

CONSTITUTION

~~DRAFT amends 30 Dec 2012 (changes tracked in blue)~~

OF

SHERWOOD FOREST HOSPITALS NHS

FOUNDATION TRUST

(A Public Benefit Corporation)

Approved from \_\_\_\_-\_\_\_\_-\_\_\_\_ 2005

~~11 February~~ Revised version approved -\_\_\_\_-2013

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# SHERWOOD FOREST HOSPITALS NHS FOUNDATION TRUST (A PUBLIC BENEFIT CORPORATION)

## CONSTITUTION

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 [\(as defined below\) as amended by the 2012 Act](#).

References in this Constitution to legislation include all amendments, replacements, or ~~re-enactments~~[reenactments](#) made, and include all subordinate legislation made thereunder.

Headings are for ease of reference only and are not to affect interpretation. All annexes referred to in this Constitution form part of it.

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

References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex to this Constitution it shall be a reference to a paragraph in that annex unless the contrary is expressly stated or the context otherwise so requires.

### 1 ~~4~~ Definitions

1.1 In this Constitution:

**2006 Act** - means the National Health Service Act ~~2006~~[2006](#);

**2012 Act** - ~~is~~[means](#) the Health and Social Care Act ~~2012~~[2012](#);

**Accounting Officer** - [means the Chief Executive who discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act;](#)

**Annual Accounts** - means those accounts prepared by the Trust [\(through the Accounting Officer\)](#) pursuant to paragraph 25 of Schedule 7 to the 2006 Act~~;~~;

~~**Applicant NHS Trust** - means the Sherwood Forest Hospitals NHS Trust which has made the application to become the Trust.~~

~~**Appointment Committee** - means a committee appointed by the Council of Governors pursuant to paragraphs 9.4.2.5 and 9.4.2.6.~~

**Annual Members' Meeting** - [means the annual meeting of the Members as provided for in paragraph 6.8;](#)

**Annual Report** - [means the annual report of the Trust prepared by the Trust as referred to at paragraph 15.1;](#)

**Appointed Governor** - means a ~~PCT~~[CCG](#) Governor, a Local Authority Governor, or an Other 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~~[the](#) committee of the Board of Directors as established pursuant to paragraph ~~9.7.3~~[8.7.4](#);

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**Auditor** - means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph ~~44.7.16.3.1~~;

~~**Authorisation**—means the authorisation issued to the Trust by Monitor under Section 35 of the 2006 Act and the phrase “terms of Authorisation” shall be construed accordingly.~~

**Board of Directors** - means the ~~Board~~board of ~~Directors~~directors of the Trust as constituted in accordance with this Constitution~~;~~;

CCG – means NHS Mansfield and Ashfield Clinical Commissioning Group;

CCG Governor – means the governor appointed by the CCG pursuant to paragraph 7.5.1;

Code of Conduct for Directors – means the Trust’s code of conduct for Directors (as amended from time to time);

Code of Conduct for Governors - means the Trust’s code of conduct for Governors (as amended from time to time);

CoG’s Nominations Committee – means the committee appointed by the Council of Governors pursuant to paragraph 8.4.1.2;

**Council of Governors** - means the ~~Council~~council of ~~Governors~~governors of the Trust as constituted in accordance with this Constitution~~;~~;

**Chairman** - means the ~~Chairman~~chairman of the Trust~~;~~ appointed in accordance with paragraph 7.16.3.1;

**Chief Executive** - means the ~~Chief Executive~~chief executive of the Trust~~;~~ appointed in accordance with paragraph 8.4.2;

~~**Complaints Handling Policy**—means the Trust's complaints handling policy, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors.~~

Constituency – means either the Public Constituency or the Staff Constituency and “Constituencies” shall be construed accordingly;

**Constitution** - means this Constitution together with ~~the~~its annexes ~~attached hereto~~;

Co-optee – means an individual attending the Council of Governors in accordance with paragraph 7.8 or 7.9;

Designated Trust Sub-contractors – means Central Nottinghamshire Hospitals PLC (CNH) and such other sub-contractors of the Trust as may be designated as as such from time to time by the Board of Directors;

**Director** - means ~~a member of the Board of Directors~~an Executive or Non-Executive Director;

~~**Director's Code of Conduct**—means the code of conduct for Directors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to.~~

**Elected Governor** - means a Staff Governor or a Public Governor~~;~~;

**Election Scheme** - means the election rules set out at Annex 3 of the Constitution- as may be amended from time to time;

**Engagement Policy** – means the engagement policy in relation to the interaction of the Board of Directors and Council of Governors as published by the Council of Governors from time to time;

**Executive Director** – means an executive director of the Trust being the Chief Executive, Finance Director or such other executive director as is appointed under paragraph 8.4;

**Finance Director** - means the ~~Finance Director~~finance director of the Trust- appointed in accordance with paragraph 8.4;

**Financial year** – means ~~(a) the period beginning with the date on which the Trust is authorised as an NHS Foundation Trust and ending with the next 31st March; and (b) Year~~ - each successive period of twelve months beginning with 1st April- in any year;

**Governor** - means a member of the Council of Governors- (and, for the avoidance of doubt, a Co-optee is not a member of the Council of Governors);

~~**Governor's Code of Conduct** – means the code of conduct for Governors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors, which all Governors must subscribe to.~~

**Health Overview and Scrutiny Committee** - means a local authority overview and scrutiny committee established pursuant to Section 21 of the Local Government Act ~~2000.~~2000;

**Health Service Body** - shall have the meaning ascribed to it in section 65(1) of the 2006 Act-;

**Healthwatch** – means a Healthwatch England committee as defined in section 181 of the Health and Social Care Act 2009 or a Local Healthwatch organisation as defined in section 222 of the Local Government and Public Involvement in Health Act 2007;

**Hospital** – means ~~(a);~~ King's Mill Hospital; ~~and (b)~~ Newark Hospital; Mansfield Community Hospital and all associated hospitals, establishments and facilities at which the ~~Applicant NHS Trust or (as the case may~~

~~5be) the~~ Trust provides and/or manages the provision of goods and/or services, including accommodation- and “Hospitals” shall be construed accordingly;

**Lead Governor** – means the Governor appointed by the Council of Governor as the Trust’s lead governor pursuant to paragraph 7.1.3;

**Local Authority** – means any of: Ashfield District Council; Mansfield District Council; Newark & Sherwood District Council; and Nottinghamshire County Council and “Local Authorities” shall be construed accordingly;

**Local Authority Governor** - means a member of the Council of Governors appointed pursuant to paragraph ~~8.11 by one or more local authorities whose area includes the whole or part of the Area of the Trust.~~7.6 by a Local Authority;

~~**Local Involvement Network** – means any local involvement network established pursuant to the Local Government and Public Involvement in Health Act 2007.~~

**Member** - means a member of the Trust and the term “membership~~Membership”~~ shall be construed accordingly-;



**Monitor** ~~-is~~ the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;

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

**Non-Executive Director** – means the Chairman or such other non-executive director of the Trust appointed in accordance with paragraph 8.4;

**Other Partnership Governor** - means a member of the Council of Governors appointed by ~~a partnership organisation other than a primary care trust or a local authority~~ an Other Partnership Organisation pursuant to paragraph 7.7;

~~**PCT Governor** – means a member of the Council of Governors appointed by an NHS primary care trust for which the Trust provides goods and/or services.~~

**Other Partnership Organisation** – means ~~West Nottinghamshire College;~~ Nottingham University; and/or such other organisation as may be appointed as such under this Constitution;

**Policies** – means the Trust’s published policies on whistleblowing, confidentiality, equal opportunities and such other reasonable Trust policies as are notified to the Directors, Governors and Co-optees in writing from time to time;

**Public Constituency** - means the constituency made up of the Public Constituency Classes;

**Public Constituency Class** – means the classes making up the Public Constituency as set out in Annex 1 and “**Public Constituency Classes**” shall be construed accordingly;

**Public Governor** - means a member of the Council of Governors elected by the members of a ~~public constituency~~ Public Constituency Class.

**Registered Dentist** – means a registered dentist within the meaning of the Dentists Act 1984;

**Registered Medical Practitioner** – means a medical practitioner who is fully registered within the meaning of the Medical Act 1983 who holds a license to practice under that Act.

**Registered Midwife** – means a person who is registered to practice as a midwife by the Nursing and Midwifery Council;

**Registered Nurse** – means a person who is registered to practice as a nurse by the Nursing and Midwifery Council;

**Secretary** - means the ~~Secretary~~ secretary of the Trust or any other person or body corporate appointed to perform the duties of the ~~Secretary~~ secretary of the Trust, including a joint, assistant or deputy secretary;

**“Senior Independent Director”** means an independent Non-Executive Director appointed by the Board of Directors (in consultation with the Council of Governors) and having the role envisaged by Monitor’s NHS Foundation Trust Code of Governance;

**Staff Class** – one of the classes for the Staff Constituency as set out in Annex 2 and “**Staff Classes**” shall be construed accordingly;

**Staff Constituency** – means the constituency of the Trust comprising the Staff Classes as referred to Annex 2;

**Staff Governor** - means a member of the Council of Governors elected by the members of ~~the staff constituency~~ a Staff Class;

**Sub-contractor Personnel** – means the employees of any of the Trust’s Designated Sub-contractors who, in the course of their employment, exercise functions on behalf of the Trust;

**Trust** - means the Sherwood Forest Hospitals NHS Foundation Trust;

~~Trust Subcontractor~~—means a contractor to the Trust whose employees exercise functions on behalf of the Trust and which is listed in the register maintained by the Secretary pursuant to paragraph 7.3.5.

~~Vice Chairman~~ - means the ~~Vice Chairman~~ Non-Executive Director appointed as the vice chairman of the Trust, ~~appointed pursuant to paragraph~~ by the Council of Governors in general meeting;

9.4.3.

~~Volunteer~~ - means an individual who carries out functions on behalf of the Trust on a voluntary basis ~~under a scheme designated by the Secretary pursuant to~~ as set out in paragraph 7.3.5.6.3;

~~Volunteer Class~~ – means the volunteer class as set out in paragraph 6.3 which form part of the Staff Constituency;

~~Volunteer Governor~~ – means a governor elected by the Volunteer Class.

## 2 ~~2~~ Name

2.1 ~~2.1~~ The name of ~~this Trust is to be~~ the foundation trust is "Sherwood Forest Hospitals NHS Foundation Trust".

## 6 3 ~~3~~ Principal Purpose

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

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

## 4 Other Purposes

4.1 In addition to the Trust's principal purpose as set out in paragraph 3, the Trust may:

4.1.1 ~~3.3 The trust may~~ provide goods and services for any purposes related to—;

~~3.3.1~~ 4.1.1.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness;; and

~~3.3.2~~ 4.1.1.2 the promotion and protection of public health;

~~3.4 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.~~

## **4 Other Purposes**

~~Subject always to the provisions of the 2006 Act and the terms of its Authorisation:~~

~~4.1 The purpose of the Trust is to provide goods and services for purposes related to the provision of health care in accordance with its statutory duties and the terms of Monitor's Authorisation.~~

~~4.2 The Trust may 4.1.2 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;~~  
and

~~4.3 The Trust may also 4.1.3 carry on activities other than those mentioned above subject to any restriction in Monitor's Authorisation. These activities must be for the purpose of making additional income available in order to better carry out the Trust's principal purpose better.~~

## **5 Powers**

5.1 ~~5.1~~ The Trust ~~is to have~~ has all the powers of an NHS foundation trust as set out in the 2006 Act, ~~subject to any restrictions in the terms of Authorisation.~~

~~5.2 In the exercise of its powers the Trust shall have regard to the core principles of the NHS and the Trust as set out in paragraph 6 below.~~

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## **6 Core Principles**

### **6.1 NHS Core Principles**

~~6.1.1 The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services. The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.~~

~~6.1.2 The NHS will respond to different needs of different populations.~~

~~6.1.3 The NHS will work continuously to improve quality services and to minimise errors.~~

~~6.1.4 The NHS will support and value its staff; public funds for healthcare will be devoted solely to NHS patients.~~

~~6.1.5 The NHS will work together with others to ensure a seamless service for patients.~~

~~6.1.6 The NHS will help keep people healthy and work to reduce health inequalities.~~

~~6.1.7 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.~~

## **6.2 Trust Core Principles**

~~6.2.1 The Trust aims to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement.~~

~~6.2.2 The Trust will listen to patients and understand what they have to say and encourage their involvement in decisions about their care.~~

~~6.2.3 The Trust will aim to provide a clean, healthy and welcoming hospital environment for patients, visitors and staff.~~

~~6.2.4 The Trust will aim to improve the patient's experience of care provided at its Hospitals and by its services respecting their privacy and preserving their dignity.~~

~~6.2.5 The Trust will have open and honest communications between staff and patients.~~

~~6.2.6 The Trust will recognise the contribution of staff by developing and supporting them to do their jobs better, and involving them in decision making.~~

~~6.2.7 The Trust will aim to provide high quality services through working in partnership.~~

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5.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

5.3 Any of the powers of the Trust may be delegated to a committee of Directors or to an Executive Director in accordance with this Constitution and the Standing Orders of the Board of Directors.

**7-Members**~~7.1 The Trust is to have six membership~~ and **constituencies**, namely:

5.4 Constituencies

5.4.1 The Trust has two Constituencies, namely:

~~7.1.1 five public constituencies, and~~ 6.1.1.1 the Public Constituency;  
and

~~7.1.2 a staff constituency~~ 6.1.1.2 the Staff Constituency.

~~7.2.6.2~~ Public Constituencies Constituency

~~7.2.4~~ 6.2.1 Subject to paragraph ~~7.5~~ 6.5 an individual is eligible to become a member of ~~a public constituency listed in column 1 of Annex 1 if he or she~~ the Public Constituency and therefore a Public Constituency Class if he:

6.2.1.1 lives in the area specified for that ~~constituency~~ Public Constituency Class in the corresponding entry in column 2 of Annex 1 ~~and;~~

6.2.1.2 ~~is not a member of another Public Constituency Class;~~

6.2.1.3 is not eligible to become a member of the ~~staff-constituency and is not a member of another public-constituency~~ Staff Constituency; and

6.2.1.4 is at least 16 years old at the time of his application to be a Member.

~~7.2.2~~ 6.2.2 Those individuals who ~~live in an area specified as an area for any public constituency listed in column 1 of Annex 1~~ are eligible to be members of the Public Constituency Classes are referred to collectively as the ~~“public-constituency~~ Public Constituency”.

~~7.2.3~~ 6.2.3 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.

~~7.2.4~~ 6.2.4 On receipt of an application for ~~membership~~ Membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

~~7.2.5~~ 6.2.5 The minimum number of Members of each ~~public-constituency~~ Public Constituency Class is set out in column 3 of Annex 1.

~~7.3~~ 6.3 Staff Constituency

~~7.3.1~~ 6.3.1 Subject to paragraphs ~~7.3.2~~ 6.3.2 and ~~7.5~~ 6.5 individuals are eligible to become members of the ~~staff-constituency~~ Staff Constituency if they are at least [18] years old and:

~~7.3.1.1~~ They 6.3.1.1 they are employed by the Trust under a contract of employment ~~by the Trust (provided that~~

~~non-executive directors of the Trust shall not be regarded as employees for this purpose), (other than as a~~  
Non-Executive Director);

6.3.1.2 they are Sub-contractor Personnel; or

~~7.3.1.2 They are employed by a designated Trust Subcontractor or are a~~  
6.3.1.3 they are a Volunteer and otherwise exercise functions on behalf of the Trust, and.

~~7.3.2~~ 6.3.2 An individual is only eligible to become a member of the ~~staff constituency~~Staff Constituency under paragraph ~~7.3.16.3.1~~7.3.16.3.1 above if they ~~have been~~satisfy the minimum duration requirements set out in 3(3) of Schedule 7 to the 2006 Act, that is to say:

~~7.3.2.1~~ 6.3.2.1 In the case of individuals qualifying under paragraph ~~7.3.1.16.3.1.1~~7.3.1.16.3.1.1 above, they :

- (a) are employed by the Trust under a contract of employment which has no fixed term ~~or a~~;
- (b) are employed by the Trust under a contract of employment which has fixed term of at least 12 months; or ~~they~~
- (c) have been continuously employed by the Trust for at least 12 months; ~~or~~

~~7.3.2.2~~ 6.3.2.2 In the case of those qualifying under paragraph ~~7.3.1.26.3.1.2 or 6.3.1.3~~7.3.1.26.3.1.2 or 6.3.1.3 above, they have been :

- (a) employed ~~or by~~ a Designated Trust Sub-contractor;  
or
- (b) engaged as a Volunteer

and have exercised functions on behalf of the Trust, continuously for a period of at least 12 months.

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~~7.3.2.3 A~~ 6.3.2.3 For the purposes of paragraphs ~~7.3.2.16.3.2.1~~7.3.2.16.3.2.1 and ~~7.3.2.26.3.2.2~~7.3.2.26.3.2.2 Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether the individual has been continuously employed by the Trust or has exercised functions on behalf of the Trust.

~~7.3.3~~ 6.3.3 An individual who is: ~~7.3.3.4~~

6.3.3.1 eligible to become a member of the ~~staff constituency~~and Staff Constituency who qualifies under paragraph

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~~7.3.1.16.3.1.1~~ or who ~~is a Volunteer and~~ qualifies under paragraph ~~7.3.1.26.3.1.3~~; and

~~7.3.3.26.3.3.2~~ is invited by the ~~Applicant NHS Trust or the Trust (as the case may be)~~ to become a member of the ~~staff constituency and a member of the~~ Staff Constituency and appropriate ~~class~~ Staff Class within the ~~staff constituency,~~ will Staff Constituency

~~shall~~ become a Member of the Trust as a member of the ~~staff constituency and a member of the appropriate class within the staff constituency~~ Staff Constituency and relevant Staff Class without an application for ~~membership~~ Membership being made unless he informs the ~~Applicant NHS Trust or the Trust (as the case may be)~~ that he does not wish to ~~do so~~ become a Member.

~~7.3.4.6.3.4~~ An individual who is eligible to become a member of the ~~staff constituency and who is employed by a designated Trust Subcontractor and who qualifies under paragraph 7.3.1.2~~ Staff Constituency by virtue of being Sub-contractor Personnel will become a Member of the Trust if they apply to the Secretary to become a Member and are entered in the register of Members.

~~7.3.5.6.3.5~~ On receipt of an application for ~~membership~~ Membership for those qualifying for membership of the Trust under paragraph ~~7.3.4.6.3.4~~, or in the case of those qualifying by default under paragraph ~~7.3.3.6.3.3~~, and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

~~7.3.6 The Secretary shall maintain a register of subcontractors designated by the Trust for the purposes of membership of the Trust and a register of volunteer schemes designated for the purposes of membership of the Trust.~~

~~7.3.7 Any individual who is both a Volunteer and employed either by the Trust or a Trust Subcontractor will be assigned to the staff constituency.~~

~~7.3.8.6.3.6~~ Those individuals who are eligible for ~~membership of the Trust~~ Membership by reason of the provisions set out in this paragraph ~~7.3.6.3~~ are referred to collectively as the "~~staff constituency~~ Staff Constituency".

#### ~~7.4.6.4~~ Staff Constituency: Classes

~~7.4.1 There shall be four classes of staff members as follows:~~

~~7.4.1.1 Staff employed primarily at, and Trust Subcontractors engaged primarily at "King's Mill Hospital", or any other Hospital, including Mansfield Community Hospital and Ashfield Health Village, with the exception of "Newark Hospital", and staff who provide community services or exercise corporate functions for the Trust but who are~~

~~not employed at any Hospital will be assigned to the "King's Mill Hospital Class";~~

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~~7.4.1.2 Staff employed primarily at and Trust Subcontractors engaged primarily at "Newark Hospital" will be assigned to the "Newark Hospital Class";~~

~~7.4.1.3 Volunteers engaged primarily at Kings Mill Hospital and Mansfield Community Hospital and Ashfield Health Village will be assigned to the "Kings Mill Hospital Volunteers Class".~~

~~7.4.1.4 Volunteers engaged primarily at Newark Hospital will be assigned to the "Newark Hospital Volunteers Class".~~

~~7.4.2 The minimum number of members required for each staff class shall be:~~

~~7.4.2.1 "King's Mill Hospital Class" - 850~~

~~7.4.2.2 "Newark Hospital Class" - 100~~

~~7.4.2.3 "Kings Mill Hospital Volunteers Class" - 100~~

~~7.4.2.4 "Newark Hospital Volunteers Class" - 50~~

~~7.4.3~~ 6.4.1 Individuals who are eligible to be a member of the ~~staff constituency~~ Staff Constituency may not become or continue as a ~~member~~ Member of more than one ~~staff class~~ Staff Class, and individuals who are eligible to join more than one ~~staff class~~ Staff Class shall be allocated to the ~~staff class~~ Staff Class for which they are primarily employed or engaged.

~~7.4.4~~ 6.4.2 Any individual who is both a Volunteer and employed by the Trust shall be assigned to ~~one of the staff classes set out in paragraphs 7.4.2.1 to 7.4.2.3~~ the Staff Class for which they are primarily employed or engaged.

## ~~7.5~~ 6.5 Disqualification for Membership

~~7.5.1 A person may not be a Member of the Trust if they are under 16 years of age.~~

~~7.5.2 A person may not become or remain a member of the public constituency if they are eligible to be a member of the staff constituency.~~

~~7.5.3 A person may not be a member of more than one constituency, or more than one constituency class.~~

~~7.5.4 A person may not become or remain a Member of the Trust if he has demonstrated aggressive or violent behaviour at any Hospital and following such behaviour he has been:~~

~~7.5.4.1 issued with a warning letter under stage 3 of the Trust's "Policy for Withholding Treatment from Violent and Abusive Patients" ("the Policy");~~



~~7.5.4.2 issued with a final written warning under stage 4 of the Policy; or~~

~~7.5.4.3 asked to leave, has been removed or excluded from any Hospital under the Policy.~~

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~~7.5.5 A person may not become or remain a Member of the Trust if they have been confirmed as a 'vexatious complainant' in accordance with the Trust's Complaints Handling Policy.~~

~~7.5.6 A person may not become or remain a Member of the Trust if they have been removed~~

~~7.5.7 A person may not become or remain a Member of the Trust if they are deemed to have acted in a manner contrary to the interests of the Trust.~~

6.5.1 An individual may not be or continue as a Member of the Trust if, in respect of:

6.5.1.1 a Public Member he does not meet the relevant eligibility criteria under paragraph 6.2; or

6.5.1.2 a Staff Member he does not meet the relevant eligibility criteria under paragraph 6.3.

~~7.5.8 Where~~6.5.2 It is the responsibility of each Member to ensure his eligibility for membership. If the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member they shall give the Member 14 days written notice to show cause why his name should not be removed from the register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the register of Members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine., the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Member concerned to comment on its findings (within 14 days), and following receipt of any comments or expiry of that 14 day period (whichever occurs first) the Secretary shall decide whether such Member should be disqualified.

~~7.5.9 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.~~

#### ~~7.6~~ 6.6 Termination of Membership

6.6.1 A Member shall cease to be a Member on:~~on:~~if he

~~7.6.1 death;~~

~~7.6.2 resignation~~ 6.6.1.1 resigns by notice in writing to the Secretary; or

~~7.6.3 ceasing~~ 6.6.1.2 ceases to ~~fulfil~~ fulfill the eligibility requirements of ~~either paragraph 7.2 or (as the case may be) 7.3; or 7.6.4 being~~ paragraphs 6.2 or 6.3 and is disqualified pursuant to ~~under~~ paragraph 7.5 above 6.5.

## 7.7 6.7 Voting at Governor Elections

~~7.7.1~~ 6.7.1 A ~~person~~ Member may not vote ~~at~~ in an election for an Elected Governor unless within the specified time period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the ~~constituency~~ Constituency (and where relevant the appropriate class within that Constituency) for which the election is being held. ~~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~~ The specified time period and form of declaration are specified in the Election Scheme.

6.7.2 It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to at paragraph 6.7.1 which is false in a material particular. ~~The forms and period are specified in Annex 3.~~

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6.7.3 An individual who is a member of another foundation trust as well as the Trust may vote in elections for this Trust provided he is able to comply with the provisions of this paragraph 6.7 (Voting at Governor Elections)

## 6.8 Annual Members' Meeting

6.8.1 The Trust shall every year hold an Annual Members' Meeting which shall be open to members of the public.

6.8.2 The following documents shall be presented at the Annual Members' Meeting by at least one of the Directors:

6.8.2.1 the Annual Accounts;

6.8.2.2 any report of the Auditor on the Annual Accounts; and

6.8.2.3 the Annual Report.

6.8.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of being presented with the documents in sub-paragraph 6.8.2 with the Annual Members' Meeting.

6.8.4 In accordance with paragraph 20.3 where an amendment has been made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as a part of the Trust), Members shall be given an opportunity to vote at the Annual Members' Meeting on whether they approve the amendment which shall be presented to that meeting by at least one Governor.

6.8.5 Where an amendment has been presented to the Annual Member's Meeting in accordance with paragraph 6.8.4, and it is not approved by more than half of the Members voting such amendment shall cease to have effect and the Trust shall take such steps as are necessary as a result.

## 6 **Council of Governors**

### 6.1 Composition

~~8.1~~7.1.1 The Trust ~~is to~~shall have a Council of Governors. ~~It is to be chaired by the Chairman of the Trust and it is to~~ which shall consist of PublicElected Governors, ~~Staff Governors, PCT Governors, Local Authority Governors, and Other Partnership~~ and Appointed Governors (as set out in paragraph 7.1.2).

~~8.2~~7.1.2 The composition of the Council of Governors shall ~~comprise~~be:

~~8.2.1~~ ~~15~~ Public Governors;

~~8.2.2~~ ~~7~~ Staff Governors comprised of the following:

~~8.2.2.1~~ ~~3~~ being elected by the "King's Mill Hospital Class";

~~8.2.2.2~~ ~~2~~ being elected by the "Newark Hospital Class";

~~8.2.2.3~~ ~~1~~ being elected by the "Kings Mill Hospital Volunteers Class";

~~8.2.2.4~~ ~~1~~ being elected by the "Newark Hospital Volunteers Class".

~~8.2.3~~ ~~1~~ PCT Governor; until such time that the requirement for a PCT Governor is removed. At such time the seat will be offered to a CCG Governor.

7.1.2.1 fifteen (15) Public Governors representing the Public Constituency Classes as set out in Annex 1;

7.1.2.2 seven (7) Staff Governors representing the Staff Classes as set out in Annex 2;

7.1.2.3 one (1) CCG Governor;

~~8.2.4~~ 47.1.2.4 four (4) Local Authority Governors; and

~~8.2.5~~ ~~2~~

7.1.2.5 two (2) Other Partnership Governors.

~~8.3~~ ~~The aggregate number of Public Governors is to be more than half of the total membership of the Council of Governors.~~

~~8.4~~ ~~The organisations currently specified as other partnership organisations that may appoint a member of the Council of Governors are:~~

~~8.4.1~~ ~~West Nottinghamshire College;~~

~~8.4.2~~ ~~Nottingham University.~~

~~8.5~~

~~7.1.3~~ ~~The Council of Governors shall nominate a Governor to be the Trust's Lead Governor.~~

## 7.2 Governor Elections

7.2.1 Elected Governors shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency. The number of Governors to be elected by each Constituency or, where appropriate, by each class of each Constituency, is as set out in Annexes 1 and 2.

7.2.2 Elections for Elected Governors shall be conducted in accordance with the Election Scheme. A subsequent variation to the Election Scheme to reflect a change to Monitor's model election rules shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 20.

7.2.3 The Election Scheme provides for arrangements to be made to assist those persons requiring assistance to vote.

7.2.4 Members:

7.2.4.1 standing for; and/or

7.2.4.2 voting in

Governor elections must comply with the terms of the Election Scheme.

7.2.5 Where an election is contested, the election shall be by secret ballot.

### 7.3 Public Governors

~~8.5.1~~7.3.1 Each ~~constituency~~Public Constituency Class shall elect the number of Governors set against it in column 4 of Annex 1.

~~8.5.2~~7.3.2 Members of each ~~public constituency~~Public Constituency Class may elect any of their number who is eligible to be a Public Governor.

~~8.5.3 If contested, the election must be by secret ballot.~~

~~8.6 The Election Scheme, including the specified forms of and periods for declarations to be made by candidates standing for office and Members as a condition of voting and the process if the election is uncontested, is set out in Annex 3.~~

~~8.7 A person~~7.3.3 An individual may not stand for election to the Council of Governors as a Public Governor unless;

7.3.3.1 within the period specified in part 1 of Annex 3, he has made a declaration in the form specified in that part of that annex of his qualification to vote as a ~~member of the public~~Member of the Public Constituency Class for which the election is being held; and

7.3.3.2 he is not prevented from being a member of the Council of Governors by paragraph 7.13 (Suspension and disqualification).

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~~constituency for which the election is being held and is not prevented from being a member of the Council of Governors by paragraph 8.15 (Disqualification).~~ It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to in paragraph 7.3.3.1 which is false in a material particular.

~~8.8 Paragraph 7.7.1 (Voting at Governor Elections) applies for a member from another Foundation Trust.~~

### ~~8.9 Staff Governors~~

#### 7.4 Staff Governors

7.4.1 Members of each Staff Class may elect the number of Governors for that Staff Class as set out in Annex 2.

~~8.9.1~~7.4.2 Members of ~~each class of the staff constituency~~the Staff Constituency may elect any ~~of the members in that class~~individual who is eligible to be a Staff Governor in respect of the relevant Staff Constituency.

~~8.9.2 If contested, the election must be by secret ballot.~~

~~8.9.3~~7.4.3 The Election Scheme, including the specified forms of and

periods for declarations to be made by candidates standing for office and Members as a condition of voting and the process if the election is uncontested, is set out in Annex 3.

~~8.9.4 A person may not stand for election to the Council of Governors as a Staff Governor unless, within the period specified in Part 1 of Annex 3, he has made a declaration in the form specified in that part of that annex of his qualification to vote as a member of the class of staff constituency for which the election is being held and is not prevented from being a member of the Council of Governors by paragraph 8.15 (Disqualification).~~

~~8.9.5 Paragraph 7.7.1 (Voting at Governor Elections) applies.~~

## **8.10 PCT Governors**

~~8.10.1 Nottinghamshire County Teaching Primary Care Trust may appoint one PCT Governor~~

### 7.5 CCG Governors

7.5.1 The CCG may appoint 1 CCG Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) pursuant to a process agreed between the CCG and the Trust.

### 7.6 Local Authority Governors

7.6.1 Each of the Local Authorities may appoint one Local Authority Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) by notice in writing signed by the chief executive and delivered to the Secretary. At such time the PCT is dissolved the seat will be offered to a CCG Governor.

## **8.11 Local Authority Governors:**

~~8.11.1 Ashfield District Council; Mansfield District Council; Newark & Sherwood District Council; and Nottinghamshire County Council may each appoint one local Authority Governor by notice in writing signed by 7.6.1.1 the leader of the relevant council;~~

~~7.6.1.2 or a member of the relevant council's executive,~~

and delivered to the Secretary.

## **8.12 7.7 Other Partnership Governors**

~~8.12.1 Each other partnership organisation as listed in paragraph 8.4~~

7.7.1 Each Other Partnership Organisation may appoint one Other Partnership Governor. One or both partnership Governors may be

appointed. (such person being eligible to be, and not disqualified from being, a Governor under this Constitution) as set out below:

~~8.12.2~~-7.7.1.1 West Nottinghamshire College may appoint ~~one~~its Other Partnership Governor by notice in writing signed by the principal of West Nottinghamshire College and delivered to the Secretary.

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~~8.12.3~~-7.7.1.2 Nottingham University may appoint ~~one~~its Other Partnership Governor by notice in writing signed by a pro - vice chancellor of Nottingham University and delivered to the Secretary.

## 7.8 Transition arrangements

7.8.1 Where an Elected Governor ceases to be eligible to hold the office to which he was elected by virtue of paragraphs 6.2 or 6.3 that Elected Governor shall immediately notify the Secretary of the circumstances giving rise to his ineligibility.

7.8.2 Where the Secretary receives notice from an Elected Governor, pursuant to paragraph 7.8.1, that he believes he is no longer eligible to hold his office (or the Secretary otherwise becomes aware that the Elected Governor is no longer eligible to hold his office) the Secretary shall notify the Elected Governor that his position is suspended with immediate effect and shall ask the Governor if he:

7.8.2.1 wishes to stand down as a Governor; and

7.8.2.2 would like, subject to paragraph 7.9.3, to be considered for a Co-optee position on the Council of Governors.

7.8.3 Where the Elected Governor confirms in writing that he:

7.8.3.1 will stand down as a Governor, such resignation shall take effect immediately;

7.8.3.2 wants to be considered as a Co-optee; and

the provisions of paragraphs 7.8.4 - 7.8.6 shall apply.

7.8.4 Subject to the maximum number of Co-optees to the Council of Governors not being exceeded by the attendance of the former Elected Governor as a Co-optee, the Secretary shall request the Chairman to table a motion at the next Council of Governors' meeting for approval of the attendance of the former Elected Governor as a Co-optee.

7.8.5 Where the attendance of the former Elected Governor as a Co-optee:

7.8.5.1 would result in the number of serving Co-optees exceeding the maximum permitted pursuant to paragraph 7.9.3; or

7.8.5.2 the Council of Governors does not resolve to permit the Elected Governor to attend as a Co-optee

the Secretary shall notify the former Elected Governor to that effect and confirm in writing that his tenure as an Elected Governor has terminated.

7.8.6 Where the Council of Governors resolve to permit a former Elected Governor to attend the Council of Governors as a Co-optee that former Elected Governor shall:

7.8.6.1 cease to hold office as a Governor and instead hold the position of Co-optee; and

7.8.6.2 hold the position of Co-optee for the remainder of his original term of office as an Elected Governor after which his attendance at the Council of Governors shall cease.

7.8.7 The provisions of paragraphs 7.9.1 - 7.9.4 shall not apply to Co-optees named under this paragraph 7.8.

## 7.9 Co-optees

7.9.1 Where any vacancy for an Elected Governor position remains unfilled notwithstanding compliance with the procedures described in paragraph 7.15.1 and 7.15.2, the Lead Governor shall put forward to the Council of Governors (in accordance with the process agreed by him and the Secretary) a list of individuals who are Members of the Constituency (and where relevant the relevant class) who can be considered to be Co-optees.

7.9.2 Subject to paragraph 7.9.3, the Council of Governors may by way of resolution resolve to confirm an individual from the Lead Governor's list to act as a Co-optee.

7.9.3 The Council of Governors may have no more than 3 Co-optees attending the Council of Governors at any time.

7.9.4 Co-optees shall attend the Council of Governors in accordance with the provisions of paragraph 7.10.3.

7.9.5 For the avoidance of doubt, Co-optees are merely "in attendance" at any meetings of the Council of Governors, shall not count towards the quorum and shall have no voting rights, and shall act only in an advisory capacity to the Council of Governors.

## ~~8.13~~ 7.10 Terms of Office

~~8.13.1~~ 7.10.1 Elected Governors:



~~8.13.1.1 may hold office~~7.10.1.1 shall be elected for a period of ~~three~~3 years ~~or two years (where relevant);~~

~~8.13.1.2 are~~7.10.1.2 are, subject to paragraphs 7.10.1.3 and 7.10.1.4 eligible for re-election at the end of ~~that~~the period referred to in paragraph 7.10.1.1;

~~8.13.1.3~~7.10.1.3 may hold office for a maximum of 9 years ~~or 6 years (where relevant);~~but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be subject to annual re-election and, in any event, he shall not serve for a total term longer than 12 years; and

~~8.13.1.4~~7.10.1.5 shall cease to hold office if they cease to be a member of the ~~constituency~~Constituency (or relevant class within a Constituency) by which they were elected or in any other situation specified in this Constitution.

~~8.13.2~~7.10.2 Appointed Governors:

~~8.13.2.1 may hold office~~7.10.2.1 shall be appointed for a period of 3 years~~;~~;

~~8.13.2.2 are~~7.10.2.2 are, subject to paragraphs 7.10.2.3 and 7.10.2.4 eligible for reappointment at the end of ~~that~~the period referred to in paragraph 7.10.2.1;

~~8.13.2.3~~7.10.2.3 may hold office for a maximum of 9 years; ~~but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be subject to annual re-appointment and, in any event, he shall not serve for a total term longer than 12 years; and~~

~~8.13.2.4 cease to hold office if the sponsoring organisation withdraws its sponsorship of them by notice in writing to the Trust~~7.10.2.4 shall cease to hold office if their appointing organisation withdraws its appointment of them or in any other situation specified in this Constitution.

~~8.13.3 In order to avoid the terms of office of members of~~  
7.10.3 Co-optees

7.10.3.1 Co-optees shall, where they are appointed pursuant to paragraph 7.9 and subject to 7.13.11, attend the Council of Governors ~~all ending at the same time, arrangements to stagger the terms of office of the Council will be made on adoption of this Constitution. For example, in the Ashfield~~

~~constituency the 2 Governors who poll the highest number of first preference votes would each receive a three year term of office, the 2 Governors who poll third and fourth preference votes would receive a two year term of office. In the event that an election is uncontested the elected Governors will draw lots to determine which Governors in each constituency or class serve for three years and which for two years. After one 2-year term the period will revert to a 3-year term so as to maintain the staggered dates of change.~~ only until the date of the next election for the vacancy in respect of which they have been coopted, whereupon their attendance as a Co-optee shall automatically cease;

7.10.3.2 Co-optees may not (pursuant to paragraph 7.10.3.1 above) hold that position for longer than 3 years; and

7.10.3.3 Co-optees shall immediately cease to hold that position if removed by resolution of the Council of Governors.

7.10.4 Governors and Co-optees must comply with the Trust's:

7.10.4.1 Constitution;

7.10.4.2 Standing Orders for the Council of Governors;

7.10.4.3 Code of Conduct for Governors; and

7.10.4.4 Policies.

#### ~~8.14~~ 7.12 Termination of Tenure

~~8.14.1~~ 7.12.1 A Governor may resign from ~~that~~ office at any time during the term of ~~that~~his office by giving notice in writing to the Secretary or the Chairman.

7.12.2 A Governor's tenure:

~~8.14.2~~ 7.12.2.1 shall be terminated [immediately] if a Governor fails to attend two consecutive meetings of the Council of Governors, ~~his tenure of office is to be terminated immediately~~ unless a majority of the other Governors are satisfied that:

~~8.14.2.1~~ (a) the absence was due to a reasonable cause; and

~~8.14.2.2~~ (b) he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.;

~~8.14.3 If a Governor is considered to have acted in a manner inconsistent with 7.12.2.2 shall be terminated immediately if the Council of Governors decide (by a majority of the other Governors) that a Governor has:~~

~~8.14.3.1 the core principles as set out in paragraph 6 above and the Authorisation; or~~

~~8.14.3.2 the Trust's standing orders or standing financial instructions; or~~

~~8.14.3.3 the Governor's Code of Conduct, or~~

~~8.14.3.4 he has failed to declare an interest as required by this Constitution or the Trust's standing orders or, he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Trust's standing orders, 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 Council of Governors then the Governor shall vacate his office immediately.~~

~~8.14.4 The Trust's standing orders shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.~~

#### **8.15 Disqualification**

- (a) failed to comply with paragraph 7.10.4; (except where the Council of Governors decide that termination of tenure would not be appropriate in the circumstances);
- (b) conducted himself in an inappropriate manner which would adversely affect public confidence in the Trust or the Council of Governors; or
- (c) conducted himself in such a manner as is likely to bring the Trust into disrepute including, but without prejudice to the generality of the foregoing, a failure to declare a material or pecuniary interest which would or would be likely to result in a conflict of interest.

7.12.3 A Co-optee's tenure shall be terminated if he:

7.12.3.1 resigns by notice to the Chairman or Secretary;

7.12.3.2 fails comply with paragraph 7.10.4 as above or abide by the values of the Nolan Principles;

7.12.3.3 is removed by a resolution of the Council of Governors;

7.12.3.4 is involved in any act of violence against staff or members of the Trust;

7.12.3.5 is or has been identified by the Chief Executive as a vexatious complainant in respect of the Trust; or

7.12.3.6 ceases to be a Member of the relevant Constituency (and/or relevant class) from which he was appointed by the Council of Governors.

7.12.4 The Council of Governors may request that the CoG's Nominations Committee investigates any matter which would give rise to them exercising their powers in paragraphs 7.12.2 - 7.12.3 (inclusive) and to receive the representations of the relevant Governor and any representative appointed by him for that purpose except to the extent that the Code of Conduct for Governors provides a procedure for the same in which case such procedure must be followed.

7.12.6 Any engagement of the CoG's Nominations Committee pursuant to paragraph 7.12.5 shall make such report and recommendations to the Council of Governors as it deems fit and shall, as far as practicable, submit any report and recommendations to the Council of Governors within 4 months of commencing their investigation.

### 7.13 Suspension and disqualification from office

7.13.1 Where a Staff Governor (who is not Sub-contractor Personnel or a Volunteer) has been:

7.13.1.1 made the subject of a written warning or a period of suspension in excess of 28 days; or

7.13.1.2 absent from his post as an employee of the Trust for a continuous period of not less than four months and no reasonable cause (in the opinion of the Council of Governors acting by simple majority) has been given for absence

his term of office as Governor may be suspended by the Council of Governors) for such period of time as the Council of Governors deems fit and so as to enable, if necessary, an investigation to be carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors as to why he should still be eligible to continue as a Staff Governor and the Council of Governors shall decide whether to terminate the Governor's term of office and such determination of the Council of Governors shall be final.

7.13.2 Where a Staff Governor who is Sub-contractor Personnel or a Volunteer has been suspended from their employment or position as a Volunteer his term of office as Governor may be suspended by the

Council of Governors) for such period of time until such suspension has been brought to an end and so as to enable, if necessary, an investigation to be carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors as to why he should still be eligible to continue as Staff Governor and the Council of Governors shall decide whether to terminate the Governor's term of office and such determination of the Council of Governors shall be final.

~~8.15.1 A person may not become or continue~~7.13.3 An individual is immediately disqualified from becoming or continuing to hold office as a Governor of the Trust if he:

~~8.15.1.1 in the case of an Elected Governor, he ceases to be a member of the constituency he represents;~~

~~8.15.1.2 in the case of an Appointed Governor, the sponsoring PCT, local authority, or other partnership organisation withdraws their sponsorship of him;~~

~~8.15.1.3 he~~7.13.3.1 has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;

7.13.3.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

~~8.15.1.4 he~~7.13.3.3 has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

~~8.15.1.5 he~~7.13.3.4 has within the preceding five years been convicted in the British Islands of any offence ~~anywhere in the world~~ and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

~~8.15.1.6 he is under 18 years of age;~~

~~8.15.1.7 he~~7.13.3.5 has within the preceding ~~two~~three years been dismissed, ~~otherwise than (including, but not limited to, by reason of redundancy or ill health, from any paid employment with a Health Service Body) by the Trust;~~

7.13.3.6 is under [18] years of age;

~~8.15.1.8 he is a person~~7.13.3.7 is an individual whose tenure of office as the ~~chairman~~Chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the ~~interests~~interest of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;

~~8.15.1.9 he 7.13.3.8~~ is an ~~executive or non-executive director of the Trust~~ Executive or Non-Executive Director, or a governor, executive director, non-executive director, chairman, chief executive officer of another NHS ~~Foundation Trust~~ foundation trust;

~~8.15.1.10 he 7.13.3.9~~ has had his name removed from ~~a any~~ list maintained under regulations prepared pursuant to ~~Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under paragraph 14 of the National Health Service (Wales) Act 2006, Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere)~~ and has not subsequently ~~had~~ has his name included in such a list;

~~8.15.1.11 he is a member of a "Local Involvement Network";~~

~~8.15.1.12 he 7.13.3.10~~ is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs; ~~or~~

~~8.15.1.13 he is a member of a local authority Health Overview and Scrutiny Committee.~~

~~8.15.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 8.15.1, he shall notify the Secretary in writing of such disqualification. 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, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor.~~

~~7.13.3.11~~ is registered as a sex offender pursuant to Part 1 of the Sex Offenders Act 1997;

~~7.13.3.12~~ has been identified and given notice in writing by the Chief Executive to the effect that he is a vexatious complainant in respect of the Trust;

~~7.13.3.13~~ is a member of Healthwatch; or

~~7.13.3.14~~ has contravened any other provision of this Constitution.

7.13.4 An individual is disqualified from becoming or continuing to hold office as a Public Governor if:

7.13.4.1 he ceases to be a Member of the Constituency (or Public Constituency Class) for which he was elected; or

7.13.4.2 he is eligible to be a Member of the Staff Constituency.

7.13.5 An individual is disqualified from becoming or continuing to hold office as a Staff Governor if he:

7.13.5.1 ceases to be a Member of the Constituency (or Staff Class) for which he was elected; or

7.13.5.2 is employed by the Trust on a temporary contract which contract is or was identified on the face of it as a temporary contract.

7.13.6 An individual is disqualified from becoming or continuing to hold office as an Appointed Governor if the relevant appointing organisation withdraws its appointment of him.

7.13.7 If an Elected or Appointed Governor ceases to be eligible to hold such office because grounds for disqualification exist pursuant to paragraph 7.13 (other than under paragraph 7.13.1 and paragraph 7.13.2), he shall immediately notify the Trust in writing of the circumstances.

7.13.8 If the Trust is on notice that a Governor may no longer be eligible to be a Governor, the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Governor concerned to comment on its findings (within [14] days) and following receipt of any comments or expiry of that 14 day period (whichever occurs first) the Council of Governors shall decide whether such Governor's term of office should be terminated.

#### 7.14 Consequences of termination of tenure

##### 7.14.1 Where a Governor:

7.14.1.1 has given notice of resignation in accordance with paragraph 7.12.1;

7.14.1.2 has had his term of office terminated pursuant to the terms of this Constitution in any manner whatsoever; or

7.14.1.1 is otherwise disqualified from holding office pursuant to the Constitution or the 2006 Act,

that Governor shall thereupon cease to be a Governor and his name shall be forthwith removed from the Register of Governors.

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

#### ~~8.46~~ 7.15 Vacancies

7.15.1 Where a Governor's tenure of office ceases for one or more of the reasons set out in paragraph 7.12 or 7.13, in the case of:

7.15.1.1 Public Governors and Staff Governors, such vacancy shall, subject to provisions of paragraphs 7.15.2 and 7.15.3, be

filled by elections held in accordance with the Election Scheme set out in Annex 2; and

7.15.1.2 the CCG Governor, the Local Authority Governor Other Partnership Governors shall be replaced in accordance with the processes set out in paragraphs 7.5 - 7.7.

~~8.16.1~~ 7.15.2 Where a vacancy arises amongst the Elected Governors for any reason (including, for the avoidance of doubt, an increase in the number of Elected Governors effected by an amendment to the Constitution in accordance with paragraph 20 below) other than the expiry of the term of office, the Council of Governors shall decide either:

~~8.16.1.1~~ 7.15.2.1 to call an election within three months to fill the vacancy, unless an election is due within nine months in which case the seat shall stand vacant until the following scheduled election;

~~8.16.1.2~~ 7.15.2.2 to invite the next highest polling candidate in the relevant constituency at the most recent election who is willing to take office, to fill the vacancy, provided that the candidate achieved at least 5% of the vote in the last held election for the relevant constituency and, where appropriate, class (the "Reserved Governor"). If the vacancy is filled in this way, the Reserved Governor shall be eligible ~~to serve~~ for re-election for a further two full three year terms, ~~subject to re-election in addition to the partial term served;~~ or ~~8.16.1.3~~

7.15.2.3 to leave the seat vacant until the next scheduled elections are held.

~~8.16.2~~ Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraphs 8.10 to 8.12, except that if the aggregate number of Public Governors does not exceed half the total membership of the Council of Governors an election will be held in accordance with the Election Scheme as soon as reasonable practicable.

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~~8.16.3~~ 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.

7.15.3 If no candidate is available or is willing to fill a vacancy arising pursuant to paragraphs 7.15.1 and 7.15.2 above, the provisions of paragraph 7.9 Co-optee(s) shall apply.



## ~~8.17~~ 7.16 Roles and Responsibilities of Governors

~~The roles and responsibilities of the Governors are:~~

### ~~8.17.1~~

7.16.1 The general duties of the Council of Governors are:

7.16.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

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

7.16.2 The Trust must take steps to secure that its Governors are equipped with the skills and knowledge they require to carry out their role as a Governor.

7.16.3 The roles and responsibilities of the Governors (in addition to any roles and responsibilities set out elsewhere in this Constitution) are:

7.16.3.1 at a ~~general meeting~~; General Meeting:

~~8.17.1.1~~ Subject to paragraph ~~9.4.1~~ (Appointment of Chairman and Non-Executive Directors), (a) to appoint or remove the Chairman and the other ~~non-executive~~ Non-Executive Directors as further set out in the Standing Orders for the Council of Governors. The removal of ~~a non-executive~~ the Chairman or a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;

(b) to approve the appointment (by the Non-Executive Directors) of the Chief Executive as further set out in the Standing Orders for the Council of Governors;

~~8.17.1.2~~ (c) to decide the remuneration and allowances, and ~~the~~ other terms and conditions of office, of the ~~non-executive~~ Non-Executive Directors;

~~8.17.1.3~~ (d) to appoint or remove the Trust's Auditor; ~~8.17.1.4~~ and

(e) to be presented with the ~~annual accounts~~ Annual Accounts, any report of the Auditor on ~~them~~ then and the ~~annual report~~; Annual Report.

~~8.17.1.5~~ To consider disputes as to membership referred to it pursuant to paragraph ~~7.5.7~~; and/or

~~8.17.1.6 To consider resolutions to remove a Governor pursuant to clause 8.14.3.~~

~~8.17.2 at a general meeting or otherwise:~~

~~8.17.2.1 approve (by a majority of the Council of Governors voting) an appointment (by the non-executive Directors) of the Chief Executive (and accounting officer) other than the initial Chief Executive appointed in accordance with paragraph 19 (5) of schedule 7 to the 2006 Act;~~

~~8.17.2.2~~7.16.3.2 ~~to~~ to give the views of the Council of Governors to the Board of Directors for the purposes of the preparation ~~(by the Board of Directors)~~ of the document containing the information to be given to Monitor as to the Trust's forward planning in respect of each ~~financial year to be given to Monitor~~Financial Year;

~~8.17.2.3~~7.16.3.3 ~~to~~ to consider the ~~annual—accounts~~Annual Accounts, any report of the ~~auditor~~Auditor on them and the ~~annual report; and/or~~Annual Report;

~~8.17.2.4~~7.16.3.4 ~~to~~ to respond as appropriate when consulted by the Directors: ~~in accordance with this Constitution; and~~

~~8.17.3 The Governors also have the specific role and function of:~~

~~8.17.3.1 providing views to the Board of Directors on the strategic direction of the Trust;~~

~~8.17.3.2 developing membership;~~

~~8.17.3.3 representing the interests of the Members; and~~

~~8.17.3.4 holding the Board of Directors to account in relation to the Trust's performance in accordance with the terms of the authorisation.~~

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~~8.17.4 Notwithstanding the provisions of paragraph 8.17.1 to 8.17.3, the Governors may exercise other functions at the request of the Board of Directors.~~

~~7.16.3.5~~to represent the interests of Members and the Other Partnership Organisations in the governance of the Trust, regularly feeding back information about the Trust, its vision and its performance to the Constituency or Other Partnership Organisation they represent; and

~~7.16.3.6~~confirming the appointment of the Co-optees.

## ~~8.18~~7.17 Expenses

~~8.18.1~~7.17.1 ~~The Trust may pay~~ Governors are entitled to receive re-imbusement for travelling and other expenses ~~to Governors at~~

~~rates determined by incurred and evidenced by receipts in accordance with the Trust's expenses policy at such rates as the Trust. These are to be published in the annual report decides from time to time.~~

~~8.18.2 The remuneration and allowances for non-executive Directors set by the Governors are also to be published in the annual report.~~

~~7.17.2 The Trust shall publish the rates referred to in paragraph 7.17.1 in the Annual Report.~~

#### ~~8.19~~ 7.18 Remuneration

~~8.19.1~~ 7.18.1 Governors are not entitled to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer for their role.

#### ~~8.20~~

#### 7.19 Meetings

7.19.1 Meetings of the Council of Governors shall be conducted in accordance with the provisions of the Standing Orders for the Council of Governors.

~~8.20.1~~ The Chairman of the Trust or in his absence the Vice Chairman appointed by the Board of Directors, or in their absence and provided that no other non-executive Directors are available, a deputy chairman appointed by 7.19.2 Meetings of the Council of Governors, either generally or for the specific meeting, is to chair the meetings of the Council of Governors, and the person chairing the meeting shall have a casting vote. Where the Council of Governors is exercising its functions under paragraph ~~8.17.1.4~~ shall be chaired by the Chairman or in his absence the Vice Chairman. If the Vice Chairman is also unavailable the meeting shall be chaired by such person as is chosen in accordance with the Standing Orders for the Council of Governors ~~shall be chaired by either the Chairman or in his absence a Governor appointed by the Council of Governors for the purpose.~~

~~8.20.2~~ Meetings of the Council of Governors are to be open to members of the public, but ~~the public may be excluded from all or part of any meeting 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 of the proceedings.~~

~~8.20.3~~ 7.19.3 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~~ where the Council of Governors ~~are to~~ shall receive and consider the annual accounts, any report of the auditor on them, and the annual report.

~~8.20.4 the Secretary shall call meetings in accordance with paragraph 8.20.3.~~

~~8.20.5-~~

~~7.19.4 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 2, Part 1.~~

~~8.20.6 A Governor elected to the Council of Governors by the public constituency or the staff constituency may not vote at a meeting of the Council of Governors unless, within 7 days prior to the commencement of the meeting he has made a declaration in the form specified that he is a member of the public constituency which elected him or the staff constituency as the case may be and is not prevented from being a~~

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~~member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under this Constitution.~~

~~8.20.7 The form referred to in paragraph 8.20.6 is set out in Annex 2, Part 1. may require one or more of the Directors to attend a meeting for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), Unless otherwise agreed, at least five working days' notice of the meeting must be provided.~~

~~7.19.5 Meetings of the Council of Governors shall be open to members of the public, but members of the public may be excluded from a meeting for special reasons.~~

~~7.19.6 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.~~

## ~~8.21~~ 7.20 Committees and Sub-Committees

~~8.21.1 7.20.1 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 and sub-committees in accordance with the provisions of the Standing Orders for the Council of Governors.~~

~~8.21.2-~~

~~7.20.2 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees thereof.~~

~~8.21.3 These committees or sub-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 19 (Dispute Resolution Procedure) cannot delegate its powers to any committee or sub-committee.~~

~~8.22 Conflicts of Interests of Governors~~ 7.21 Conflicts of Interests of Governors.

~~Paragraph 11 (Conflicts of Interest) applies.~~

## **9 Board of Directors**

### **9.1 The Trust is to**

7.21.1 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.

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

### 7.22 Referral to the Panel

7.22.1 A Governor may refer a question as to whether the Trust has failed or is failing;

7.22.1.1 to act in accordance with the Constitution; or

7.22.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

7.22.2 In this paragraph 23, the Panel means a panel of persons appointed by Monitor to which a Governor of the Trust may refer a question as set out in 7.22.1

### 7.23 Engagement Policy

7.23.1 The Governors and Directors shall observe the terms of the Engagement Policy in relation to their engagement with each other on matters concerning the Trust.

## 8. Board of Directors

~~8.1 The Trust shall have a Board of Directors. It is to consist of the Chairman, executive and non-executive Directors.~~

~~9.2 The Board of Directors is to include:~~

~~9.2.1 the following non-executive Directors:~~

~~9.2.1.1 the Chairman, and~~

~~9.2.1.2 a maximum of eight other non-executive Directors.~~

~~9.2.2 the following executive Directors:~~

~~9.2.2.1 the Chief Executive who shall be the accounting officer;~~

~~9.2.2.2 which shall consist of Executive and Non-Executive Directors.~~

~~8.2 The Board of Directors shall comprise the following:~~

~~8.2.1 the Chairman;~~

~~8.2.2 at least 5 other Non-Executive Directors;~~

~~8.2.3 the Chief Executive;~~

~~8.2.4 the Finance Director; and~~

~~9.2.2.3 a maximum of six other executive Directors, one of whom is a registered medical practitioner or registered dentist and another of whom is to be a registered nurse or registered midwife.~~

~~9.3 Only a member of a public constituency is eligible for appointment as a non-executive director save that this shall not apply to the Chairman and non-executive Directors appointed under paragraph 9.4.1 below.~~

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~~9.4 Appointment of Chairman and non-executive Directors~~

~~9.4.1 The Council of Governors shall appoint as the initial Chairman and non-executive Directors of the Trust, the chairman and non-executive directors of the Applicant NHS Trust for the unexpired period of their respective terms of office as chairman or non-executive director of the Applicant NHS Trust, or twelve months whichever is the longer unless they notify the Council of Governors that they do not wish to be appointed.~~

~~9.4.2 Subject to the provisions of paragraph 9.4.1, the process for appointing new non-executive Directors and the Chairman will be as follows:~~

~~9.4.2.1 The Chairman and other non-executive Directors are to be appointed by the Council of Governors following a process of open competition. The current Chairman or a non-executive Director may stand for reappointment.~~

~~9.4.2.2 Six months before the end of the term of office of the Chairman or a non-executive Director (as the case may be), the Council of Governors will appoint an Appointment Committee to seek a suitable replacement. The Appointment Committee will be constituted in accordance with paragraphs 9.4.2.5 and 9.4.2.6 below.~~

~~9.9.4.2.3 Notwithstanding the provisions of paragraph 9.4.2.2, the post will be advertised.~~

~~9.4.2.4 The Appointment Committee will make recommendations to the Council of Governors, including recommendations about pay.~~

~~9.4.2.5 The Appointment Committee for the Chairman will consist of three Public Governors, one Staff Governor, and one Appointed Governor. If the number of Governors prepared to serve on the Appointment Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. A Public Governor will chair the Appointment Committee. Each member of the Appointment Committee will have one vote.~~

~~9.4.2.6 The Appointment Committee for the non-executive Directors will consist of the Chairman, two Public Governors, one Staff Governor, and one Appointed Governor. The Chief Executive will attend in an advisory capacity only. If the number of Governors prepared to serve on the Appointment 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 Appointment Committee. Each member of the Appointment Committee will have one vote.~~

~~9.4.2.7 The Appointment Committees constituted under paragraphs 9.4.2.5 and 9.4.2.6 will be supported by appropriate advice from a human resources specialist and include an external assessor.~~

~~9.4.2.8 The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Appointment Committee.~~

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~~9.4.3 The Board of Directors shall appoint one of the non-executive Directors as Vice Chairman.~~

~~9.4.4 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.~~

8.2.5 at least 2 other Executive Directors one of whom is:

8.2.5.1 a Registered Medical Practitioner or Registered Dentist;

8.2.5.2 a Registered Nurse or Registered Midwife; and

8.2.5.3 such other executive directors as are considered necessary but subject to the provisions of paragraph 8.3.

8.3 At all times the composition of the Board of Directors shall be such that the number of Executive Directors is less than the number of Non-Executive Directors.

8.4 Appointment and removal of Non-Executive Directors and Executive Directors

8.4.1 Appointment and removal of Non-Executive Directors

8.4.1.1 The Council of Governors, at a general meeting, shall appoint and remove the Chairman and other Non-Executive Directors;

8.4.1.2 The Council of Governors shall establish the CoG's Nominations Committee (comprising the Chairman, three Public Governors, two Staff Governors and one Appointed Governor) to consider candidates for appointment as Non-Executive Directors against an agreed job specification.

8.4.1.3 The CoG's Nominations Committee shall shortlist from those candidates meeting the specified criteria, those candidates whom it wishes to interview and shall conduct interviews with the said candidates and thereafter make its recommendation to the Council of Governors as to who should be appointed as a Non-executive Director.

8.4.1.4 The Council of Governors shall consider the recommendation of the CoG's Nominations Committee and make a decision as to the appointment of the Non-Executive Directors in general meeting.

8.4.1.5 An individual shall not be appointed as a Non-Executive Director unless he is a member of the Public Constituency.

8.4.1.6 Removal of the Non-Executive Directors shall require the approval of three-quarters of the members of the Council of Governors.

8.4.2 Appointment and removal of Executive Directors

8.4.2.1 It is for the Chairman and the other Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.

8.4.2.2 It is for a committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors to appoint or remove the Executive Directors (other than the Chief Executive).



## ~~9.5~~ 8.5 Terms of Office

~~9.5.1~~ 8.5.1 Subject to paragraph 8.5.3, the Chairman and the ~~non-executive~~ other Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office (including as to remunerations and allowances, which shall be published in the Annual Report) decided by the Council of Governors ~~at a~~ in general meeting.

~~9.5.2~~ The initial Chairman and the initial non-executive Directors are to be appointed for the unexpired period of their respective terms of office as chairman or (as the case may be) non-executive director of the Applicant NHS Trust or 12 months whichever is the longer.

~~9.5.3~~ 8.5.2 Subject to paragraph 8.5.3, the Executive ~~(and accounting officer) and the Finance Director~~ Directors shall hold offices for a period in accordance with the terms and conditions of office (including as to remunerations and allowances) decided by the relevant committee of ~~non-executive~~ Non-Executive Directors.

~~9.5.4~~ The initial Chief Executive and the initial Finance Director are to be appointed for the unexpired period of their respective terms of office as chief executive or (as the case may be) finance director of the Applicant NHS Trust or 12 months whichever is the longer.

~~9.5.5~~ The executive Directors other than the Chief Executive and the Finance Director shall

### 8.5.3 Non-Executive Directors:

8.5.3.1 shall be appointed for a period of 3 years;

8.5.3.2 are, subject to paragraphs 8.5.3.3 and 8.5.3.4 eligible for re-election at the end of the period referred to in paragraph 8.5.3.1;

8.5.3.3 shall not, except in exceptional circumstances, hold office for a period in ~~accordance with the terms and conditions decided by the relevant committee of non-executive Directors.~~

~~9.5.6~~ The initial executive Directors other than the Chief Executive and the Finance Director are to be appointed for the unexpired period of their respective terms of office as executive directors of the Applicant NHS Trust or 12 months whichever is the longer. excess of 6 years; and

8.5.3.4 where appointed for more than 6 years shall be subject to annual re-appointment up to a maximum of 9 years.

8.5.4 The Directors shall comply with the Trust's:

8.5.4.1 Constitution;

[8.5.4.2 Standing Orders for the Board of Directors;](#)

[8.5.4.3 Code of Conduct for Directors; and](#)

[8.5.4.4 Policies.](#)

## ~~9.6~~ [8.6](#) Disqualification

~~9.6.1~~ [8.6.1](#) A person [8.6.1](#) An individual may not ~~be~~ [become or continue as](#) a Director of the Trust if:

~~9.6.1.1~~ [8.6.1.1](#) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;

[8.6.1.2](#) [A he is a person in relation to whom a moratorium period under a debt relief order applies \(under Part 7A of the Insolvency Act 1986\);](#)

~~9.6.1.2~~ [8.6.1.3](#) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

~~9.6.1.3~~ [8.6.1.4](#) he has within the preceding five years been convicted ~~anywhere~~ in the ~~world~~ [British Islands](#) of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

~~9.6.1.4~~ ~~in the case of a non-executive Director, he no longer satisfies paragraph 9.3.~~

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~~9.6.1.5~~ [8.6.1.5](#) he is a person whose tenure of office as a chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

~~9.6.1.6~~ ~~he~~ [8.6.1.6](#) has had his name removed from ~~a~~ [any](#) list ~~maintained under regulations prepared~~ pursuant to ~~Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under paragraph 14 of the National Health Service (Wales) Act 2006, Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere)~~ and has not subsequently ~~had~~ [has](#) his name included in such a list;

~~9.6.1.7~~ [8.6.1.7](#) he has within the preceding ~~two~~ [three](#) years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;

~~9.6.1.8~~ 8.6.1.8 he is an executive or non-executive director or governor of another NHS Foundation Trust, or ~~a governor~~ an executive director, non-executive director, chairman, chief executive officer of another Health Service Body;

## **9.7 Roles and Responsibilities**

~~9.7.1 The powers of the Trust are to be exercisable by the Board of Directors on its behalf.~~

~~9.7.2 Any of those powers may be delegated to a committee consisting of Directors or to an executive Director.~~

~~9.7.3 A committee of non-executive Directors established as an Audit Committee is to monitor, review and carry out such other functions in relation to the Auditor as are appropriate.~~

~~9.7.4 It is for the Chairman and the non-executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and accounting officer). The initial Chief Executive (and accounting officer) is to be the Chief Executive of the Applicant NHS Trust, if he wishes to be appointed.~~

~~9.7.5 It is for a committee consisting of the Chairman, the Chief Executive (and accounting officer) and the other non-executive Directors to appoint or remove the executive Directors.~~

~~9.7.6 The Trust is to establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors, but pending the establishment of such a committee and their decisions these matters are to be decided in accordance with the remuneration and allowances of the respective officers as employed by the Applicant NHS Trust.~~

8.6.1.9 Monitor has exercised its powers under the 2006 Act to:

- (a) remove that individual as a director of the Trust or any other NHS foundation trust within its jurisdiction;
- (b) suspend him from office; or
- (c) disqualify him from holding office as a director of the Trust or of any other NHS foundation trust

for a specified period;

8.6.1.10 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;

8.6.1.11 he is registered as a sex offender pursuant to Part I of the Sex Offenders Act 1997;

8.6.1.12 he has been identified as a vexatious complainant in respect of the Trust and has been notified to the effect by notice in writing given by the Chief Executive; or

8.6.1.13 he has been unable to dedicate adequate time to the role and responsibilities of a Director of the Trust.

8.6.2 An individual may not be a Non-Executive Director if he ceases to be a member of the Public Constituency.

8.6.3 The Board of Directors may in their discretion appoint a Committee of the Board of Directors to enquire into any such matter as may be raised in connection with paragraph 8.6.1 and/or 8.6.2 above in accordance with terms of reference as determined by the Board of Directors and to make recommendations to the Board of Directors in respect thereof.

## 8.7 Duties, Roles and Responsibilities

8.7.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximize the benefits for the Members of Trust as a whole and for the public.

~~9.7.7~~ 8.7.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor.

~~9.7.8~~ 8.7.3 The Directors are to present to the Council of Governors at a general meeting the ~~annual accounts~~ Annual Accounts, any report of the Auditor on them, and the ~~annual report~~ Annual Report.

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~~9.7.9 The Board of Directors may establish committees to advise the Council of Governors and the Board of Directors on issues relating to specific sub-areas of the Area of the Trust~~

8.7.4 The Board of Directors shall appoint an audit committee of Non-Executive Directors to monitor, review and carry out such other functions in relation to audit as are appropriate.~~9.7.10~~

8.7.5 The functions of the Trust under ~~paragraphs 15.6.1 and 15.6.2~~ paragraph 14 are delegated to the Chief Executive as accounting officer.

## ~~10~~ 9. Meetings of Directors

~~10.1 The Board of Directors will hold at least four quarterly meetings in each Financial Year which are to be open to members of the public and press, but the public may be excluded from all or part of any meeting by resolution of the Board of Directors 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 of the proceedings.~~

- 9.1 Meetings of the Board of Directors shall be conducted in accordance with the provisions of the Standing Orders for the Board of Directors.
- 9.2 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 9.3 Before holding a meeting (as soon as practicable after it has been provided to the Board of Directors), the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.
- 9.4 As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the Board of Directors meeting to the Council of Governors.

## 10. Conflicts of Interest of Directors

- 10.1 The duties that a Director has by virtue of being a Director include in particular:
  - 10.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
  - 10.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- ~~10.2 Notwithstanding the provisions of paragraph 10.1, the Board of Directors may hold further meetings from time to time which will not be open to members of the public or the press.~~ The duty referred to in sub-paragraph 10.1.1 is not infringed if:
  - 10.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 10.2.2 the matter has been authorised in accordance with the Constitution.
- ~~10.3 The Board of Directors, in consultation with the Council of Governors, is to adopt standing orders covering the proceedings and business of its meetings and such other matters relating to the conduct of the Trust's business and functions as it considers appropriate in accordance with Part 2 of Annex 2. These are to include setting a quorum for meetings, both of executive and non-executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment. The duty referred to in sub-paragraph 10.2.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.~~

## **11 Conflicts of Interest**

~~11.1 A Governor or Director (as the case may be) must declare to the Secretary:10.4 In sub-paragraph 10.1.2, "third party" means a person other than:~~

~~11.1.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust; and~~

~~11.1.2 any interests which are relevant and material to the business of the Trust.~~

~~11.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with this Constitution or the Trust's standing orders and delivering it to the Secretary on election or appointment or as soon thereafter as the interest arises, but within seven days of becoming aware of the existence of a relevant and material interest. In addition, if a Governor or Director (as the case may be) is present at a meeting of the Council of Governors or the Board of Directors (as appropriate) and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part~~

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~~in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Council of Governor's meeting minutes, or the Board of Director's meeting minutes (as appropriate). Any changes in interests should be officially declared at the next relevant meeting following the change occurring. It is the obligation of the Governor or Director to inform the Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate register of interests upon receipt within three working days. This paragraph applies to any committee, sub-committee or joint committee of the Council of Governors and the Board of Directors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he is also a Governor or Director). The provisions of this paragraph are subject to paragraph 11.6.~~

~~11.3 For the purpose of this paragraph, "relevant and/or material interests" are:~~

~~11.3.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);~~

~~11.3.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;~~

~~11.3.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;~~

~~11.3.4 a position of authority in a charity or voluntary organisation in the field of health and social care;~~

~~11.3.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.~~

~~11.3.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.~~

~~11.3.7 any travelling or other expenses or allowances payable to a Governor or Director in accordance with this Constitution shall not be treated as a pecuniary interest.~~

~~11.4 Subject to any other provision of this Constitution, a Governor or Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:~~

~~11.4.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or~~

~~11.4.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.~~

~~11.5~~

~~10.4.1 the Trust; or~~

~~10.4.2 a person acting on its behalf.~~

~~10.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.~~

~~10.6 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.~~

~~10.7 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.~~

~~10.8 A **Governor or Director** shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:~~

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~~11.5.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or~~

~~11.5.2 of an interest in any company, body or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor or as the case may be, a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.~~

## ~~11.6 Where a Governor or Director:~~

~~11.6.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and~~

~~11.6.2 the total nominal value of those securities does not exceed £5,000 or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and~~

~~11.6.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one hundredth of the total issued share capital of that class, the Governor or Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.~~

~~11.7 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of this Constitution to be also an interest of the other.~~

~~11.8 The Trust's standing orders may make further provision in relation to interests and the requirement to declare an interest.~~

~~11.9 If Governors or Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman.~~ Director need not declare an interest:

10.8.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

10.8.2 if, or to the extent that, the Directors are already aware of it;

10.8.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:

10.8.3.1 by a meeting of the Board of Directors, or

10.8.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

10.9 Directors shall comply with the provisions of the Standing Orders for the Board of Directors in relation to the declaration and management of conflicts of interests.

## ~~12-11. Registers~~

~~12.1-11.1~~ The Trust is to have:

~~12.1.1-11.1.1~~ a register of Members showing, in respect of each Member, the ~~constituency~~ Constituency and where there are classes within it, the class to which he belongs;



~~12.1.2~~ 11.1.2 a register of members of the Council of Governors;

~~12.1.3~~

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

~~12.1.4~~

11.1.4 a register of Directors;

~~12.1.5 a register of interests of the Directors;~~

~~12.1.6 a register of designated Trust Subcontractors; and~~

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~~12.1.7 a register of designated volunteer schemes.~~

~~12.2 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.~~

### **12.3 Register of Members**

~~12.3.1 Subject to paragraph 7.3.3, Members must complete and sign an application in the form prescribed by the Secretary.~~

11.1.5 a register of interests of the Directors;

11.2 The Secretary shall admit to the:

11.2.1 Register of Members the name, Constituency and class of Constituency of a Member upon receipt of a signed declaration from the Member confirming their eligibility as a Member;

11.2.2 Register of Governors the name and Constituency (and where relevant class within the Constituency) of those Members who have been elected or appointed as a Governor of the Trust.

11.3 The Secretary shall remove from the:

11.3.1 Register of Members any Member:

11.3.1.1 who is not, or who is no longer, eligible to be a Member;

11.3.1.2 indicates in writing that they no longer wish to be a Member; or

11.3.1.3 has died, upon receipt of a notice to that effect from the Member's next of kin or personal representative;

11.3.2 Register of Governors those Governors:

11.3.2.1 who have not been re-elected;

11.3.2.2 who have had their appointment withdrawn;

11.3.2.3 whose tenure of office as Governors has been terminated;  
or

11.3.2.4 who is otherwise disqualified from office.

~~12.3.2 The Secretary shall maintain the register in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraph 13. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in~~  
11.4 The Secretary shall maintain the respective Registers of Interests of the Directors and Governors and undertake a review of the same at least once in every year by notice to that effect to all Directors and Governors.

~~aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.~~

#### **12.4 Register of Governors**

~~12.4.1 The register shall list the names of Governors, their category of membership of the Council of Governors (public, staff, primary care trust, local authority, or other partnership organisation) and an address through which they may be contacted which may be the Secretary.~~

#### **12.5 Register of Interests of the Governors**

~~12.5.1 The register shall contain the names of each Governor, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Trust's standing orders.~~

#### **12.6 Register of Directors**

~~12.6.1 The register shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.~~

#### **12.7 Register of interests of Directors**

~~12.7.1 The register shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Trust's standing orders.~~

#### **12.8 Register of Designated Trust Subcontractors**

~~12.8.1 The register shall contain the names of each Trust Subcontractor which is designated by the Trust for the purposes of membership of the Trust.~~

### ~~12.9 Register of Designated Volunteer Schemes~~

~~12.9.1 The register shall contain the names of each volunteer scheme which is designated by the Trust for the purposes of membership of the Trust.~~

~~12.10 The Trust is to send to Monitor a list of the persons who were first elected or appointed as:~~

~~12.10.1 the members of the Council of Governors, and~~

~~12.10.2 the Board of Directors.~~

### ~~13-12. Public Documents~~

~~13.1~~ 12.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

~~13.1.1~~ 12.1.1 a copy of the current Constitution;

~~13.1.2 a copy of the current Authorisation;~~

~~13.1.3~~ 12.1.2 a copy of the latest ~~annual accounts~~ Annual Accounts and of any report of the ~~auditor~~ Auditor on them;

~~13.1.4 a copy of the latest annual report;~~

~~13.1.5 a copy of the latest information as to its forward planning;~~

~~13.1.6 a copy of any notice given under section 52 of the 2006 Act.~~

~~12.1.3~~ 12.1.3 a copy of the latest Annual Report;

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

12.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trust to be dissolved) of the 2006 Act;

12.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;

12.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

12.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

12.2.5 a copy of any statement provided under Section 65F (administrators draft report) of 2006 Act;

12.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;

12.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006;

12.2.8 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

12.2.9 a copy of any final report published under section 65L (administrators final report) of the 2006 Act;

12.2.10 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;

12.2.11 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

~~13.2~~ 12.3 Any person who requests it ~~is to~~ shall be provided with a copy or extract from any of the above documents.

~~13.3~~ 12.4 The registers mentioned in ~~the~~ paragraph ~~12.4~~ 11.1 above are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the 2006 Act; and so far as those registers are required to be available: ~~(a)~~

12.4.1 they are to be available free of charge at all reasonable times; ~~(b)~~ and

12.4.2 a person who requests ~~it is to~~ shall be provided with a copy of or extract from them.

12.5 The Trust shall not make any part of its register available for inspection by members of the public which show details of any Member of the Trust if the Member so requests.

~~13.4~~ 12.6 If the person requesting a copy or extract of a register or a document referred to in this paragraph 12 above is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

**~~14~~ 13. Auditor**

~~14.1~~ 13.1 The Trust is to have an Auditor and is to provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under ~~Schedule 10~~ Chapter 5 of Part 2 to the 2006 Act.

~~14.2~~ 13.2 An individual may only be appointed Auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.

~~14.3~~ 13.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 7.16.

~~8.17.1.3, and monitoring of the Auditor's functions by a committee of non-executive Directors is covered in paragraph 9.7.3.~~

~~14.4~~ 13.4 An officer of the Audit Commission (as defined in the 2006 Act) may be appointed as Auditor with the agreement of the Commission. If such an appointment by the Council of Governors is made the Audit Commission shall charge fees for the services of the officer so appointed.

~~14.5~~ 13.5 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

**~~15~~ 14. Accounts**

~~15.1~~ 14.1 The Trust must keep proper accounts and proper records in relation to the accounts.

~~15.2~~ 14.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

~~15.3 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.~~

~~15.4~~ 14.3 The accounts are to be audited by the Trust's Auditor.

~~15.5~~ 14.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:

14.4.1     ~~15.5.1~~     the accounts;

14.4.2     ~~15.5.2~~     the records relating to them; and

~~15.5.3~~ 14.4.3 any report of the Auditor on them.

~~15.6~~ 14.5 The Trust ~~(through the Chief Executive and accounting officer)~~ is to prepare in respect of each Financial Year, Annual Accounts in such form as Monitor may with the approval of the Secretary of State direct. The function of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

~~15.7~~ 14.6 In preparing its Annual Accounts, the Trust is to comply with any directions given by Monitor with the approval of the Secretary of State as to :

~~15.7.1~~ the methods and principles according to 14.6.1 the period or periods in respect of which the Trust shall prepare accounts ~~are to be prepared~~; and

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~~15.7.2~~ the information to be given in the content and form of the 14.6.2 the audit requirements of any such accounts.

~~15.8~~ 14.7 The Trust must:

~~15.8.1~~ 14.7.1 lay a copy of the Annual Accounts, and any report of the ~~auditor~~ Auditor on them, before Parliament; and

~~15.8.2~~ 14.7.2 once it has done so, send copies of those documents to Monitor within such a period as Monitor may direct

## ~~16~~ 15. Annual Reports, Forward Plans and Non-NHS Work

~~16.1~~ 15.1 The Trust is to prepare ~~annual reports~~ an Annual Report and send ~~them~~ it to Monitor.

~~16.2~~ ~~The annual reports are to give:~~

15.2 The Annual Report shall contain:

~~16.2.1~~ 15.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of ~~its~~ any public constituency is representative of those eligible for such membership; ~~and~~

15.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 7.19.4;

15.2.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 8.5.2 and such other procedures as the Trust has on pay;

15.2.4 the remuneration of the Directors and the expenses of the Governors and the Directors; and

~~16.2.2~~ 15.2.5 any other information Monitor requires.

~~16.3~~ 15.3 The Trust is to comply with any decision Monitor makes as to:

~~16.3.1~~ 15.3.1 the form of the ~~annual reports~~ Annual Reports;

~~16.3.2~~ 15.3.2 when the ~~annual reports~~ Annual Reports are to be sent to it;  
and

~~16.3.3~~ 15.3.3 the periods to which the ~~annual reports~~ Annual Reports are to relate.

~~16.4~~ 15.4 The Trust ~~is to~~ shall give information as to its forward planning in respect of each Financial Year to Monitor. This information is to be prepared by the Directors, who must have regard to the views of the Council of Governors (paragraph ~~9.7.7~~ 7.16.3.2 above).

~~16.5~~ 15.5 Each forward plan must include information about -

~~16.5.1~~ 15.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the ~~trust~~ Trust proposes to carry on, and

~~16.5.2~~ 15.5.2 the income it expects to receive from doing so.

~~16.6~~ 15.6 Where a forward plan contains a proposal that the ~~trust~~ Trust carry on an activity of a kind mentioned in sub-paragraph ~~16.5.1~~ 15.5.1 the Council of Governors must—:

~~16.6.1~~ 15.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the ~~trust~~ Trust of its principal purpose or the performance of its other functions, and

~~16.6.2~~ 15.6.2 notify the ~~directors~~ Directors of the ~~trust~~ Trust of its determination.

~~16.7 A trust which~~ 15.7 If the ~~Trust~~ Trust proposes to increase by 5% or more the proportion of its total income in any ~~financial year~~ Financial Year attributable to activities other than the ~~provision of goods and services for the purposes of the health service in England~~ Principal Purpose referred to in paragraph 3 ~~it~~ may implement the proposal only if more than

~~30~~ half of the members of the Council of Governors ~~of the trust~~ voting approve its implementation.

## 16. Mergers, Significant Transactions and other transaction requirements

- 16.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 16.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 16.3 “Significant Transaction” means:
- 16.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 20% of the value of the Trust’s gross assets before the acquisition;
- 16.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 20% of the value of the Trust’s gross assets before the disposition; or
- 16.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 20% of the value of the Trust’s gross assets before the transaction.
- 16.4 For the purpose of this paragraph 16:
- 16.4.1 “gross assets” means the total of fixed assets and current assets;
- 16.4.2 in assessing the value of any contingent liability for the purposes of sub paragraph 16.3.3 the Directors:
- 16.4.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
- 16.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- 16.4.2.3 may take account of the likelihood of the contingency occurring.
- 16.5 Where the Trust has a single requirement for goods, services or works, and a number of transactions are to be entered into to fulfill that requirement, the value of the transaction for the purpose of paragraph 16.3 is the aggregate value of each of those transactions.
- 16.6 The Trust shall inform, as soon as is reasonably practicable, the Council of Governors of any transaction which it has approved which in its opinion is likely to have a negative effect on the Trust’s reputation.



## ~~17~~ 17. Indemnity

- 17.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 17.2 The Trust may ~~take out insurance either through the NHS Litigation Authority or otherwise in respect of directors and officers liability.~~ make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors or Directors to meet all or any liabilities which are properly the liability of the Trust under paragraph 17.1.

## ~~18~~ 18. Instruments and acts of the Trust etc.

- 18.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 18.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.
- 18.3 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

## ~~19~~ 19. Dispute Resolution Procedures

- 19.1 ~~In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.~~ 19.2 In the event of dispute between the Council of Governors and the Board of Directors The procedure to be followed in the event of a dispute between the Council of Governors and the Board of Directors is set out in the Engagement Policy.

~~19.2.1 In the first instance the Chairman on advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute.~~

~~19.2.2 If the Chairman is unable to resolve the dispute he shall appoint a special 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.~~

~~19.2.3 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.~~

## ~~20-20.~~ Amendment of the Constitution

20.1 ~~The Trust may make amendments to this~~ This Constitution may only be amended with the approval of ~~Monitor.:~~

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20.1.1 more than half of the members of the Board of Directors voting; and

20.1.2 more than half of the members of the Council of Governors voting.

~~20.2 No proposals for amendment of this Constitution will be put to Monitor unless it~~

~~has been approved by:~~ 20.2 Amendments made under paragraph 21.1 take

effect as soon as the conditions in that paragraph are satisfied, but the amendment

has no effect in so far as the constitution would, as a result of amendment, not

accord with Schedule 7 of the 2006 Act.

~~20.2.1 the Board of Directors at a meeting of the Board of Directors where at least two-thirds of the Directors are present at the meeting and a majority of Directors vote in favour of the amendment; and~~

~~20.2.2 the Council of Governors at a meeting of the Council of Governors where at least two-thirds of the Governors are present at the meeting and a majority of Governors vote in favour of the amendment.~~

## ~~21~~ Dissolution of the Trust

~~21.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.~~

- 20.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 20.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
- 20.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 20.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 20.5 The Trust shall inform Monitor of any amendments to the Constitution.

**Annex 1: PUBLIC CONSTITUENCIES OF THE TRUST**

NAME OF		MINIMUM NUMBER OF	NUMBER OF
	All Wards of Ashfield District Council, plus the Wards of: • Ravenshead; and	50  (Total Pop.	
	All wards of Mansfield District Council, plus the Ward of Welbeck,	50	
<b>Newark &amp;</b>	All Wards of Newark & Sherwood District Council, plus the Wards of: • Trent and Tuxford, from Bassetlaw District Council; and the Wards of: • Loveden; and • Saxonwell, from South Kesteven District Council; and the Wards of: • Oak; • Bingham East;	50  (Total Pop. 134,124)	



	Wards in the District Council of: Bolsover:	30	
	• <a href="#">Blackwell</a> ;	(Total Pop.	
	• <a href="#">Pleasley</a> ;		
	• <a href="#">Scarcliffe</a> ;		
	• <a href="#">Shirebrook East</a> ;		
	• <a href="#">Shirebrook Langwith</a> ;		
	• <a href="#">Shirebrook North West</a> ;		
	• <a href="#">Shirebrook South East</a> ;		
	• <a href="#">Shirebrook South West</a> ;		
	• <a href="#">South Normanton East</a> ;		
	• <a href="#">South Normanton West</a> ; and		
	• <a href="#">Tibshelf</a> , and		
	• <a href="#">Amber Valley</a>		
	• <a href="#">Alfreton</a> ;		
	• <a href="#">Ironville &amp; Riddings</a> ;		
	• <a href="#">Somercotes</a> ; and		
	• <a href="#">Swanwick</a> .		
	<a href="#">Wards in the District Council of North East Derbyshire</a>		
	• <a href="#">Holmewood and Heath</a>		



	<p>Any area within an electoral constituency of the East Midlands region <b>is</b> not covered above. In geographical terms ,this covers the local authority districts across</p> <ul style="list-style-type: none"> <li>• the rest of Derbyshire,</li> <li>• the rest of Nottinghamshire,</li> <li>• Rutland,</li> <li>• Lincolnshire,</li> <li>• Leicestershire,</li> <li>• Northamptonshire</li> </ul> <p>All members within this new</p>	<p><b>500</b></p> <p><b>( Total pop 3,758,198)*</b></p>	

\*Source: National Statistics (Nomis: [www.nomisweb.co.uk](http://www.nomisweb.co.uk))





## **Annex 2 : ~~PRACTICE AND PROCEDURE FOR MEETINGS~~ Staff Constituency**

~~In accordance with paragraphs 8.20.5 and 10.2 of the Constitution the Council of Governors and the Board of Directors must adopt standing orders for the regulation of their procedure in accordance with the minimum terms set out in this annex.~~

### **~~Part 1 Council of Governors~~**

~~The standing orders for the Council of Governors must provide for:~~

~~1 A minimum notice period for meetings and the agenda and supporting papers of not less than 2 clear days.~~

~~2 Provision for the conduct of meetings including:-~~

~~2.1 Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions including any special rules relating to motions under paragraph 8.14.3 (removal of Governors) save that provision may be made to cover the position where there is a vacancy in the Public Governors.~~

~~2.2 Voting, which may not provide for voting otherwise than on the basis of one vote for each Governor apart from the Chairman of the meeting.~~

~~2.3 Provision for proxies who must be Governors in their own right.~~

~~2.4 Chairing the meeting in the absence of the Chairman.~~

~~2.5 Powers of the Chairman to determine the conduct of the meeting.~~

~~2.6 Circumstances where persons other than Governors may be allowed to speak at meetings.~~

~~2.7 Quorum, which must provide for there to be a majority of public and patient Members at any meeting.~~

~~3. Provision for a record of attendance and the requirement for minutes of the meetings to be kept.~~

~~4. Provision for the approval of decisions without meetings where all Governors have been notified of the proposal and a majority of those eligible to vote have approved the resolution in writing within not less than 4 days.~~

~~5. Provision for the establishment of committees, sub-committees, joint committees and working groups~~

~~6. Provision for the delivery to the Secretary at or immediately before the commencement of the meeting of a declaration in the form:~~

~~“To the Secretary of Sherwood Forest NHS Foundation Trust~~

~~I hereby declare that I am at the date of this declaration a member of the [Public/Staff] constituency, and I am not prevented from being a member of the Council of Governors by reason of:~~

~~My having been adjudged bankrupt or my estate having been sequestrated and in either case not having been discharged;~~

~~My having made a composition or arrangement with, or granted a trust deed for my creditors and have not been discharged in respect of it;~~

~~Within the preceding five years, my being convicted anywhere in the world of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on me;~~

~~My being under 18 years of age;~~

~~Within the preceding two years, my being been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;~~

~~My being a person whose tenure of office as the chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service, for non attendance at meetings, or for non disclosure of a pecuniary interest;~~

~~My being an executive or non-executive director of the Trust, or a governor, non-executive director, chairman, chief executive officer of another NHS Foundation Trust;~~

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~~Having my name removed from any 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 has not subsequently had his name included in such a list;~~

~~My being a member of a Local Involvement Network;~~

~~My being incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs; or~~

~~My being a member of a local authority Health Overview and Scrutiny~~

~~Committee. Dated .....~~

Signed....."

## Part 2 Board of Directors

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

~~1. A minimum notice period for meetings and the agenda and supporting papers of not less than 2 clear days, save with the consent of a majority of those entitled to be present and actually present at the meeting.~~

~~2. Provision for the conduct of meetings including:-~~

~~2.1 Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions~~

### Staff Classes

1. There shall be six Staff Classes as follows:

1.1 the "King's Mill Hospital" Class being:

1.1.1 those staff employed primarily at, and Subcontractor Personnel engaged primarily at King's Mill Hospital or any other Hospital excluding Newark Hospital and Mansfield Community Hospital; and

1.1.2 staff who provide community services or exercise corporate functions for the Trust but who are not employed at any Hospital;

~~2.2 Voting, which may not provide for voting otherwise than on the basis of one vote for each director apart from the chairman of the meeting;~~

1.2 the "Newark Hospital Class" being those staff employed primarily at and Sub-contractor Personnel engaged primarily at Newark Hospital;

1.3 the "Mansfield Community Hospital Class" being those staff employed primarily at and Sub-contractor Personnel engaged primarily at Mansfield Community Hospital; and

1.4 the "Volunteers Class" being those Volunteers engaged at one or more of the Hospitals.

2. The minimum number of Members required for each Staff Class shall be:

2.1 King's Mill Hospital Class – 850

2.2 Newark Hospital Class - 100

2.3 Mansfield Community Hospital Class - [ ]

2.4 Volunteer Class – [ ]

DN: Kerry do you have the relevant minimum numbers?

~~2.3 Provision for proxies~~

3. The Staff Classes shall be entitled to elect the following number of Governors:

3.1 three (3) elected by the King's Mill Hospital Class;

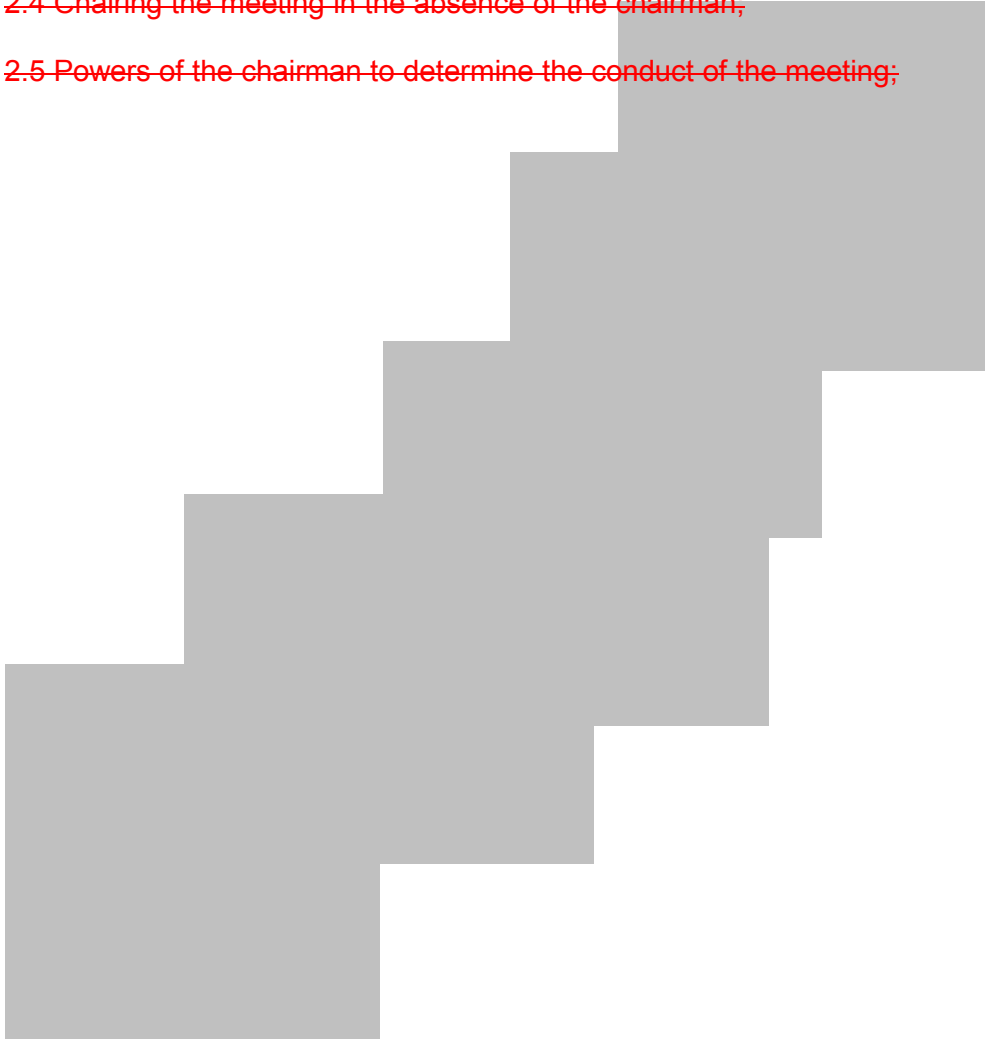
3.2 two (2) elected by the Newark Hospital Class;

3.3 one (1) elected by the Mansfield Community Hospital Class; and

3.4 one (1) elected from the Volunteer Class.

~~2.4 Chairing the meeting in the absence of the chairman;~~

~~2.5 Powers of the chairman to determine the conduct of the meeting;~~



~~2.6 Circumstances where persons other than directors may be allowed to speak at meetings; and~~

~~2.7 Quorum.~~

~~3. Provision for a record of attendance and the requirement for minutes of the meetings to be kept.~~

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~~4. Provision for the approval of decisions without meetings.~~

~~5. Provision for meetings to be held using telephone or electronic means.~~

~~6. Provision for the establishment of committees, sub-committees, joint committees and working groups which must include:~~

~~6.1 An audit committee comprising non-executive Directors;~~

~~6.2 A remuneration committee, comprising the Chief Executive and non-executive Directors; and~~

~~6.3 A governance committee.~~

~~7. Provision requiring the declarations of interests and providing for the conduct of Directors when an interest is material~~

~~8. Provision requiring the adherence to the NHS Standard for Business Conduct as published from time to time~~

~~9. Provisions governing the procurement of works, goods and services, and tendering and contracting procedures~~

~~10. Provision regarding the use of the seal of the Trust and the execution of documents.~~

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**Part 1 - Interpretation**

1. ~~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 NHS Act 2006

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

**Part 2 – Timetable for election**

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

**Proceeding**

Publication of notice of election

**Time**

Not later than the fortieth day before the day of the close of the poll.

Final day for delivery of nomination  
before  
papers to returning officer

Not later than the twenty eighth day  
the day of the close of the poll.

Publication of statement of

Not later than the twenty seventh day



nominated candidates	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 day of	Not later than the fifteenth day before the the close of the poll.
Close of the poll election.	By 5.00pm on the final day of the

### 3. Computation of time –

(1) In computing any period of time for the purposes of the timetable – ~~(a) a Saturday or Sunday;~~

(a) a Saturday or Sunday;

(b) ~~(b)~~ Christmas day, Good Friday, or a bank holiday, or

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

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

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

**9. Nomination of candidates** –

(1) ~~(1)~~ Each candidate must nominate themselves on a single nomination paper. ~~(2) The returning officer~~

(2) The returning officer

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

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

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

- (a) ~~(a)~~ any financial interest that the candidate has in the corporation, and
- (b) ~~(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) ~~(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) ~~(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) ~~(a)~~ they wish to stand as a candidate,

(b) ~~(b)~~ their declaration of interests as required under rule 11, is true and correct, and

(c) ~~(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) ~~(a)~~ decides that the candidate is not eligible to stand, ~~(b) decides that the nomination paper is invalid,~~

(b) decides that the nomination paper is invalid,

(c) ~~(c)~~ receives satisfactory proof that the candidate has died, or

(d) ~~(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) ~~(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) ~~(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~~

(c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

(d) ~~(d)~~ that the paper does not include a declaration of eligibility as required by rule 12, or

(e) ~~(e)~~ that the paper is not signed and dated by the candidate, as required by rule 13.



~~(3)~~

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

~~(b)~~ ~~(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)~~ ~~(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)~~ ~~(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.

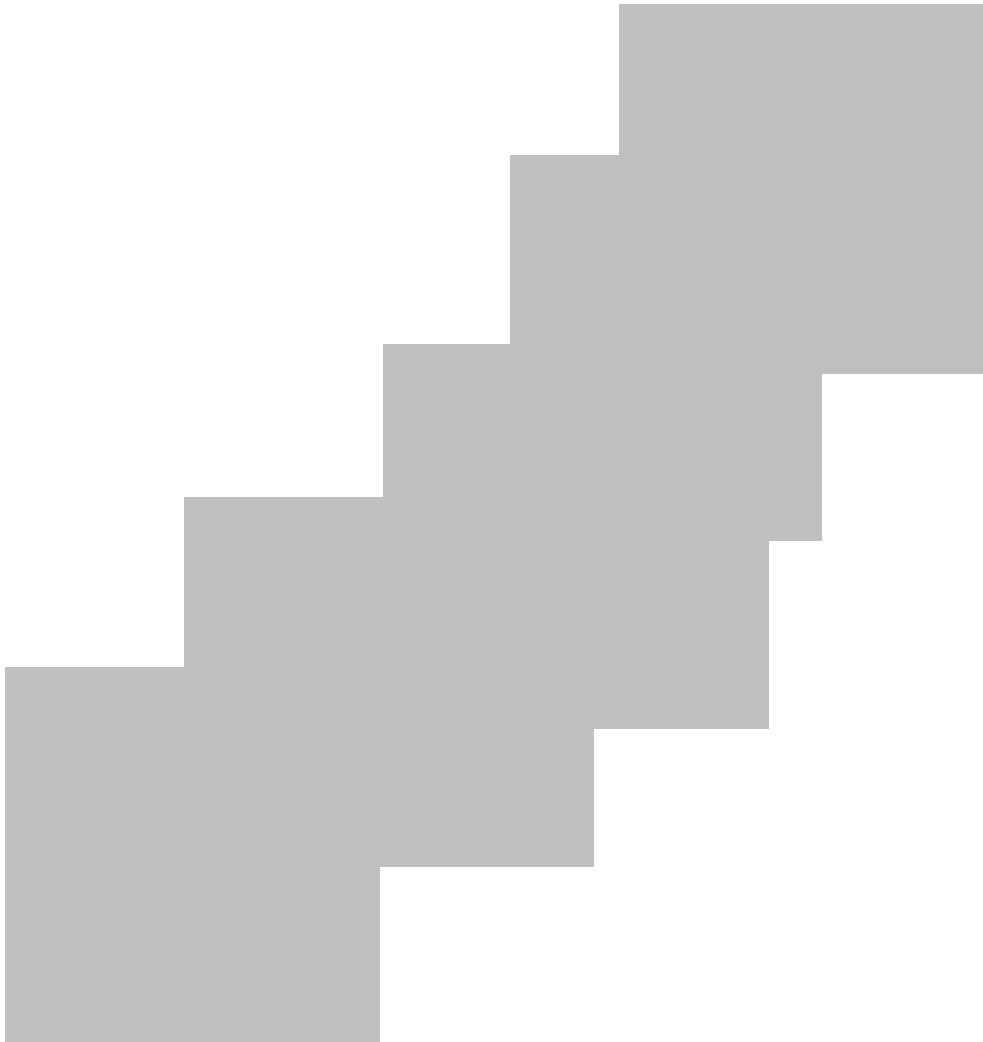
**17. Withdrawal of candidates** - A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

#### **18. Method of election –**

~~(1)~~ ~~(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

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

(b) ~~(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) ~~(1)~~ The votes at the poll must be given by secret ballot.

(2) ~~(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,~~

(a) the name of the corporation,

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

(c) ~~(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) ~~(a)~~ that the voter is the person to whom the ballot paper was addressed,

(b) ~~(b)~~ that the voter has not marked or returned any other voting paper in the election, and

(c) ~~(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,~~

(a) the name of the voter,

(b) the address of the voter,

(c) ~~(b) the address of the voter,~~ ~~(c)~~ the voter's signature, and

(d) ~~(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) ~~(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) ~~(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,~~

(a) the name of the corporation,

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

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





- ~~(d)~~
- ~~(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),
- ~~(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) ~~(1)~~ The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(2) ~~(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) ~~(a)~~ is satisfied as to the voter’s identity, and

(b) ~~(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) ~~(a)~~ the name of the voter, and

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

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

**29. Lost ballot papers –**

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

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

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

(c) ~~(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) ~~(a)~~ the name of the voter, and

(b) ~~(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) ~~(a)~~ the name of the voter, and

(b) ~~(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) ~~(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) ~~(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,~~ <sup>1</sup>

(a) the name of the voter,

(b) the address of the voter,

(c) ~~(b) the address of the voter,~~ ~~(e)~~ the voter’s signature, and

(d) ~~(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~~

(a) covering envelope, or

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

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

(b) ~~(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) ~~(a)~~ mark the ballot paper “disqualified”,

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

(c) ~~(c)~~ record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and

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

**Part 6 - Counting the votes**

**36. Interpretation of Part 6** – In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

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

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

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



~~(b)~~–

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

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

“quota” means the number calculated in accordance with rule 41 below,

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

“stage of the count” means –

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

(b) ~~(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 (e)~~

(c) the exclusion of one or more candidates at any given time,

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

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

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

**37. ~~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. ~~38.~~ The count** –

(1) The returning officer is to –

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

(b) ~~(b)~~ count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.



### **39. Rejected ballot papers –**

(1) Any ballot paper –

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

(b) ~~(b)~~ on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(c) ~~(c)~~ on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) ~~(d)~~ which is unmarked or rejected because of uncertainty,

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

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

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

### **40. First stage –**

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

### **41. The quota –**

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

### **42. Transfer of votes –**



~~(1)~~

(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)~~

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

(3) ~~(3)~~ The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) ~~(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) ~~(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)~~

(6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

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

(9) ~~(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.

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~~(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.

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

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

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

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

(2) ~~(2)~~ The returning officer shall, on each transfer of transferable papers under rule 42 above –

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

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

. (c) record as non-transferable votes the difference between the surplus and the total

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transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and

(d) compare— ~~§ 42~~ (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with ~~§ 44~~ (ii) the recorded total of valid first preference votes.

~~(3)~~ (3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

~~(4)~~ (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the

returning officer, the same order of preference is indicated or the numerical sequence is broken.

#### 44. Exclusion of candidates ~~—(1)~~

(1) ~~If—~~

(a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule 45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

(2) ~~(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) ~~(3)~~—The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) ~~(5)~~—If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub- parcels according to their transfer value.

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



~~(9)~~

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

(10) ~~(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) ~~(11)~~ If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.

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

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

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

**45. Filling of last vacancies – (**

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

(2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates



together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

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

#### **46. Order of election of candidates –**

~~(1)~~ ~~(1)~~ The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 42(10) above.

~~(2)~~ ~~(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)~~ ~~(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)~~ ~~(4)~~ Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

### ***Part 7 – Final proceedings in contested and uncontested elections***

#### **47. Declaration of result for contested elections –**

~~(1)~~ ~~(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 Sherwood Forest Hospitals NHS Trust by section 4(4) of the Health and Social Care (Community Health and Standards) Act 2003, 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)~~ ~~(2)~~ The returning officer is to make –

.  
or not,

(a) the number of first preference votes for each candidate whether elected

.

(b) any transfer of votes,





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

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


. (e) the number of rejected ballot papers under each of the headings in rule 39(1),

available on request.

**48. 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. 49.-Sealing up of documents relating to the poll** –

(1) ~~(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) ~~(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 spoilt 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) ~~(4)~~ 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) ~~(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.

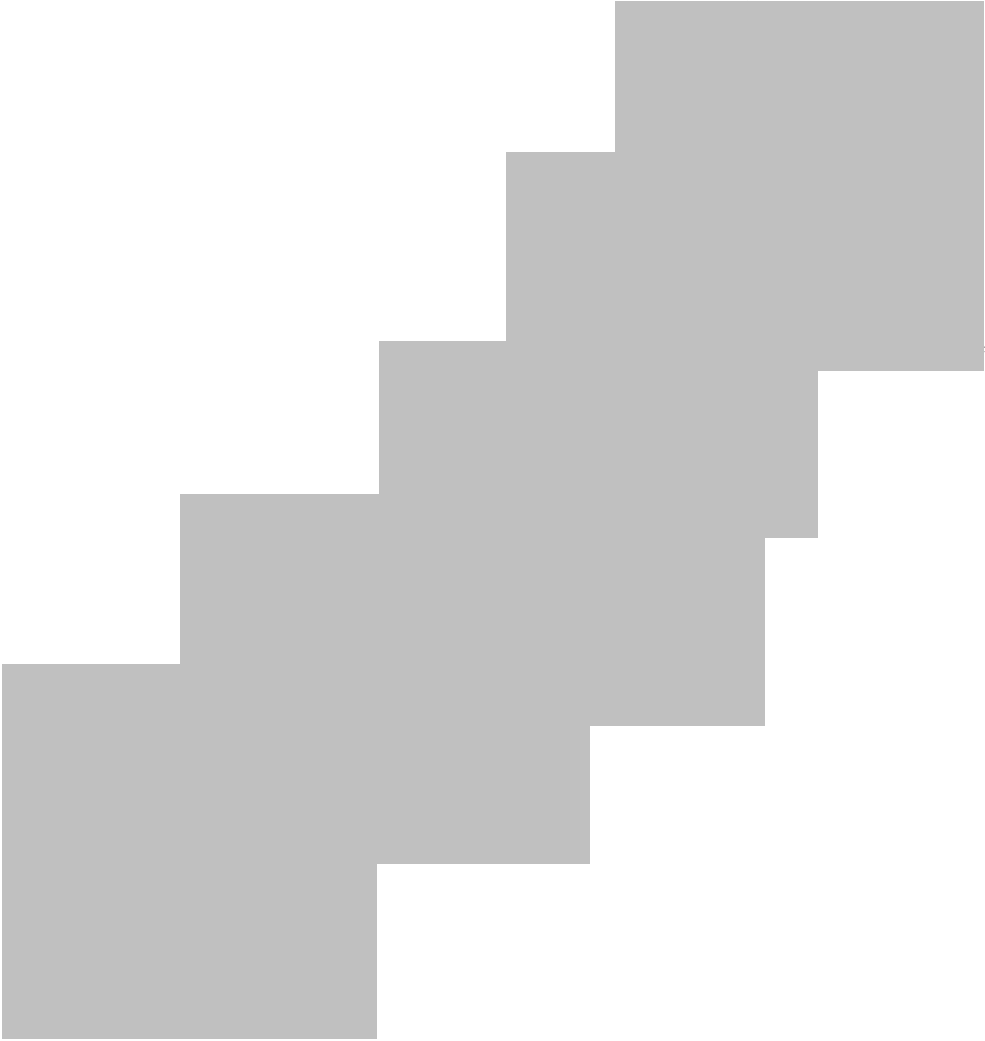
(3) ~~(3)~~ A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

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

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

(4) ~~(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 ~~isEP~~.
- (ii) ~~(ii)~~ that the regulator has declared that the vote was invalid.

### ***Part 9 – Death of a candidate during a contested election***

#### **54. Countermand or abandonment of poll on death of candidate –**

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

- . (a) publish a notice stating that the candidate has died, and
- . (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –



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

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

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

### ***Part 10 – Election expenses and publicity***

#### ***Election expenses***

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

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

(a) personal expenses,

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

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

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

~~(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) (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)~~

(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) ~~(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) ~~(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) ~~(2)~~ The information must consist of –

- . (a) a statement submitted by the candidate of no more than 100 words, and
- . (b) a photograph of the candidate.

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

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

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

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

.  
vote,  
or

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



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

~~(b) a candidate, or a person claiming to have had a right to be elected at the election. (4)~~

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

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

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

## ***Part 12 – Miscellaneous***

### **62. Secrecy –**

(1) ~~(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) ~~(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) ~~(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.~~

**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. ~~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. ~~65.~~ Delay in postal service through industrial action or unforeseen**

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

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

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

ANNEX 4



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