question and the reasons for such action.

3 Certificates of Clearance

- 3.1 Any person wishing to stand as a candidate for Governor must obtain a Certificate of Clearance from the Secretary. The Certificate of Clearance will require the prospective candidate to declare any criminal convictions, and the Applicant Trust or (as the case may be) the Trust will then take a view as to whether, in its discretion, those convictions disqualify the individual from exercising the function of a Governor.

Appendix 2

Council of Governors: further provisions

1 Remuneration

Governors are not to receive remuneration from the Applicant Trust or (as the case may be) the Trust, provided that this shall not prevent the remuneration of Governors by their employer.

2 Vacancies

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

2.2 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall decide either:

2.2.1 to call an election within three months to fill the seat for the remainder of that term of office; or

2.2.2 to invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office, or

2.2.3 to leave the seat vacant until the next scheduled elections are held if the unexpired period of office is less than six months.

2.3 Where the vacancy arises amongst the Appointed Governors, the Secretary will request that the relevant organisation appoint a "Replacement Governor" within 30 days to hold office for the remainder of the term of office. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 2 of Annex 4 of this Constitution.

2.4 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

3 Meetings

3.1 The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each year apart from the first year, when the Council of Governors is to receive and consider the Annual Accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the Annual Report (the "Annual Members' Meeting").

3.2 The Secretary shall call meetings in accordance with paragraph 3.1 above.

3.3 Any meeting of the Council of Governors requires a quorum of one third of the total number of Governors to be present with a majority of those present being an aggregate of Public Governors and Patients' Governors.

3.4 No business shall be carried out at a meeting which is not quorate.

- 3.5 If at any meeting of the Council of Governors, there is no quorum present within 15 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a period of 7 days and the Secretary shall give or shall procure the giving of notice to all Governors of the date, time and place of that adjourned meeting. Notwithstanding paragraph 3.3 above, upon reconvening, those present shall constitute a quorum.

4 Committees, sub-committees and joint committees

- 4.1 The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 4.2 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 4.3 These committees, sub-committees or joint committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with paragraph 2.5 of Appendix 4 of Annex 9.

5 Transitional provisions for the initial Governors

The following provisions shall apply for the initial Elected Governors of the Trust.

5.1 The initial Public Governors

- 5.1.1 Of those candidates who are declared elected at the Initial Election, the three candidates who poll the most votes shall serve a term of office ending 3 (three) years from the date of Authorisation and the remaining candidates shall serve a term of office ending 2 (two) years from the date of Authorisation.
- 5.1.2 Candidates elected unopposed shall be deemed to have received 1 (one) vote for the purposes of paragraph 5.1.1 above.
- 5.1.3 If after applying the provisions of paragraphs 5.1.1 and 5.1.2 above, it is not possible to determine which candidate or candidates are entitled to an initial term of office of 2 years or 3 years, his or their initial term of office shall be determined by the drawing of lots. The drawing of lots shall be conducted by the Chairman in the presence of two Non-Executive Directors and the Secretary, who shall report the outcome to the candidates concerned.

5.2 The initial Staff Governors

- 5.2.1 Of those candidates who are declared elected at the Initial Election, the two candidates who polled the most votes shall serve a term of office ending 3 (three) years from the date of Authorisation.
- 5.2.2 Of those candidates who are declared elected at the Initial Election, the two candidates who polled the least votes shall serve a term of office ending 2 (two) years from the date of Authorisation.

- 5.2.3 Candidates elected unopposed shall be deemed to have received 1 (one) vote for the purposes of paragraphs 5.2.1 and 5.2.2 above.
- 5.2.4 If, after applying the provisions of paragraphs 5.2.1 to 5.2.3 above it is not possible to determine which candidate or candidates are entitled to an initial term of office of 2 years or 3 years, his or their initial term of office shall be determined by the drawing of lots. The drawing of lots shall be conducted by the Chairman in the presence of two Non-Executive Directors and the Secretary, who shall report the outcome to the candidates concerned.

5.3 The initial Patient Governors

- 5.3.1 Of those candidates who are declared elected at the Initial Election, the three candidates who poll the most votes shall serve a term of office ending 3 (three) years from the date of Authorisation and the remaining candidates shall serve a term of office ending 2 (two) years from the date of Authorisation.
- 5.3.2 Candidates elected unopposed shall be deemed to have received 1 (one) vote for the purposes of paragraph 5.3.1 above.
- 5.3.3 If after applying the provisions of paragraphs 5.3.1 and 5.3.2 above, it is not possible to determine which candidate or candidates are entitled to an initial term of office of 2 years or 3 years, his or their initial term of office shall be determined by the drawing of lots. The drawing of lots shall be conducted by the Chairman in the presence of two Non-Executive Directors and the Secretary, who shall report the outcome to the candidates concerned.
- 5.4 For the purposes of the provisions set out in paragraphs 5.1 to 5.3 above, a "year" means a period of 12 consecutive "months" commencing immediately on the date of Authorisation and a "month" means a calendar month.

6 Council of Governors: declarations

- 6.1 The specified form of declaration referred to at paragraph 13.5 of this Constitution regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections at Annex 4 and shall state as follows:
- "I declare that I am resident at the address detailed in this form. I declare that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named in this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed in this form. I declare that I have stated details of any of my political membership and any financial interests I have in the Applicant Trust (or, as the case may be, the Trust). I understand that if any of these declarations are later found to be false I will if elected lose my seat on the Council of Governors and may also have my membership withdrawn."*
- 6.2 The specified form of declaration referred to at paragraph 13.5 of this Constitution regarding the declaration to vote in elections for Public Governors and Patient Governors will be as set out in Rule 21 of the Model Rules for Elections.

**ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL
OF GOVERNORS**

**WHITTINGTON HEALTH NHS FOUNDATION TRUST
STANDING ORDERS FOR THE COUNCIL OF GOVERNORS**

(to be developed)

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

**WHITTINGTON HEALTH NHS FOUNDATION TRUST
STANDING ORDERS**

**FOR THE
BOARD OF DIRECTORS**

(to be developed)

ANNEX 9 - FURTHER PROVISIONS

(Paragraphs 1, 4, 8, 9, 14 and 22)

Appendix 1:

NHS and Trust principles

1 NHS core principles

- 1.1 The NHS will provide a universal service for all based on clinical need, not ability to pay.
- 1.2 The NHS will provide a comprehensive range of services.
- 1.3 The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.
- 1.4 The NHS will respond to different needs of different populations.
- 1.5 The NHS will work continuously to improve the quality of services and to minimise errors.
- 1.6 The NHS will support and value its staff.
- 1.7 The NHS will work together with others to ensure a seamless service for patients.
- 1.8 The NHS will help keep people healthy and work to reduce health inequalities.
- 1.9 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

2 [Trust operating principles

- 2.1 The Trust aims to become the hospital of choice for local people, providing the highest quality services to them.
- 2.2 In conducting its affairs, the Trust shall have regard to the need to provide information to Members and to conduct its affairs in an open and accessible way.⁴

3 Co-operation with health service and other bodies

- 3.1 In exercising its functions, the Trust shall co-operate with Health Service Bodies and any local authority with which the Trust has a Local Authority Partnership Agreement.
- 3.2 Notwithstanding the provisions of paragraph 3.1 above, the Trust shall co-operate with any specific third party body that it has a duty (statutory, contractual, or otherwise) to co-operate with.

⁴ Client to confirm what these should be.

4 Respects for rights of people

- 4.1 In conducting its affairs, the Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Trust as set out in the Human Rights Act 1998.

Appendix 2:

Membership

1 Disqualification from membership of the Trust

- 1.1 A person may not become or continue as a Member of the Trust if:
- 1.1.1 he is under 14 years of age at the date of his application or invitation to become a Member (as the case may be);
 - 1.1.2 he has demonstrated aggressive or violent behaviour (such as verbal assault, physical assault, violence or harassment) at any NHS hospital, NHS premises or NHS establishment against any of the Applicant Trust's (or as the case may be) the Trust's employees or other persons who exercise functions for the purposes of the Trust whether or not in circumstances leading to his removal or exclusion from any NHS hospital, premises or establishment;
 - 1.1.3 he has been confirmed as a 'vexatious complainant' in accordance with the relevant Applicant Trust or (as the case may be) the Trust policy for handling complaints;
 - 1.1.4 he has been removed as a member from another NHS foundation trust;
 - 1.1.5 he has been deemed to have acted in a manner contrary to the interests of the Applicant Trust or (as the case may be) the Trust;
 - 1.1.6 he fails or ceases to fulfil the criteria for membership of the Public Constituency, the Staff Constituency or the Patients' Constituency;
 - 1.1.7 he has been dismissed (otherwise than by reason of redundancy) from a position of employment with the Trust; or
 - 1.1.8 he is the Auditor of the Trust (including, for the avoidance of doubt, a member of the audit team).
- 1.2 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, or it appears to the Secretary that a Member no longer wishes to be a Member, the Secretary shall give the Member 14 days written notice to show cause why his name should not be removed from the register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the register of Members. In the event of any dispute about entitlement to membership, the dispute shall be resolved in accordance with the procedure set out in paragraph 2.1 of Appendix 4 of this Annex 9.
- 1.3 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

2 Expulsion from membership of the Trust

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 2.1.1 Any Member may complain to the Secretary that another Member has acted in a way detrimental to or contrary to the interests of the Trust, or is otherwise disqualified as set out in paragraph 1 above.
 - 2.1.2 Subject to paragraphs 2.2 to 2.6 below, if a complaint is made the Council of Governors, or a delegated committee or sub-committee or joint committee of the Council of Governors, will consider the complaint, having taken such steps as it (or they) consider appropriate, to ensure that each Member's point of view is heard and may either:
 - 2.1.2.1 dismiss the complaint and take no further action; or
 - 2.1.2.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.
- 2.2 No person who has been expelled from membership pursuant to the provisions of paragraphs 2.1 above is to be re-admitted as a Member except by a resolution of the Council of Governors carried by votes of two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

3 Termination of Membership

- 3.1 A Member shall cease to be a Member on:
- 3.1.1 death; or
 - 3.1.2 resignation by notice in writing to the Secretary; or
 - 3.1.3 ceasing to fulfil the requirements of paragraphs 8, 9 or 10 of this Constitution, as the case may be; or
 - 3.1.4 being disqualified pursuant to paragraph 1 above, or being expelled pursuant to paragraph 2 above.

Appendix 3:

Board of Directors – further provisions

1 Process for appointing Non-Executive Directors and the Chairman

- 1.1 Subject to the provisions of paragraphs 23 and 24 of the Constitution, the process for appointing new Non-Executive Directors and the Chairman will be as follows:
- 1.1.1 Not less than six months before the end of the term of office or upon a vacancy arising for any reason other than expiry of a term of office of the Chairman or a Non-Executive Director (as the case may be) the Council of Governors will appoint a Nominations Committee to seek a suitable replacement. The Nominations Committee will be constituted in accordance with paragraphs 1.1.5 and 1.1.6 below.
 - 1.1.2 Where the Nominations Committee considers that either the Chairman or the Non-Executive Director coming to the end of his term of office should be reappointed for a further term, the Nominations Committee shall make a recommendation to the Council of Governors to that effect.
 - 1.1.3 Where:
 - 1.1.3.1 the Nominations Committee does not make a recommendation that the Chairman or a Non-Executive Director should be reappointed in accordance with paragraph 1.1.2 above; or
 - 1.1.3.2 the Chairman or (as the case may be) the Non-Executive Director in question does not want to be reappointed; or
 - 1.1.3.3 the Council of Governors rejects a recommendation that the Chairman or (as the case may be) a Non-Executive Director should be reappointed in accordance with paragraph 1.1.2 above,the Nominations Committee shall initiate a process of open competition for the appointment of the Chairman and/or Non-Executive Director, and the post will be advertised.
 - 1.1.4 The Nominations Committee will make recommendations to the Council of Governors, including recommendations about pay.
 - 1.1.5 The Nominations Committee for the Chairman will consist of one Public Governor, one Patient Governor, one Staff Governor and one Appointed Governor. If the number of Governors prepared to serve on the Nominations Committee is greater than the number of places available, the committee members will be selected by an election by their peer Governors. Either a Public Governor or a Patient Governor will chair the Nominations Committee. Each member of the Nominations Committee will have one vote and, in the event of an equality in votes, the person chairing the Nominations Committee will have a casting vote.
 - 1.1.6 The Nominations Committee for the Non-Executive Directors will consist of the Chairman, one Public Governor, one Patient Governor,

one Staff Governor and one Appointed Governor. The Chief Executive will be invited to attend in an advisory capacity only. If the number of Governors prepared to serve on the Nominations Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. The Chairman will chair the Nominations Committee. Each member of the Nominations Committee will have one vote. In the event of an equality of votes, the Chairman will have a casting vote.

1.1.7 The Nominations Committee constituted under paragraphs 1.1.5 and 1.1.6 above may be supported by appropriate advice from a human resources specialist and it may also engage an external organisation or individual recognised as expert at appointments to identify the qualifications, skills and experience required for the positions of Chairman and/or Non-Executive Director.

1.1.8 The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Nominations Committee.

2 Criteria for suspension and removal of Non-Executive Directors and the Chairman

2.1 General criteria

2.1.1 The Council of Governors, when exercising the powers of suspension or removal in accordance with paragraph 23 of this Constitution, shall have regard to the following criteria (this is not an exhaustive list and each case shall be considered on its own merits taking into account all relevant factors, including any representations made by the Non-Executive Directors or Chairman in question):

2.1.1.1 if a Director fails to attend 2 consecutive meetings of the Board of Directors in any Financial Year he may be removed from office unless the Council of Governors is satisfied by a 75% majority of those members of the Council of Governors present and voting that:

2.1.1.1.1 the absence was due to a reasonable cause; and

2.1.1.1.2 he will be able to start attending meetings of the Board of Directors again within such a period as the Council of Governors considers reasonable;

2.1.1.2 failure to disclose an interest in accordance with paragraph 30 of this Constitution;

2.1.1.3 if a Director is considered to have acted in a manner inconsistent with:

2.1.1.3.1 the NHS and Trust principles, as set out in Appendix 1 of Annex 9, or in a manner detrimental to the interests of the Trust; or

2.1.1.3.2 the Authorisation; or

2.1.1.3.3 the Standing Orders for the Board of Directors; or

2.1.1.3.4 the Directors' Code of Conduct.

2.2 Further criteria: suspensions

- 2.2.1 Suspension is a temporary measure which shall be used to prevent a Non-Executive Director from exercising his or her functions pending the completion of an investigation or removal from office under paragraph 23 of the Constitution. The Council of Governors, when exercising the power of suspension in accordance with paragraphs 23.2 to 23.5 of the Constitution, shall have regard to the following criteria (this is not an exhaustive list and each case shall be considered on its own merits taking into account all relevant factors, including any representations made by the Non-Executive Director or the Chairman in question);
- 2.2.1.1 the criteria referred to in paragraph 2.1.1 above;
- 2.2.1.2 where the Trust or the Council of Governors is in receipt of information which gives cause for concern about a Non-Executive Director continuing to hold office;
- 2.2.1.3 where there is sufficient evidence to warrant removal from office under paragraph 23 of the Constitution, but before the removal takes effect;
or
- 2.2.1.4 where there is an allegation of fraud or other impropriety or other alleged misconduct that would require the Non-Executive Director to be suspended in order to protect patients, staff or public funds, or which is likely to impair the work of the Trust.

Appendix 4:

Further Provisions: General

1 Indemnity

- 1.1 Members of the Council of Governors, the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 1.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, the Board of Directors and the Secretary.
- 1.3 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

2 Dispute resolution procedures

Membership disputes

- 2.1 In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Board of Directors or a delegated committee or sub-committee of the Board of Directors or a joint committee of the Board of Directors and the Council of Governors, whose decision shall be final.

Other disputes

- 2.2 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chairman who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chairman he may appeal in writing within 14 days of the Chairman's decision to the Board of Directors whose decision shall, subject to the provisions of paragraphs 2.3 and 2.4 below, be final.
- 2.3 In the event of a dispute being referred to the Chairman under SO **insert** of Annex 7 of this Constitution and a determination being made in accordance with the procedure set out in paragraph 2.2 above, if the Governor in question is aggrieved at the decision of the Board of Directors he may apply in writing within 7 days to the Board of Directors for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed determination is reasonable or otherwise.
- 2.4 On receipt of an application under paragraph 2.3 above the Board of Directors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on an independent assessor within 21 days of the date upon which the application is received by the Board of Directors the independent assessor will be nominated by Centre for Effective Dispute Resolution (CEDR). The independent assessor's decision will be binding and conclusive on the parties.

Disputes between the Council of Governors and the Board of Directors

- 2.5 In the event of dispute between the Council of Governors and the Board of Directors:
- 2.5.1 in the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
 - 2.5.2 if the Chairman is unable to resolve the dispute he shall appoint a committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute (the "Special Committee");
 - 2.5.3 if the recommendations (if any) of the Special Committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.

3 Amendment of the Constitution

The Board of Directors may amend the Constitution. Amendments to this Constitution are to be made with the approval of the Independent Regulator. For the avoidance of doubt, any amendments to the appendices or annexes attached to this Constitution must also be approved by the Independent Regulator.

4 Notices

- 4.1 Save where a specific provision of the Constitution otherwise requires or permits, any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose.
- 4.2 In this paragraph 5 "electronic communication" shall have the meaning ascribed to it in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 4.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 5.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.

Appendix 5

The Role and Responsibilities of the Secretary

- 1 The Trust shall have a Secretary who may be an Officer of the Trust, but may not be a Governor or Director of the Trust.
- 2 Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected inter alia to:
 - 2.1 ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors, and Members;
 - 2.2 ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for the Board of Directors) are complied with;
 - 2.3 ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for the Council of Governors) are complied with;
 - 2.4 advise the Board of Directors and the Council of Governors (through the Chairman or the Deputy Chairman, as the case may be) on all governance matters;
 - 2.5 be available to give advice and support to individual Directors and Governors and assistance with professional development;
 - 2.6 be available to give advice and guidance to Directors and Governors on their respective statutory duties and corporate governance-related matters;
 - 2.7 attend as necessary all meetings of the Board of Directors and Council of Governors including their committees, sub-committees and joint committees, and to keep accurate minutes of these meetings; and
 - 2.8 attend Members' meetings and keep accurate minutes of these meetings.