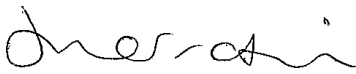


Dorset County Hospital NHS Foundation  
Trust

(A Public Benefit Organisation)

**CONSTITUTION**

Certified as a true and up-to-date copy

Signed: 

Name: Jenny Horrabin

Position: Joint Executive Director of Corporate Affairs

Date: May 2026

## **Introduction**

Dorset County Hospital NHS Foundation Trust and Dorset HealthCare University NHS Foundation Trust approved arrangements to establish a group model to support increased joint working and collaboration between the two organisations and the wider system, in line with the powers set out in the Health and Care Act 2022 and with approval from NHS England and NHS Dorset.

To support the joint working, a joint Chair and a joint Chief Executive have been appointed, together with joint Non-Executive Directors and Joint Executive Directors. In line with current legislation, both Trusts remain as individual statutory organisations with individual Constitutions. Therefore, for the purposes of this document, references to the Chair and Chief Executive, and other joint roles on the Board of Directors, will remain singular and not 'joint' or 'group'.

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## Interpretation and definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and Health and Care Act 2022.
- 1.2 A reference to legislation or to a legislative provision shall be to that legislation or legislative provision as it is in force, amended or re-enacted from time to time.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 Words importing the singular shall import the plural and vice-versa.
- 1.5 "Notice" is deemed served within 24 hours if by electronic means or within 72 hours if by first class post.
- 1.6 In addition, in this Constitution:

the **2006 Act** is the National Health Service Act 2006;

the **2012 Act** is the Health and Social Care Act 2012;

the **2022 Act** is the Health and Care Act 2022;

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

**Annual Members' Meeting** is defined in paragraph 11 of the Constitution;

**Appointed Governor** means an appointed representative from a key stakeholder; **Constitution** means this Constitution and all annexes to it;

**Constitution** means the Constitution together with its annexes

**Elected Governors** means the Public Governors and Staff Governors;

**Executive Director** means a Director appointed by the relevant Committee of the Board who is a full or part-time employee of the Trust or the holder of an executive office

**Non-Executive Director** means a Director appointed by the Council of Governors who is not a full or part-time employee of the Trust or the holder of an executive office

**Public Governor** means a public Governor elected;

**Staff Governor** means a staff Governor elected;

**NHSE** is the body corporate known as NHS England, as provided by Section 1H of the 2006 Act.

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

the **Trust** is defined in paragraph 2 of the Constitution.

## Name

- 2.1 The name of the Trust is Dorset County Hospital NHS Foundation Trust ("the Trust").

## Principal purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to:
  - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
  - 3.3.2 the promotion and protection of public health.

- 3.4 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 to better carry on its principal purpose.
- 3.5 The Trust may carry out research in connection with the provision of healthcare and make facilities and staff available for the purposes of education, training or research carried on by others.

## **Powers**

- 4.1 The powers of the Trust are set out in the 2006 Act, updated in the Health and Social Care Act 2012 and the Health and Care Act 2022
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.4 Subject to 4.5 and as otherwise provided by section 45 of the Mental Health Act 2007, any of these powers may be delegated to a committee of Directors or to an executive director.
- 4.5 The Board of Directors may authorise any three or more persons each of whom is neither:
  - 4.5.1 an executive director of the Trust; nor
  - 4.5.2 an employee of the Trustto exercise powers conferred on the Trust by Section 45 of the Mental Health Act 2007.
- 4.6 The Trust may enter into arrangements for the carrying out, on such terms as the Trust considers appropriate, of any of its functions jointly with any other person.
- 4.7 The Trust may arrange for any of the functions exercisable by the Trust to be exercised by or jointly with any one or more of the following:
  - 4.7.1 A relevant body;
  - 4.7.2 A local authority within the meaning of section 2B of the 2006 Act;
  - 4.7.3 A combined authority within the meaning of section 65Z5 of the 2006 Act
- 4.8 The Trust may also enter into arrangements to carry out the functions of another relevant body, whether jointly or otherwise.
- 4.9 Where a function is exercisable by the Trust jointly with one or more of the other organisations mentioned at paragraph 4.7, those organisations and the Trust may:
  - 4.9.1 Arrange for the function to be exercised by a joint committee of theirs;
  - 4.9.2 Arrange for the Trust, one or more of those other organisations, or a joint committee of them, to establish and maintain a pooled fund in accordance with section 65Z6 of the 2006 Act.
- 4.10 The Trust must exercise its functions effectively, efficiency and economically.
- 4.11 In making a decision about the exercise of its functions, the Trust must have regard to all likely effects of the decision in relation to:
  - 4.11.1 The health and well-being of (including inequalities between) the people of England;
  - 4.11.2 The quality of services provided to (including inequalities between benefits obtained by) individuals by or in pursuance of arrangements made by relevant bodies for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - 4.11.3 Efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 4.12 In the exercise of its functions, the Trust must have regard to its duties under section 63B of the 2006 Act (complying with targets under section 1 of the Climate Change Act 2008 and section 5 of the Environment Act 2021, and to adapt any current or predicted impacts of climate change in the most recent report under section 56 of the Climate Change Act 2008).
- 4.13 For the purposes of this section, “relevant body” means NHSE, an integrated care board, an NHS Trust, a NHS foundation Trust (including the Trust) or such other body as may be prescribed under section 65Z5(2). “Relevant bodies” means two or more of these organisations as the context requires.

- 4.14 The arrangements under this paragraph 4 shall be in accordance with:
- 4.14.1 any applicable requirements imposed by the 2006 Act or regulations made under that Act;
  - 4.14.2 any applicable statutory guidance that has been issued and
  - 4.14.3 otherwise on such terms as the Trust sees fit.

## **Membership and constituencies**

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 5.1.1 a public constituency; or
  - 5.1.2 the staff constituency.
- 5.2 In the case of a dispute as to which constituency an individual is eligible to be a member, the Secretary shall determine the issue. The Secretary's decision on these matters is final.

## **Application for membership**

- 6.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust. A person shall become a member of the Trust from the date that they are entered onto the Trust's register of members, subject to paragraph 7, 8 and 9 of this Constitution.

## **Public Constituency**

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

## **Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 8.1.1 They are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 They have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals, who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 For the avoidance of doubt:-
- 8.3.1 Seconded staff. Seconded staff are individuals whose contract of employment remains with another employer, but who are seconded to and line-managed by the Trust.
  - 8.3.2 Individuals who assist or provide services to the Trust on a voluntary basis do not fall within the definition of individuals who exercise functions for the purposes of the Trust and are not eligible for membership of the Staff Constituency.
  - 8.3.3 Those working for a partnership organisation, based at the Trust, including staff with honorary contracts at the Trust fall within the definition of individuals who exercise functions for the purposes of the Trust.
- 8.4 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.5 The Staff Constituency will not be divided into classes and shall comprise individuals who are eligible for membership of the Staff Constituency.

- 8.6 An individual may not become a member of the Staff Constituency of the Trust pursuant to paragraph 8 if they exercise functions solely for the purposes of a hosted service of the Trust, whether or not they are employed by the Trust.
- 8.7 For the purposes of paragraph 8.5, a “hosted service” means a service or business that is hosted by the Trust and which operated with a degree of autonomy within the Trust. The Secretary shall maintain a list of all hosted services within the Trust.
- 8.8 The minimum number of members in the Staff Constituency is specified in Annex 2.

### **Automatic membership by default – staff**

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

### **Restriction on Trust membership**

- 10.1 An individual who is a member of a constituency may not while membership of that constituency continues, be a member of any other constituency.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3 The Trust Secretary shall, in accordance with the 2006 Act and the Constitution, determine the constituency of which an individual is eligible to be a member.
- 10.4 An individual must be at least 16 years old to become a member of the Trust.
- 10.5 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 8 – Further Provisions relating to Members.

### **Annual Members’ Meeting**

- 11.1 The Trust shall hold an annual meeting of its members (‘Annual Members’ Meeting’). The Annual Members’ Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members’ Meeting are set out in Annex 9 – Annual Members’ Meeting.

### **Council of Governors – composition**

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected Governors and appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3. The aggregate number of Public Governors is to be more than half the total number of Governors.
- 12.3 The members of the Council of Governors, other than the appointed Governors, shall be chosen by election by their constituency. The number of Governors to be elected by each constituency is specified in Annex 3.

### **Council of Governors – election of Governors**

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules. The Board of Directors will decide which of the two voting methods set out in the Model Rules for Elections is to be used.
- 13.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. The Model Election Rules current at the date of their adoption under this Constitution are specified in Annex 10.

- 13.3 A subsequent variation of the Model Election Rules by NHS Providers, or any other subsequent body with authority to do so, shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of the Constitution (amendment of the Constitution). For the avoidance of doubt, the Trust cannot amend the Model Rules.
- 13.4 An election, if contested, shall be by secret ballot.

### **Council of Governors - tenure**

- 14.1 An elected Governor may hold office for a period not exceeding three years commencing from the date of the Council of Governors Meeting at which their election is announced.
- 14.2 An elected Governor shall cease to hold office if they cease to be a member of the constituency by which they were elected. For the avoidance of doubt, this includes a Governor moving their principal residence from one public constituency to another.
- 14.3 Subject to 14.7, an elected Governor shall be eligible for re-election at the end of their term.
- 14.4 An appointed Governor may hold office for a period not exceeding three years commencing from the Council of Governors Meeting at which their appointment is announced.
- 14.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 14.6 Subject to 14.7, an appointed Governor shall be eligible for re-appointment at the end of their term.
- 14.7 A Governor (whether elected or appointed) may not hold office for more than nine consecutive years, and shall not be eligible for re-election or re-appointment, whichever the case may be, if they have already held office for more than six consecutive years. For the purposes of this paragraph 14, years of office are consecutive unless there is a break of at least 1 year between them. For the avoidance of doubt, this paragraph applies to the tenure of any permutation or combination of office as an elected or appointed Governor.

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

- 15.1 The following may not become or continue as a member of the Council of Governors:
- 15.1.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 15.1.2 a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
  - 15.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it;
  - 15.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
  - 15.1.5 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
  - 15.1.6 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 4. Provision for the removal of Governors is also set out in Annex 4.

## **Council of Governors – duties of Governors**

- 16.1 The general duties of the Council of Governors are:
  - 16.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
  - 16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 16.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 16.3 Further provisions about the duties of Governors are set out in Annex 4.

## **Council of Governors – meetings of Governors**

- 17.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with this Constitution) or, in their absence, the Vice Chair (appointed in accordance with the provisions of this Constitution), or, in their absence, one of the Non-Executive Directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, a Non- Executive Director will chair that part of the meeting. The Chair of the meeting shall have the casting vote.
- 17.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for special reasons which may include for reasons of commercial confidentiality. The Chair may exclude members of the public from a meeting if they are interfering with or preventing the proper conduct of the meeting.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

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

- 18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6. Amendment of these Standing Orders is subject to the provisions of paragraph 4.14 in Annex 6.

## **Council of Governors - conflicts of interest of Governors**

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

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

- 21.1 The Trust may pay travelling expenses to members of the Council of Governors at rates determined by the Trust. Other expenses, if wholly incurred to allow attendance, may be paid as determined by the Trust as follows:
- 21.1.1 Child care expenses actually incurred and receipted;
  - 21.1.2 Carer expenses actually incurred and receipted;
  - 21.1.3 The Trust will not remunerate Governors for loss of earnings.

## **Council of Governors – further provisions**

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

## **Board of Directors – composition**

- 23.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non- Executive Directors.
- 23.2 The Board of Directors is to comprise:
- 23.2.1 a Non-Executive Chair;
  - 23.2.2 no less than five and no more than 8 other voting Non-Executive Directors; and
  - 23.2.3 no less than five and no more than 8 voting Executive Directors, provided that, at all times, the number of independent Non-Executive Directors (excluding the Chair) equals or exceeds the number of Executive Directors.<sup>1</sup>
- 23.3 One of the Executive Directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the Executive Directors shall be the Chief Finance Officer.
- 23.6 One of the Executive Directors is to be a registered medical practitioner (or a registered dentist (within the meaning of the Dentists Act 1984)).
- 23.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 23.8 The Board shall determine whether each Non-Executive Director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the non-executive director's judgment. The Board shall disclose in the annual; report each Non-Executive Director it considers to be independent.<sup>2</sup>
- 23.9 The Board may also appoint up to two Associate Non-Executive Directors and up to two non-voting Executive Directors to support the Board succession strategy, diversity and achieving a balance of Board level skills. Such Directors cannot participate in any formal vote at Board.

## **Board of Directors – general duty**

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

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

- 25.1 A person may be appointed as a Non-Executive Director only if:
- 25.1.1 They are a member of a Public Constituency; or
  - 25.1.2 where any of the Trust's Hospital includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and
  - 25.1.3 They are not disqualified by virtue of paragraph 29 below.

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<sup>1</sup> Code of Governance B.2.7

<sup>2</sup> Code of Governance B.2.6

## **Board of Directors – appointment and removal of Chair and other Non-Executive Directors<sup>3</sup>**

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint, reappoint or remove the Chair of the Trust and the other Non-Executive Directors.
- 26.2 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 26.3 The Council of Governors shall adopt a procedure for appointing/removing the Chair and/or other Non-Executive Directors in accordance with any guidance issued by NHS England.

## **Board of Directors – appointment of Vice Chair and Senior Independent Director**

- 27.1 The Council of Governors shall appoint one of the Non-Executive Directors to be the Vice Chair of the Board of Directors. If the Chair is unable to discharge their office as Chair of the Trust, the Vice Chair of the Board of Directors shall be acting Chair of the Trust.
- 27.2 The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors as Senior Independent Director to act in accordance with NHS England's Code of Governance for NHS Provider Trusts (as may be amended and replaced from time to time), and the Board of Director's Standing Orders. The SID should be available to all stakeholders, particularly Governors and members, should they have concerns which they feel unable to resolve via normal channels, such as through contact with the Chair or Chief Executive, or in circumstances in which such contact would be inappropriate.<sup>4</sup>

## **Board of Directors - appointment and removal of the Chief Executive Officer and other Executive Directors<sup>5</sup>**

- 28.1 The Non-Executive Directors shall appoint or remove the Chief Executive Officer.
- 28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.
- 28.4 The Chief Executive may appoint one of the Executive Directors as Deputy Chief Executive, subject to the approval of the Board's Nominations and Remuneration Committee.

## **Board of Directors – disqualification**

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

- 29.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 29.2 a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- 29.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it.
- 29.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out at Annex 5.

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<sup>3</sup> Code of Governance, provision C.2.13

<sup>4</sup> Code of Governance B.2.11

<sup>5</sup> Code of Governance, provision B.2.12

## **Board of Directors – meetings**

- 30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, such as commercial confidentiality.
- 30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.<sup>6</sup>

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

- 31.1 The standing orders for the practice and procedure of the Board of Directors are included at Annex 7. Amendment of these Standing Orders does not require amendment of the Constitution, as the current version of Standing Orders is deemed to prevail. Such amendment to be in accordance with paragraphs 4.42 and 12.3 of Annex 7.

## **Board of Directors - conflicts of interest of Directors**

- 32.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 32.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 32.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 32.2 The duty referred to in paragraph 32.1.1 is not infringed if:
- 32.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 32.2.2 The matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In paragraph 32.1.2, “third party” means a person other than:
- 32.4.1 The Trust; or
- 32.4.2 A person acting on its behalf.
- 32.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 This paragraph does not require a declaration of an interest of which the Director is not aware of or where the Director is not aware of the transaction or arrangement in question.
- 32.9 A Director need not declare an interest:
- 32.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.9.2 If, or to the extent that, the Directors are already aware of it;
- 32.9.3 If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
- 32.9.3.1 By a meeting of the Board of Directors, or
- 32.9.3.2 By a committee of the Directors appointed for the purpose under the Constitution.

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<sup>6</sup> Code of Governance, provision Appendix B 3.3

- 32.10 For the purposes of paragraph 32.2.2:
- 32.10.1 A matter shall have been authorised in accordance with the Constitution if it has been approved by the Board of Directors (excluding any Director whose interest is the subject of authorisation) on the basis that to do so would be in the best interests of the Trust.
- 32.10.2 The Board of Directors may grant any such authorisation in paragraph 32.10.1 subject to such terms and conditions as the Board of Directors thinks fit.
- 32.10.3 The Board of Directors may decide to revoke or vary any authorisation granted pursuant to paragraph 32.10.1 at any time, but such a decision will not affect anything done by the Director(s) whose interest is the subject of authorisation prior to such revocation or variation.

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

### **Non-Executive Directors:**

- 33.1 The Nominations and Remuneration Committee of the Council of Governors shall be responsible for the appointment process (and setting the terms and conditions) of the Chair and Non-Executive Directors. A full Council of Governors meeting shall consider and approve the Committee's recommended candidate for appointment at its next meeting.
- 33.2 The tenure for Non-Executive Directors shall be set at three years. Any re-appointed Non- Executive Director must have had a formal performance evaluation and continue to demonstrate commitment to the role. Any exceptional term beyond six years (e.g., two three-year terms) should be reviewed robustly and subject to an annual re-appointment process. A Non-Executive Director of the Trust (including the Chair) may not hold office for longer than a maximum of nine years in aggregate in the capacity of either the Chair or a Non-Executive Director of the Trust.<sup>7</sup>
- 33.3 The Nominations and Remuneration Committee of the Council of Governors shall consist of a majority of Governors.<sup>8</sup>

### **Executive Directors:**

- 33.4 The Nominations and Remuneration Committee of the Board of Directors shall be responsible for the appointment of the Chief Executive and other Executive Directors including deciding their remuneration and allowances, and the other terms and conditions of office.<sup>9</sup>

## **Registers**

The Trust shall have (in paper or electronic format):

- 34.1 a register of members showing, in respect of each member, the constituency to which they belong;
- 34.2 a register of members of the Council of Governors;
- 34.3 a register of interests of Governors;
- 34.4 a register of Directors; and
- 34.5 a register of interests of the Directors.

## **Admission to and removal from the registers**

- 35.1 The Secretary shall remove from the register of members the name of any member who they are made aware is no longer entitled to be a member under the provisions of this Constitution.

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<sup>7</sup> Code of Governance, provision B.4.3

<sup>8</sup> Code of Governance, provision B.2.6

<sup>9</sup> Code of Governance, provision B.2.10

## **Registers – inspection and copies**

- 36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 36.3 So far as the registers are required to be made available:
  - 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## **Documents available for public inspection**

- 37.1 The following documents will be available for inspection by members of the public free of charge at all reasonable times:
  - 37.1.1 a copy of the current Constitution;
  - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 37.1.3 a copy of the latest annual report;The Trust should make the above documents available upon request.
- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
  - 37.2.1 a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration) or 65LA (Trusts to be dissolved) of the 2006 Act.
  - 37.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 37.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 37.2.8 a copy of any final report published under section 65I (administrator's final report),
  - 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
  - 37.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## **Auditor**

- 38.1 The Trust shall have an auditor.
- 38.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 38.3 A person may only be appointed Auditor if they (or in the case of a firm each of its members), is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 of the 2006 Act.
- 38.4 The Auditor shall carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS England on standards, procedures and techniques to be adopted.

## **Audit Committee**

- 39.1 The Trust shall establish a committee of Non-Executive Directors (at least one of whom should have competence in accounting and/or auditing and recent and relevant financial experience<sup>10</sup>) as an audit committee. The audit committee will perform such monitoring, reviewing and other functions as are appropriate.
- 39.2 The Trust Chair should not be a member of the Committee and the Vice Chair and Senior Independent Director should not chair the Committee.<sup>11</sup>

## **Accounts**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the Trust's auditor.
- 40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 40.6 The Accounting Officer shall cause the Trust to:
  - 40.6.1. Send copies of the annual accounts, and any report of the financial auditor on them, to NHS England; and
  - 40.6.2 Once it has done so, lay a copy of the annual accounts, and any report of the financial auditor on them, before Parliament.

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

- 41.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Board of Directors.
- 41.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about:
  - 41.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry out; and
  - 41.5.2 the income it expects to receive from doing so.

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<sup>10</sup> Code of Governance provision D.2.1

<sup>11</sup> Code of Governance provision D.2.1

- 41.6 Where a forward plan contains a proposal that the Trust carry out an activity of a kind mentioned in paragraph 41.5.1 the Council of Governors must:
- 41.6.1 determine whether it is satisfied that the carrying out of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
  - 41.6.2 notify the Directors of the Trust of its determination.
- 41.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

## **Presentation of the annual accounts and reports to the Governors and members**

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts;
  - 42.1.2 any report of the auditor on them; and
  - 42.1.3 the annual report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the Annual Members' Meeting.

## **Instruments**

- 43.1 The Trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 43.3 The Trust headquarters are at Williams Avenue, Dorchester, Dorset, DT1 2JY.

## **Amendment of the Constitution<sup>12</sup>**

- 44.1 The Trust may make amendments of its Constitution only if:
- 44.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments; and
  - 44.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 44.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 44.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 44.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 44.4 Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

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<sup>12</sup> Code of Governance, provision Appendix B 3.5

## **Mergers etc. and significant transactions**

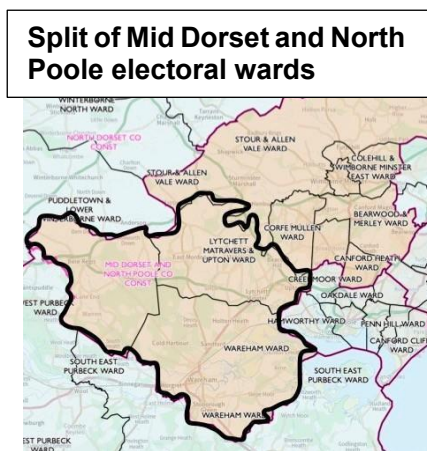
- 45.1 The Trust may only apply for a statutory merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 45.3 For the purposes of paragraph 45.2:
- 45.3.1 A significant transaction is an investment or divestment; and
  - 45.3.2 A transaction is significant if its value equates to more than 25% of the Trust's:
    - 45.3.2.1 gross assets;
    - 45.3.2.2 income; or
    - 45.3.2.3 gross capital (following completion of the transaction), calculated with reference to the Trust's opening balance sheet for the financial year in which approval is being sought.
  - 45.3.3 A statutory transaction under paragraph 45.1 is not a significant transaction for the purposes of paragraph 45.2.
- 45.4 For the avoidance of doubt, for the purposes of paragraph 45.3.1, the term 'transaction' shall not include a contract with a commissioning organisation for the provision of services for the purposes of the health service in England or Wales.
- 45.5 If more than half of the members of the Council of Governors voting decline to approve a significant transaction or any part of it, the Council of Governors must approve a written Statement of Reasons for its rejection, to be provided to the Board of Directors.
- 45.6 Nothing in this paragraph shall prevent the Board of Directors from appropriate engagement with the Council of Governors, as it sees fit, to provide information on any other transaction or arrangement which the Trust may enter, which does not constitute a "significant transaction" as defined within paragraph 45.3.

## Annex 1 – The Public Constituencies

(Paragraphs 7.1 and 7.3)

The Public Constituency consists of 3 (was 5) constituencies which will be drawn from the parliamentary boundaries established in 2023 (former Local Authorities areas) with some minor amendments to electoral wards and will include a combined South Somerset and Rest of England constituency.

### Electoral Wards for the West and South Dorset constituency



An individual who lives in one of the electoral areas as specified below as an area for a public constituency who may become or continue as a member of the Trust:

Current FT Public Constituency	Old council boundaries (pre 2019)	New parliamentary constituencies, electorate nos. in 2023, and unitary authority	Proposed Public Constituencies and no's of seats
West Dorset (6 seats)	West Dorset District Council	West Dorset Electorate = 75,390 – Dorset CC  Beaminster; Bridport; Chalk Valleys; Charminster St. Mary's; Chesil Bank; Dorchester East; Dorchester Poundbury; Dorchester West;	<p><b>West &amp; South Dorset (11 seats) with change of boundary</b></p>
Weymouth and Portland (5 seats)	Weymouth and Portland Borough Council	South Dorset <i>incl. change of boundary.</i> Electorate = 76,640 – Dorset CC  Chickerell, Littlemoor & Preston, Melcombe Regis, Portland, Radipole,	
East Dorset (2 seats) – <b>Purbeck</b> , East Dorset & BCP	Purbeck District Council only	<i>Crossways, South East Purbeck, Swanage</i>  polling districts WPU1 and WPU4 - WPU13 in West Purbeck	
	East Dorset District Council (partial)	Mid Dorset & North Poole (partial). Electorate = 74,305 – Dorset CC  <i>Lytchett Matravers &amp; Upton</i>  Wareham West Purbeck	

### Electoral Wards for the North and East Dorset constituency



An individual who lives in one of the electoral areas as specified below as an area for a public constituency who may become or continue as a member of the Trust:

Current FT Public Constituency	Old council boundaries (pre 2019)	New parliamentary constituencies, electorate nos. in 2023, and unitary authority	Proposed Public Constituencies and no's of seats
North Dorset (2 seats)	North Dorset District Council	North Dorset incl. change of boundary from West Dorset.  Beacon, Blackmore Vale, Blandford, Cranborne & Alderholt, Cranborne Chase, Gillingham, Hill Forts & Upper Tarrant,	North & East Dorset (4 seats) with change of boundary
		Electorate = 72,109 – Dorset CC  Puddletown & Lower Winterborne, Shaftesbury Town, Stalbridge & Marnhull, Sturminster Newton, Verwood, Winterborne North	
East Dorset (2 seats) – Purbeck, East Dorset & BCP	East Dorset District Council	Mid Dorset & North Poole (partial).  Colehill & Wimborne Minster East Corfe Mullen  Bearwood & Merley (BCP) Broadstone (BCP)	
		Electorate = 74,305 – Dorset CC  Stour & Allen Vale Wimborne Minster  Canford Heath (BCP)	
East Dorset (2 seats) – Purbeck, East Dorset & BCP	Christchurch Borough Council	Christchurch incl. change of boundary.  Burton & Grange Christchurch Town Commons Ferndown North Ferndown South Highcliffe & Walkford	
	Poole Borough Council	Poole incl. change of wards moved to Mid Dorset & North  Canford Cliffs Creekmoor Hamworthy Newtown & Heatherlands	
		Electorate = 71,598 – BCP  Mudford, Stanpit & West Highcliffe St Leonards & St Ives West Moors & Three Legged Cross West Parley	
		Electorate = 72,162 – BCP Poole.  Oakdale Parkstone Penn Hill Poole Town	

<p>East Dorset (2 seats) – Purbeck, East Dorset &amp; <b>BCP</b></p>	<p>Bournemouth Borough Council</p>	<p>Bournemouth East incl. change of boundary. Electorate = 73,173 BCP</p> <p>Boscombe East &amp; Pokesdown Boscombe West East Cliff &amp; Springbourne East Southbourne &amp; Tuckton Littledown &amp; Iford Moordown Muscliff &amp; Strouden Park Queen's Park West Southbourne</p>	<p>Bournemouth West incl. change of boundary. Electorate = 72,094 BCP</p> <p>Alderney &amp; Bourne Valley Bournemouth Central Kinson Redhill &amp; Northbourne Talbot &amp; Branksome Woods Wallisdown &amp; Winton West Westbourne &amp; West Cliff Winton East</p>	<p><b>North &amp; East Dorset (3 seats) with change of boundary</b></p>
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**Electoral Wards for South Somerset and Rest of England**

<p>South Somerset and Rest of England (1)</p>	<p>South Somerset District Council and Rest of England</p>	<p>South Somerset and Rest of England</p>	<p><b>South Somerset and Rest of England (1)</b></p>
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The minimum number of members required for a public constituency is 50.

## **Annex 2 – the Staff Constituency**

(Paragraphs 8.4 and 8.5)

The Staff Constituency will not be divided into classes but will consist of four Members to the Council of Governors irrespective of profession or department allowing those members to focus on the development of the Trust rather than on the narrow interests of their respective profession or department.

The minimum number of members in the Staff Constituency is 500.

## **Annex 3 – Composition of the Council of Governors**

(Paragraphs 12.2 and 12.3)

The Council of Governors is to consist of public Governors, staff Governors and appointed Governors from local authorities, universities and partner organisations. The aggregate number of public Governors is to be more than half of the total number of members of the Council of Governors. The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

- The interests of the community served by the Trust are appropriately represented;
- The level of representation of the Public Constituencies, the Staff Constituency and the Appointing Organisations achieves an appropriate balance having regard to their legitimate interest in the Trust's affairs;

The Council of Governors of the Trust is to comprise:

<b>Appointed Governors (8)</b>		<b>Tenure</b>		<b>Role</b>
<b>Appointed Governors from Statutory Organisations (1)</b>				
Local Authority	Dorset Council	1	Organisational tenure = 3 yrs	To represent key local non-NHS local authority health economy partners
<b>Appointed Governors from Partnership Organisations (7)</b>				
Voluntary and Charitable Sector	Organisation to represent older people Organisation to represent the spectrum of palliative and hospice care Friends of Dorset County Hospital Vacancy for further national/regional healthcare charity.	1 1 1 4	Organisational tenure = 3 yrs	To engage and assist the Trust in local developments
<b>Elected Staff Governors (4)</b>				
	Staff Membership is not split into staff classes	4	3 years	To assist the Trust in development and delivery of services through active representation from those who deliver the services
<b>Elected Public Governors (16)</b>				
Parliamentary Areas	West and South Dorset	11	3 yrs.	To represent the public and patients who are served by the NHS Foundation Trust
	North & East Dorset	4	3 yrs.	
	South Somerset and Rest of England	1	3 yrs.	
<b>Total number of governors (28)</b>				

## **Annex 4 – Additional Provisions: Council of Governors**

(Paragraph 15.3)

### **Elected Governors**

1. A member of the public constituency may not vote at an election for a public Governor unless, not less than seven days before they vote, they have made a declaration in the form specified by the Trust that they are qualified to vote as a member of the public constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Appointed Governors**

2. The Secretary, in consultation with the respective appointing organisation, is to adopt a process for agreeing the appointment of each of the Appointed Governors.

### **Lead Governor**

3. The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors, in accordance with the role description within the Code of Governance for NHS Provider Trusts. The Lead Governor may be a Public Governor, an Appointed Governor or a Staff Governor. If more than one nomination is received an anonymous ballot of all the Governors shall be held to fill the position.
4. The Council approve additional duties to the role description within the Code of Governance for NHS Provider Trusts to support the Council in fulfilling its statutory obligations. The term of office of the Lead Governor shall be two years. A Governor may be re-appointed as the Lead Governor by the Council of Governors at the end of that term. Only in exceptional circumstances would a Lead Governor serve for more than two terms.

### **Further provisions as to eligibility to be a Governor**

5. A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
  - 5.1. They are a Director of the Trust or Director of another NHS Foundation Trust;
  - 5.2. They are a member of a committee which has any role on behalf of a local authority or the Welsh Parliament to scrutinise and review health matters including a local authority's scrutiny committee covering health matters;
  - 5.3. They, being a member of the staff constituency, are in receipt of a final written warning under the Trust's disciplinary procedure and the time period for such warning has not expired;
  - 5.4. They have, within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body as outlined in section 9 of the 2006 Act
  - 5.5. They are a person whose tenure of office as the Chair or as a member, Governor or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;

- 5.6. They have had their name removed from any list prepared under chapter 6 of the 2006 Act or the equivalent lists maintained in Wales or has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable);
- 5.7. They are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
- 5.8. Being a member of one of the public constituencies, they have failed to sign a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors; or
- 5.9. They have previously been removed as a Governor pursuant to the procedure set out in this Annex or as the Governor of another NHS Foundation Trust, unless the Council of Governors vote by majority approval that they can re-stand for election;
- 5.10 They are the spouse, partner, parent or child of a member of the Council of Governors or the Board of Directors of the Trust;
- 5.11 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 5.12 They are a person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council, in accordance with the Medical Act 1983, or has been suspended from that register, and not subsequently had their name returned to the register;
- 5.13 They are not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or Condition G4 of the Trust's Licence;
- 5.14 They are the subject of an order under the Sexual Offences Act 2003;
- 5.15 They are included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list.

#### **Termination of office and removal of Governors**

6. A person holding office as a Governor (either elected or appointed) shall immediately cease to do so if:
  - 6.1. They resign by notice to the Secretary;
  - 6.2. They fail to attend three meetings of the Council of Governors either consecutively or in any period of 12 months unless the other Governors are satisfied that:
    - 6.2.1. The absences were due to reasonable causes; and
    - 6.2.2. They will be able to start attending meetings of the Trust again within such a period as the Council of Governors considers reasonable;
  - 6.3. They are disqualified from continuing to be a Governor under paragraph 5 above;

6.4. They have failed without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;

6.5. If within one calendar month of appointment, they have failed to sign and deliver a statement to the Secretary in a form required by the Trust confirming acceptance and agreement to abide by the Trust's Code of Conduct for Governors;

7. A Governor may also be removed from the Council of Governors on the grounds that:

7.1. They committed a serious breach of the Trust's Code of Conduct for Governors; or

7.2. They have acted in a manner detrimental to the interests of the Trust; or

7.3. They have brought the Trust into disrepute.

and the Council of Governors considers that it is not in the best interests of the Trust for them to continue as a Governor;

8. Where a person has been elected or appointed to be a Governor and they become disqualified for appointment under the provisions of paragraph 5 above, they shall notify the Secretary in writing of such disqualification as soon as practicable. If it comes to the notice of the Secretary at the time of their appointment or election or later, that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and they shall cease to act as a Governor;

9. Where a person has been declared disqualified by the Secretary under the provisions of paragraph 8, they may appeal the Secretary's decision to the Chair, whose decision on the matter will be final. The appeal must be submitted in writing within a 6-month period from the disqualification;

10. The Council of Governors is required to agree a clear policy and a fair process for consideration of the removal of any Governor (elected or appointed) under paragraphs 6.2, 6.4, 6.5 and/or paragraph 7 above. The policy is set out in the "Standard Operating Procedure (SOP) for the Removal of a Governor from the Council of Governors" and it looks firstly to find a local resolution to any allegations or concerns that have been raised against the Governor. Where local resolution is not possible, an investigation will be carried out and its findings considered by the Council's Standards Committee.

11. The Council of Governors will establish a Standards Committee, to be chaired by the Lead Governor. The Committee will consider the investigation carried out into the allegations or concerns raised that may lead to the removal or censure of a Governor. The Standards Committee shall provide a mechanism for Governor peer review and accountability and shall be established with formal Terms of Reference, to be agreed by the Council of Governors. The Terms of Reference must make provision for an alternative committee chair if the investigation involves the Lead Governor and one of its members must be a Lead Governor from a different Council of Governors. The decision of the Standards Committee will be communicated to the Governor under investigation and the action recommended by the Committee should be implemented by the Chair.

12. Where the action recommended by the Standards Committee is the removal of the Governor from the Council of Governors, a resolution to that effect must be approved by a majority of the Governors present and voting at a Council of Governors meeting;

13. A Governor who resigns or whose term of office ends under paragraph 6 shall not be eligible to stand for re-election, or for re-appointment in the case of Appointed Governors, for a period of 12 months from the end of their term of office. For the avoidance of doubt, a Governor who is removed from office under paragraph 12 shall not be eligible to stand for re-election, or for re-appointment in the case of Appointed Governors, for a period of 3 years and they will require approval from the majority of the Council of Governors present and voting at a Council of Governors meeting before they can re-stand for election or re-appointment;<sup>13</sup>

#### **Vacancies amongst Governors**

14. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply;
15. Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office;
16. Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
  - 16.1. To call an election within twelve months to fill the seat for the remainder of that term of office; or
  - 16.2. To invite the next highest polling candidate for that seat at the most recent election to fill the seat until the next election or for the unexpired term of office of the vacant seat, whichever is the earlier, subject to a minimum term of six months, at which time the seat will fall vacant and subject to election. Should that candidate decline, the Council of Governors may approach each of the remaining next highest polling candidates in order until the seat is filled, save that the Council of Governors may adopt this process on no more than two occasions within 12 months of the last election for that seat; or
  - 16.3. If the unexpired period of the term of office is less than twelve months, to leave the seat vacant until the next elections are held.
  - 16.4. In exceptional circumstances and as agreed by both Board and CoG that expiring terms may be extended for a further 12 months.
17. For the purposes of determining the length of time a Governor has held office (and therefore their eligibility to seek re-election or re-appointment as a Governor according to paragraph 14 of the Constitution), the period between a Governor taking office as a consequence of paragraphs 13 to 15 of Annex 4 and the end of that term of office shall be treated as one year.

#### **Declaration**

18. Section 60 of the 2006 Act requires persons standing for and voting in the elections to make a declaration setting out the particulars of their qualifications to vote or stand as a member of the constituency for which the election is being held. This requirement does not apply to Staff Governors (Section 60(4) of the 2006 Act). A member of the Public Constituency may not stand for, or vote at, an election for a Public Governor unless within seven days before they vote they have made a declaration in the forms specified below that they are qualified to vote as a member of the relevant area of the Public Constituency and (if standing for election) that they are not prevented from being a member of the Council of Governors. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.



**19.** The declarations referred to in paragraph 16 will be as follows:

Declaration pursuant to S60(1) of entitlement to vote in an election for the Public Constituency:

"I hereby declare that I am at the date of this declaration a member of the Public Constituency, by reason of living at [ ] in the constituency for which this election is being held"

Declaration pursuant to S60(2) of entitlement to stand as a Governor:

"I hereby declare that I am at the date of this declaration a member of the Public Constituency by reason of living at [ ] in the constituency for which this election is being held and I am not prevented from being a member of the Council of Governors by reason of any of the matters set out in Annex 4, Paragraph 5 of the Constitution of the Trust"

Declaration to be made by Governors prior to Council of Governors' meetings pursuant to S60(3):

Declaration to the Secretary of Dorset County Hospital NHS Foundation Trust

"I hereby declare that at the date of this declaration I am not prevented from being a member of the Council of Governors under the provisions in the Constitution."

## **Annex 5 – Additional Provisions: Board of Directors**

### **Appointment of Chair and other Non-Executive Directors**

The Chair and the Non-Executive Directors are to be appointed by the Council of Governors in accordance with paragraph 26 of the Constitution using the following procedure:

1. The Council of Governors will maintain a policy for the composition of the Non-Executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
2. The Council of Governors will normally work with an external organisation recognised as expert at appointments to identify the skills and experience required for Non-Executive Directors.
3. Appropriate candidates (not usually more than five for each vacancy) will be identified by a Nominations and Remuneration Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.
4. The Nominations and Remuneration Committee will comprise the Chair (or, when a Chair is being appointed, the Senior Independent Director unless they are standing for appointment, in which case another Non- Executive Director), two public Governors, one staff Governor and one appointed Governor. The Nominations and Remuneration Committee will be advised by an independent assessor, who may be a chair of another NHS foundation Trust. The Chief Executive will be entitled to attend meetings of the Nominations and Remuneration Committee unless the Committee decides otherwise and the Committee shall take into account the Chief Executive's views.
5. The Nominations and Remuneration Committee will make a recommendation to the Council of Governors for approval.
6. Any re-appointment of a Non-Executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors has approved.

### **Removal of Chair and other Non-Executive Directors**

The Chair or another Non-Executive Director may be removed by the Council of Governors in accordance with paragraph 26 of the Constitution, subject to the following procedure:

7. Any proposal for removal must be proposed by a Governor and seconded by not less than eight Governors including at least two elected Governors and two appointed Governors.
8. Written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given the opportunity to respond to such reasons.
9. In making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chair.
10. If any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within 12 months of the meeting.

**Further provisions as to eligibility to be a Director**

11. A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if:
  - 11.1. They are a Governor of the Trust or a Governor of another NHS foundation trust;
  - 11.2. They are a member of the Trust's Patients Forum;
  - 11.3. They are a Director, or holds an equivalent role, of another NHS Trust or NHS Foundation Trust except with the approval of the Board of Directors and in the case of a Non-Executive Director, with the approval of the Council of Governors;
  - 11.4. They have, or is a member of a committee which has, any role on behalf of a local authority or the Welsh Parliament to scrutinise and review health matters including a local authority's scrutiny committee covering health matters;
  - 11.5. They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 11.6. They have, within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body as outlined in section 9 of the 2006 Act ;
  - 11.7. They are a person whose tenure of office as the Chair or as a member, Governor or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
  - 11.8. They have had their name removed from any list prepared under chapter 6 of the 2006 Act or the equivalent lists maintained in Wales or has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable);
  - 11.9. They are a person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council, in accordance with the Medical Act 1983, or has been suspended from that register, and not subsequently has their name returned to the register.
  - 11.10. They fail to disclose an interest required to be disclosed under the Constitution and three quarters of the Board (and, in the case of a Non-Executive Director, a majority of the Council of Governors) agreed that they should permanently vacate office;
  - 11.11. In the case of a Non-Executive Director, they have failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
  - 11.12. They have failed to sign and deliver to the Secretary a statement in the form requirement by the Board of Directors confirming acceptance of the code of conduct for Directors;

- 11.13. They are not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or Condition G4 of the Trust's Licence;
- 11.14. Disclosures revealed by a Disclosure and Barring Service check against them are such that it would be inappropriate for them to become or continue as a Director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 11.15. They are the subject of an order under the Sexual Offences Act 2003.
- 11.16. They are included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list

#### **Remuneration, allowances and expenses**

12. The Trust may reimburse Directors for travelling and other costs and expenses at such rates as the Nominations and Remuneration Committee decides. These rates are to be disclosed in the annual report.
13. The remuneration and allowances for Directors are to be disclosed in the annual report.

#### **Secretary**

14. The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, the Chief Executive or the Chief Finance Officer.
15. The Secretary's functions shall include:
  - 15.1. acting as Secretary to the Council of Governors, the Board of Directors and any committees of the Board;
  - 15.2. summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors and keeping the minutes of those meetings;
  - 15.3. keeping the register of members and other registers and books required by this Constitution to be kept;
  - 15.4. having charge of the Trust's seal;
  - 15.5. publishing to members in an appropriate form information which they should have about the Trust's affairs;
  - 15.6. preparing and sending to NHSI and any other statutory body all returns which are required to be made.
16. The Secretary is to be appointed and removed by the Board of Directors.

## Annex 6 – Standing Orders for the Practice and Procedure of the Council of Governors

(Paragraph 18)

### Interpretation

- 1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they shall be advised by the Secretary).
- 1.2 If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
- 1.3 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

**Board of Directors** shall mean the Chair and Non-Executive Directors and the Executive Directors.

**Chair** is the person appointed as Chair by the Council of Governors in accordance with this Constitution. The expression “the Chair” shall be deemed to include the Vice Chair or otherwise a Non-Executive Director appointed to preside for the time being over meetings.

**Chief Executive** shall mean the Chief Executive officer of the Trust.

**Committee** shall mean a committee appointed by the Council of Governors. Such committees shall be advisory only.

**Committee members** shall be persons formally appointed by the Council of Governors to sit on or to chair specific committees.

**Constitution** means the Constitution of the Trust and all annexes to it, as may be amended from time to time.

**Council of Governors** means the Council of Governors of the Trust

**Director** shall mean a person appointed to the Board of Directors in accordance with the Trust’s Constitution and includes the Chair.

**Executive Director** means a Director appointed by the relevant Committee of the Board who is a full or part-time employee of the Trust or the holder of an executive office

**Governor** means a Governor on the Council of Governors.

**Lead Governor** means the person(s) appointed by the Council of Governors in accordance with Annex 4 paragraphs 3 and 4 of the Constitution to be Lead Governor of the Council of Governors.

**Meeting** means a duly convened meeting of the Council of Governors;

**Motion** means a formal proposition to be discussed and voted on during the course of a meeting.

**Nominated Officer** means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

**Non-Executive Director** means a Director appointed by the Council of Governors who is not a full or part-time employee of the Trust or the holder of an executive office

**Officer** means an employee of the Trust.

**Question on Notice** means a question from a Governor (notice of which has been given pursuant to Standing Order 4.7.2) about a matter over which the Council has powers or duties or which affects the services provided by the Trust;

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

**Senior Independent Director** means one of the Non-Executive Directors who is appointed to be available to Governors if they have concerns that contact through the usual channels has failed to resolve. The Senior Independent Director could be the Vice Chair

**SOs** means Standing Orders.

### **General Information**

- 2.1. These Standing Orders for the practice and procedure of the Council of Governors are the standing orders referred to in paragraph 18 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 4.14 below.
- 2.2. The purpose of the Council of Governors' Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all meetings of the Council of Governors and associated deliberations. The Council shall always seek to comply with the Trust's Code of Conduct for Governors.
- 2.3. All business shall be conducted in the name of the Trust.
- 2.4. A Governor who has acted honestly and in good faith will not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their functions as a Governor save where the Governor has acted recklessly. Any costs arising in this way will be met by the Trust. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

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

- 3.1. The composition of the Council of Governors shall be in accordance with paragraph 12 and Annex 3 of the Constitution.
- 3.2. If the person presiding at any meeting of the Council of Governors has a conflict of interest in relation to the business being discussed, a Non-Executive Director will chair that part of the meeting.
- 3.3. A Senior Independent Director will be appointed to act as a further point of contact with the Council of Governors in accordance with paragraph 27 of the Constitution.

### **Meetings of the Council of Governors**

- 4.1. Admission to meetings
  - 4.1.1 Meetings of the Council of Governors must be open to the public (which, for the avoidance of doubt, includes representatives of the press), subject to 4.1.2 and 4.1.3 below.
  - 4.1.2 The Council of Governors may resolve to exclude members of the public or a representative from the press from any meeting or part of a meeting for reasons of commercial confidentiality or for other special reasons.
  - 4.1.3 The Chair may exclude any member of the public or representative from the press from the meeting of the Council of Governors if they consider that that member of the public or representative from the press is interfering with or preventing the proper conduct of the meeting or for other special reasons.
  - 4.1.4 Meetings of the Council of Governors shall be held at least four times each financial year at such times and places that the Chair may determine.
  - 4.1.5 In exceptional circumstances, a member of the Council who is not present at the meeting may participate in the meeting and count towards the quorum if the absent member can hear the voices of the other members and they can hear the voice and see the absent member director by video or computer link.

- 4.1.6 Without prejudice to the power of the Council of Governors to require one or more of the Directors to attend a meeting of the Council of Governors for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and decide whether to propose a vote on the Trust's or Directors' performance) at paragraph 17.3 of the Constitution, the Council of Governors may invite the Chief Executive, one or more Directors or a representative of the auditor or other advisors, as appropriate, to attend any meeting of the Council of Governors to enable Governors to raise questions about the Trust's affairs.
- 4.2. Calling Meetings
- 4.2.1 Meetings of the Council of Governors may be called by the Secretary or the Chair or ten Governors (including at least five elected Governors and one appointed Governor) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If upon receipt of such a request, the Secretary fails to call such a meeting, the Chair or four Governors, whichever is the case, shall call the meeting.
- 4.2.2 All decisions taken in good faith at a meeting of the Council of Governors shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting or the appointment or election of the Governors attending the meeting.
- 4.3. Notice of Meetings
- 4.3.1 The Secretary shall deliver a schedule of the dates, times and venues of meetings of the Council of Governors for each financial year, three months in advance of the first meeting of the Council of Governors to be called, duly signed by the Chair or by an Officer of the Trust authorised by the Chair to sign on their behalf, to every Governor, or send such schedule by post to the usual place of residence of such Governor. The Council will meet no less than four times in a financial year. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to 4.3.4 below.
- 4.3.2 Notwithstanding 4.3.1, and subject to 4.3.3, should an additional meeting of the Council of Governors be called pursuant to 4.2, the Secretary shall, as soon as possible, deliver written notice of the date, time and venue of the meeting to every Governor, or send by post to the usual place of residence of such Governor, so as to be available to them at least fourteen days but not more than twenty-eight days' notice before the meeting. Such notice will also be published on the Trust's website.
- 4.3.3 The Chair may waive the notice required pursuant to 4.3.2 in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.4 Subject to 4.3.3, failure to serve notice on more than three quarters of Council of Governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.
- 4.3.5 Before each meeting of the Council of Governors, the Secretary shall ensure that every Governor is provided with reasonable notice of the details of the business to be transacted in it. In the case of a meeting called by Governors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

4.4. Setting the Agenda

- 4.4.1 The Secretary shall ensure an agenda, minutes of the previous meeting of the Council of Governors, copies of any questions on notice and/or motions on notice to be considered at the relevant meeting of the Council of Governors. Supporting papers are circulated to every Governor via electronic means, or made available in paper copy, as required, normally at least five days in advance of the meeting.
- 4.4.2 Approval of the minutes of the previous meeting of the Council of Governors will be a specific item on each agenda.
- 4.4.3 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair at least ten working days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

4.5. Chair of Meeting

- 4.5.1. At any meeting of the Council of Governors, the person presiding shall be determined in accordance with paragraph 17.1 of the Constitution.
- 4.5.2. At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting or the Council of Governors is meeting to appoint or remove the Chair or decide their remuneration and allowances and other terms and conditions of office or outcome of annual appraisal, the Vice Chair shall preside.
- 4.5.3. If the Vice Chair is absent from the meeting, or the Council of Governors is meeting to appoint or remove the Vice Chair or decide their remuneration and allowances and other terms and conditions of office, the Senior Independent Director shall preside.
- 4.5.4. If the person presiding at any meeting of the Council of Governors has a conflict of interest in relation to the business being discussed, a Non-Executive Director will chair that part of the meeting.

4.6. Notices of Motions

- 4.6.1 Motions by the Council of Governors may only concern matters for which the Council of Governors has a responsibility or which affect the services provided by the Trust.
- 4.6.2 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governor who gave it and the signature of four other Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any Governor to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 4.6.3 Subject to 4.6.5 and except in the circumstances covered by 4.8, Governors desiring to move or amend a motion shall send a written notice thereof at least ten working days before the meeting at which it is proposed to be considered to the Secretary, such written notice to be signed or transmitted by at least two Governors. For the purposes of this 4.6, receipt of such motions by electronic means is acceptable.
- 4.6.4 Upon receipt of a motion, the Secretary shall:
  - 4.6.4.1 acknowledge receipt in writing to each of the Governors who signed or transmitted it; and
  - 4.6.4.2 insert this in the agenda for that meeting, together with any relevant papers.

- 4.6.5 The following motions may be moved at any meeting without notice:
    - 4.6.5.1 To amend the minutes of the previous meeting of the Council of Governors in order to ensure accuracy;
    - 4.6.5.2 To change the order of business in the agenda for the meeting;
    - 4.6.5.3 To refer a matter discussed at a meeting to an appropriate body or individual;
    - 4.6.5.4 To appoint a working group arising from an item on the agenda for the meeting;
    - 4.6.5.5 To receive reports or adopt recommendations made by the Board of Directors;
    - 4.6.5.6 To withdraw a motion;
    - 4.6.5.7 To amend a motion;
    - 4.6.5.8 To proceed to the next business on the agenda;
    - 4.6.5.9 That the question be now put;
    - 4.6.5.10 To adjourn a debate;
    - 4.6.5.11 To adjourn a meeting;
    - 4.6.5.12 To exclude the public and press from the meeting in question pursuant to 4.1.2 (in which case, the motion shall state on what grounds such exclusion is appropriate).
    - 4.6.5.13 To not hear further from a Governor, or to exclude them from the meeting in question (if a member persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in their absolute discretion, may move that the Governor in question will not be heard further at that meeting and, if seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specific period. If seconded, that motion will be voted on without discussion.)
    - 4.6.5.14 To give the consent of the Council of Governors to any matter on which its consent is required pursuant to the Constitution.
  - 4.6.6 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.7. Questions on Notice at Meetings
- 4.7.1 Subject to 4.7.2, a Governor may ask a Question on Notice of:
    - 4.7.1.1 the Chair;
    - 4.7.1.2 another Governor;
    - 4.7.1.3 an Executive Director; or
    - 4.7.1.4 the chair of any sub-committee or working group of the Council.
  - 4.7.2 Except in the circumstances covered by 4.8, notice of a Question on Notice must be given in writing to the Secretary at least ten days prior to the relevant meeting. For the purposes of this Standing Order 4.7, receipt of any such Questions on Notice via electronic means is acceptable.
  - 4.7.3 A response to a Question on Notice may take the form of:
    - 4.7.3.1 A direct oral answer at the relevant meeting (which may, where the desired information is in a publication of the Trust or other published work, take the form of a reference to that publication);
    - 4.7.3.2 Where a direct oral answer cannot be given, a written answer which will be circulated as soon as reasonably practicable to the questioner and circulated to the remaining Governors with the agenda for the next meeting.
  - 4.7.4 Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Chair.

- 4.8. Urgent motions or questions
- 4.8.1 The Chair may, in their opinion, table an urgent motion or question.
- 4.8.2 A Governor may submit an urgent motion or question in writing to the Secretary before the commencement of the meeting at which it is proposed it should be considered.
- 4.9. Reports from the Executive Directors
- 4.9.1 At any meeting, a Governor may ask any question on any report by an Executive Director or another Officer through the Chair without notice, after that report has been received by or while such report is under consideration by the Council of Governors at the meeting.
- 4.9.2 Unless the Chair decides otherwise, no statements will be made by a Governor other than those which are strictly necessary to define or clarify any questions posed pursuant to 4.9.1 and, in any event, no such statement may last longer than three minutes each.
- 4.9.3 A Governor who has asked a question pursuant to 4.9.1 may ask a supplementary question if the supplementary question arises directly out of the reply given to the initial question.
- 4.9.4 The Chair may, in their absolute discretion, reject any question from any Governor if, in the opinion of the Chair, the question is substantially the same and relates to the same topic as a question which has already been put to the meeting or a previous meeting.
- 4.9.5 At the absolute discretion of the Chair, questions may, at any meeting which is held in public, be asked of the Executive Directors present by members of the Trust or any other members of the public present at the meeting.
- 4.10. Speaking
- This Standing Order applies to all forms of speech/debate by Governors or members of the Trust and public in relation to a motion or question under discussion at a meeting of the Council of Governors.
- 4.10.1 Any approval to speak must be given by the Chair.
- 4.10.2 Speeches must be directed to the matter, motion or question under discussion or to a point of order.
- 4.10.3 Unless in the opinion of the Chair it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature, complexity or importance, no proposal, speech nor any reply may exceed three minutes.
- 4.10.4 The Chair may, in their absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.
- 4.10.5 A person who has already spoken on a matter at a meeting may not speak again at that same meeting in respect of that matter unless exercising a right of reply or speaking on a point of order.
- 4.11. Chair's Ruling
- Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- 4.12. Voting
- 4.12.1 Subject to the provisions of this Constitution, decisions at meetings shall be determined by a majority of the votes of the Governors present and voting.
- 4.12.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request or if the Chair so directs.

- 4.12.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
  - 4.12.4 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
  - 4.12.5 In no circumstances may an absent Governor vote by proxy. Subject to paragraph 4.17.3, absence is defined as being absent at the time of the vote.
  - 4.12.6 An elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a Governor on the Council of Governors. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors and every agenda for meetings of the Council of Governors shall draw this to the attention of the elected Governors.
  - 4.12.7 In the event that a decision is required ahead of the next Council of Governors meeting a virtual vote will be proposed. Virtual voting shall be undertaken via a secure electronic system and will be passed by a simple majority of the number of Governors on Council. Public Governors must be the majority of those voting. The decision will be ratified at the next public Council of Governors meeting
- 4.13. Suspension of Standing Orders (SOs)
- 4.13.1 Except where this would contravene any statutory provision or a direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present and that a majority of those present vote in favour of suspension.
  - 4.13.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
  - 4.13.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
  - 4.13.4 No formal business may be transacted while SOs are suspended.
  - 4.13.5 The Trust's Audit Committee shall review every decision to suspend SOs.
- 4.14. Variation and Amendment of Standing Orders
- These Standing Orders shall be amended only in accordance with the procedure set out in paragraph 44 of the Constitution and only if:
- 4.14.1 a motion to amend the Standing Orders is signed by five Governors (including at least three elected Governors and two appointed Governors) and submitted to the Secretary in writing at least 21 days before the meeting at which the motion is intended to be proposed; and
  - 4.14.2 the majority of the Governors present and voting vote in favour of the amendment.
- 4.15. Record of Attendance
- 4.15.1 The names of the Governors present at the meeting (including when present pursuant to paragraph 4.17.3) shall be recorded in the minutes.
  - 4.15.2 Governors who are unable to attend a meeting shall notify the Secretary in writing in advance of the meeting in question in order that their apologies are submitted.
- 4.16. Minutes
- 4.16.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting.
  - 4.16.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
  - 4.16.3 The minutes of the meeting shall be made available to the public except for

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minutes relating to business conducted when members of the public and press are excluded pursuant to 4.1.2 unless otherwise required by law.

4.17. Quorum

- 4.17.1 Ten Governors shall form a quorum including not less than five elected Governors, and not less than one appointed Governor.
- 4.17.2 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 4.17.3 The Council of Governors may agree that its members can participate in its meetings by live and uninterrupted video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

**Arrangements for the Exercise of Functions by Delegation**

- 5.1 The Council of Governors may not delegate any of its powers to a committee or sub-committee, although it may appoint committees consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties. Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

**Confidentiality**

- 6.1 A Governor on the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission unless:
  - 6.1.1 it is reported to the Council of Governors; or
  - 6.1.2 the matter is in the public domain; or
  - 6.1.3 disclosure is required by law.
- 6.2 Members of the Nominations and Remuneration Committee shall not disclose any matter dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or the Committee resolves that it is confidential.

**Declaration of Interests and Register of Interests**

- 7.1. Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests to the Council in accordance with paragraph 20 of the Constitution and any other material interest as defined below. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.2. Subject to the exceptions in 7.3, a "material interest" is:
  - 7.2.1 any Directorship of a company;
  - 7.2.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Trust;
  - 7.2.3 any interest in an organisation providing health and social care services to the National Health Service;
  - 7.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 7.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.

- 7.3. The exceptions which shall not be treated as material interests for the purposes of these provisions are as follows:
- 7.3.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 7.3.2 an employment contract with the Trust held by a Staff Governor;
  - 7.3.3 an employment contract with a local authority held by a Local Authority Governor;
  - 7.3.4 an employment contract with or other position of authority within an appointing organisation held by an Appointed Governor.
- 7.4. Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or their spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:
- 7.4.1 shall withdraw from the meeting;
  - 7.4.2 play no part in the relevant discussion or decision; and
  - 7.4.3 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 7.5. Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 7.6. If a Governor has any doubt about the relevance of an interest, they should discuss it with the Chair who shall advise them whether or not to disclose the interest.
- 7.7. At the time a Governor's interests are declared, they should be recorded in the Council of Governors' minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next meeting of the Council of Governors following the change occurring.
- 7.8. Governors' Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

### **Register of Interests**

- 8.1. The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 8.2. Details of the Register will be kept up to date and reviewed annually.
- 8.3. The Register will be available to the public.

### **Compliance - Other Matters**

- 9.1 All Governors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Chief Finance Officer and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.3 All Governors must behave in accordance with the Trust's Code of Conduct for Governors as amended from time to time and the seven Nolan principles of behaviour in Public Life: -
  - Selflessness;
  - Integrity;
  - Objectivity;
  - Accountability;
  - Openness;
  - Honesty, and
  - Leadership.

### **Resolution of Disputes with Board of Directors**

- 10.1 Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below shall be followed.
- 10.2 The Chair, or Vice Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 10.3 Failing resolution under 10.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4 The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.6 The Chair or Vice Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.2 above shall be repeated. The Disputes Statement must this time set out whether the referral of matter to independent mediation has been considered and if the option of independent mediation has been rejected or has proven unsuccessful in facilitating a resolution.
- 10.7 If, in the opinion of the Chair or Vice Chair (if the dispute involves the Chair) and following the further discussions/independent mediation prescribed in 10.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Vice Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and Board of Directors accordingly.
- 10.8 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.9 On the unsatisfactory completion of this disputes process, the view of the Board of Directors shall prevail.
- 10 Nothing in this procedure shall prevent the Council of Governors, if it so desires and acting through the Lead Governor, from informing NHS England that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

### **Council Performance**

- 11.1 The Chair shall, at least annually, lead a performance assessment process for the Council of Governors to enable the Council of Governors to review its roles, structure and composition, and procedures, taking into account emerging best practice.
- 11.2 The performance assessment process shall include a review of the input into the Council of Governors of each appointing organisation.

## Annex 7 – Standing Orders for the Practice and Procedure of the Board of Directors

(Paragraph 31)

### Introduction

- 1.1 The Dorset County Hospital NHS Foundation Trust is a public benefit corporation. The Trust is established under the National Health Service Act 2006 (the 2006 Act).
- 1.2 These Board Standing Orders form a core part of the governance framework within which the Board, Committees, Directors and staff must operate. They should be considered in conjunction with the Matters Reserved for the Board, the Scheme of Delegation and the Standing Financial Instructions.
- 1.3 All Executive and Non-Executive Directors and senior staff are expected to be aware of the existence of these documents, understand when they should be referred to and, where necessary and appropriate to their role, make themselves familiar with the detailed provisions.

### Interpretation

- 2.1. Save as permitted by law, and subject to the Constitution, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (SOs) (on which they should be advised by the Secretary).
- 2.2. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
- 2.3. Any expression to which a meaning is given in the 2006 Act and other Acts relating to the National Health Service shall have the same meaning in this interpretation and in addition:-

**Accounting Officer** shall be the Officer responsible and accountable for funds entrusted to the Trust. They shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive

**Appointed Governor** means an appointed representative from a key stakeholder Board or Board of Directors shall mean the Chair, Non-Executive Directors and the Executive Directors appointed in accordance with the Constitution

**Budget** shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust

**Chair** is the person appointed by the Council of Governors in accordance with the Constitution to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole

**Chief Executive** shall mean the Chief Executive Officer of the Trust

**Chief Finance Officer** shall mean the chief finance officer of the Trust

**Committee** shall mean a committee appointed by the Board

**Committee members** shall be persons formally appointed by the Board to sit on or to chair specific committees

**Constitution** shall mean the Constitution with any variations from time to time approved by the Board of Directors and the Council of Governors

**Council of Governors** means the Council of Governors of the Trust as constituted in accordance with the Constitution

**Director** shall mean a person appointed as a Director of the Board in accordance with the Constitution and includes the Chair

**Executive Director** means a Director appointed by the relevant Committee of the Board who is a full or part-time employee of the Trust or the holder of an executive office

**Motion** means a formal proposition to be discussed and voted on during the course of a meeting

**Nominated officer** means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs

**Non-Executive Director** shall mean a member of the Board of Directors who is not an employee of the Trust and who is appointed by the Council of Governors in accordance with the Constitution

**Officer** means an employee of the Trust

**Petition** means a formal written request sent into the Trust by members of the public calling for some form of action by the Board.

**Secretary** means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust, including a Joint, Assistant or Deputy Secretary

**Senior Independent Director** means one of the Non-Executive Directors who is appointed to be available to Governors if they have concerns that contact through the usual channels has failed to resolve. The Senior Independent Director could be the Vice Chair

**SFIs** means Standing Financial Instructions

**SOs** means Standing Orders

**Trust** means Dorset County Hospital NHS Foundation Trust which is a public benefit corporation

**Vice Chair** means the Non-Executive Director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason or is unable to act due to a conflict of interest

## The Trust

- 3.1 All business shall be conducted in the name of the Trust.
- 3.2 All funds received in Trust shall be in the name of the Trust as corporate trustee. In relation to funds held on Trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 3.3 Directors acting on behalf of the Board as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission for England and Wales and to NHSE. Accountability for non-charitable funds held on trust is only to NHSE.
- 3.4 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Matters Reserved for the Board and the Scheme of Delegation for the Board and have effect as if incorporated into the SOs.
- 3.5 **Composition of the Trust Board of Directors** - The composition of the Board of Directors shall be as set out in paragraph 23 of the Trust's Constitution.
- 3.6 **Appointment of the Chair and Directors** - The Chair and Non-Executive Directors are appointed in accordance with paragraph 26 of the Constitution and Executive Directors in accordance with paragraph 28 of the Constitution.
- 3.7 The roles of the Chair and the Chief Executive must not be undertaken by the same individual.
- 3.8 The Chief Executive should not go on to be the Chair of the same NHS Foundation Trust
- 3.9 **Terms of Office of the Chair and Directors** - The procedure governing the period of tenure of office of the Chair and Directors is contained in paragraph 33 of the Constitution.

- 3.10 **Appointment of Vice Chair** - For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Council of Governors may appoint a Non-Executive Director to be Vice Chair for such a period, not exceeding the remainder of their term as Non-Executive Director of the Trust, as they may specify on appointing them.
- 3.11 Any Non-Executive Director so elected may at any time resign from the office of Vice Chair by giving notice in writing to the Chair and/or the Secretary and the Council of Governors may thereupon appoint another Non- Executive Director as Vice Chair in accordance with paragraph 3.6.
- 3.12 **Powers of Vice Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, the Vice Chair shall act as Chair until a new Chair is appointed in accordance with paragraph 26 of the Constitution or the existing Chair resumes their duties, as the case may be. References to the Chair in these SOs shall, so long as there is no Chair able to perform their duties, be taken to include references to the Vice Chair.
- 3.13 **Shared roles for Board Directors** - Where more than one person is appointed to share a post on the Board which qualifies the holders for Executive Directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of Standing Order 3.6 as one person.  
Where a post of a Board member is shared by more than one person:  
(a) both shall be entitled to attend meetings of the Board  
(b) either shall be eligible to vote in the case of agreement between them  
(c) in the case of disagreement between them no vote should be cast  
(d) the presence of either or both shall count as one person for the quorum.
- 3.14 **Board appointments made jointly with other NHS bodies** – For the avoidance of doubt, any board appointment to support joint working arrangements as set out in paragraph 4.6 – 4.8 of the Constitution must, where appropriate, be made in accordance with paragraph 11.3 of Annex 5.

### Meetings of the Board of Directors

- 4.1 Meetings of the Board of Directors must be open to the public, unless the Board in its absolute discretion decides otherwise in relation to all or part of such meetings for reasons of commercial sensitivity or for other special reasons.
- 4.2 The Chair shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that business shall be conducted without interruption and disruption. The Chair may exclude any member of the public or representative from the press from the meeting of the Board of Directors if they consider that that member of the public or representative from the press is interfering with or preventing the proper conduct of the meeting.
- 4.3 Any record of the proceedings taken by the public or representatives of the press shall only be in writing unless otherwise agreed by the Board of Directors.
- 4.4 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board may determine.

The Chair of the Trust or Secretary may call a meeting of the Board of Directors at any time. At least one-third of the whole number of Board members may call a meeting of the Board at any time upon submitting a request in writing to the Secretary. If a meeting is not then called within a period of at least fourteen but not more than twenty-eight days of a request being presented, then one-third or more Directors may call such a meeting.

All decisions taken in good faith at a meeting of the Board of Directors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, a vacancy on the Board of Directors, or defect in the appointment of the Directors attending the meeting.

- 4.5 **Notice of Meetings** - Before each meeting of the Trust, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every Director, or sent by post or email to their usual place of residence, so as to be available to them at least five working days before the meeting. The Chair may waive the notice required pursuant to this paragraph in the case of emergencies or in the case of the need to conduct urgent business.
- 4.6 Lack of service of the notice on any Director shall not affect the validity of a meeting.
- 4.7 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.8 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.
- 4.9 A public notice of the date, time and place of each Board meeting will also be displayed at the Trust's headquarters at least three working days before the meeting.
- 4.10 **Setting the Agenda** - The agenda for all the meetings of the Trust will be prepared by the Chair and Chief Executive, assisted by the Secretary.
- 4.11 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted.
- 4.12 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least ten working days before the meeting, subject to SO 4.5. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.13 **Petitions** - Where a petition has been received by the Trust, the Chair shall decide whether this should be placed before the Board of Directors and/or the Council of Governors.
- 4.14 **Chair of Meeting** - At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Vice Chair, if there is one and they are present, shall preside. If the Chair and Vice Chair are absent, such Non-Executive Director as the Directors present shall choose shall preside.

- 4.15 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.
- 4.16 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one third of the whole number of Directors is present, including at least one Executive Director and one Non-Executive Director.
- 4.17 An officer in attendance for an Executive Director at the Board of Directors but without formal acting up status may not count towards the quorum.
- 4.18 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 7 and/or 8), they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 4.19 **Annual Members' Meeting** - In accordance with the Constitution the Trust will publicise and hold a members' meeting (the "Annual Members' Meeting") within nine months of the end of the financial year.
- 4.20 **Notices of Motion** - A Director desiring to move or amend a motion shall send a written notice thereof at least ten working days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 4.7.
- 4.21 **Withdrawal of Motion or Amendments** - The proposer may withdraw a motion or amendment, once moved and seconded, with the concurrence of the seconder and the consent of the Chair.
- 4.22 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be possible for any Director other than the Chair to propose a motion to the same effect within six months; however, the Chair may do so if they consider it appropriate.
- 4.23 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any consequent amendment to it.
- 4.24 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- An amendment to the motion.
  - The adjournment of the discussion or the meeting.
  - That the meeting proceed to the next business. (\*)
  - The appointment of an ad hoc committee to deal with a specific item of business.
  - That the motion be now put. (\*)

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

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

- 4.25 Subject to the agreement of the Chair, a Director may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.
- 4.26 **Attendance at Meetings**
- 4.26.1. The Board of Directors may in exceptional circumstances agree that its members can participate in its meetings by video or computer link provided it remains live and uninterrupted. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 4.26.2. Directors who are unable to attend a meeting should advise the Secretary in advance of the meeting so that their apologies may be submitted.
- 4.27 **Chair's Ruling** - Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- 4.28 **Voting** - Subject to any legal requirements or any requirements of the Constitution, if in the opinion of the Chair, a vote should be required on a question at the meeting, it shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.29 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request or the Chair so direct.
- 4.30 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.31 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.32 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote, subject to SO 4.26.
- 4.33 An officer who has been appointed formally by the Board to act up for an Executive Director during a period of temporary incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.
- 4.34 **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it. In accordance with paragraph 30.2, a copy of the minutes, following agreement from the Board, will be made available to the Council of Governors.

- 4.35 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.36 Minutes shall be circulated in accordance with the Directors' wishes. Where providing a record of a public meeting, the minutes shall be made available to the public.
- 4.37 **Suspension of Standing Orders** - Except where this would contravene any provision of the Constitution or authorisation or any statutory provision or any direction made by NHS England, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Directors are present. This shall include at least one Executive Director and one Non-Executive Director and a majority of those present vote in favour of suspension.
- 4.38 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.39 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
- 4.40 No formal business may be transacted while SOs are suspended for procedural purposes.
- 4.41 The Audit Committee shall review every decision of the Board of Directors to suspend SOs.
- 4.42 **Variation and Amendment of Standing Orders** - These Standing Orders may only be amended in accordance with the Constitution and, in addition, only if:
- A notice of motion under SO 4.20 has been given; and
  - No fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
  - At least two-thirds of the Directors are present; and
  - The variation proposed does not contravene a statutory provision or direction.
- 4.43 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.

#### **Arrangements for the Exercise of Functions of the Board of Directors by Delegation**

- 5.1. Subject to the Constitution, any legal requirements and such directions as may be given by NHS England, the Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee of Directors, appointed by virtue of SO 6 or by an Executive Director in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2. **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders (SO 3.4) may in emergency be exercised by the Chief Executive and the Chair, after having consulted and obtained the agreement of the Chair and at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for Directors for ratification.

- 5.3. **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees which it has formally constituted including any joint committees constituted to further joint working arrangements subject to paragraphs 4.6-4.8 of the Constitution). The Constitution and terms of reference of these committees or sub-committees, and their specific executive powers shall be approved by the Board of Directors.
- 5.4. **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Board of Directors.
- 5.5. The Chief Executive shall prepare a Scheme of Delegation identifying their proposals, which shall be considered and approved by the Board of Directors subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors as indicated above.
- 5.6. Nothing in the Scheme of Delegation shall impair the overall responsibility of the Board of Directors or the discharge of the direct accountability to the Board of Directors of the Chief Executive or other Executive Director to provide information and advise the Board of Directors in accordance with the Constitution, any statutory requirements or any requirements of NHS England.

## **Committees**

- 6.1. **Appointment of Committees** - Subject to the Constitution and such directions as may be given by NHS England, the Board of Directors may appoint committees of the Board of Directors, consisting wholly of Directors of the Trust.
- 6.2. A committee appointed under SO 6.1 may, subject to such directions as may be given by NHS England or the Board of Directors appoint sub-committees consisting of Directors of the Trust.
- 6.3. A committee established pursuant to paragraph 6.2 above may meet in common with a committee of Directors of another NHS Foundation Trust.
- 6.4. The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board of Directors.
- 6.5. Each such committee or sub-committee, shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.6. Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board of Directors.
- 6.7. The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. Where the Board of Directors determines that persons, who are neither Directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors.

- 6.8. The Trust is required to establish the following committees of Non-Executive Directors in accordance with the 2006 Act.
- Remuneration (known as Nominations and Remuneration Committee)
  - Audit
- 6.9. The Trust has chosen to establish the following committees of the Board:
- Finance and Performance
  - Strategy Transformation and Partnerships
  - Quality Governance
  - Charitable Funds Committee
- 6.10. **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 6.11. A Director of the Trust shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

### **Declarations of Interests and Register of Interests**

- 7.1. **Declaration of Interests** - Directors are required to comply with the Trust's Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Board of Directors. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.2. Interests which should be regarded as "relevant and material" are:
- a) Directorships, including Non-Executive Directorships held in private companies or public liability companies (PLCs) (with the exception of those of dormant companies).
  - b) Ownership or part-ownership or Directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
  - d) A position of authority in a charity or voluntary organisation in the field of health and social care.
  - e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
  - f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
- 7.3. If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chair or Secretary.
- 7.4. At the time Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board of Directors meeting following the change occurring. It is the obligation of the Director to inform the Secretary of the Trust in writing within five working days of becoming aware of the existence of a relevant or material interest.

- 7.5. Board Directors' Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.6. During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, the majority will resolve the issue with the Chair having the casting vote.
- 7.7. There is a requirement for the interests of Directors' spouses or partners to be declared, if they fall within the criteria outlined in SO 7.2.
- 7.8. **Register of Interests** - In accordance with the Constitution, the Secretary will ensure that a Register of Interests is established to record formal declarations of interests of Directors. In particular the Register will include details of all Directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Board Directors, as defined in SO 7.2.
- 7.9. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 7.10. The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

#### **Disability of Directors in Proceedings on Account of Pecuniary Interest**

- 8.1. Subject to the provisions of the Constitution and to the following provisions of this Standing Order, if a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.2. The Board may exclude a Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 8.3. For the purpose of this Standing Order the Chair or a Director shall be treated, subject to SO 8.2 and SO 8.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
  - (a) They, or a nominee of theirs, 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
  - (b) They are 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;

and in the case of married persons or persons living together as partners the interest of one or other shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

- 8.4. A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
  - (b) of an interest in any company, body or person with which they are connected as mentioned in SO 8.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.5. Where a Director:
- (a) 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
  - (b) 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
  - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit them 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 their duty to disclose their interest.

- 8.6. Standing Order 8 applies to a committee or sub-committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such committee or sub-committee (whether or not they are also a Director) as it applies to a Director.
- 8.7. **Waiver of Standing Orders made by the Secretary of State for Health** - Under regulation 11(2) of the NHS (Membership and Procedure Regulations SI 1999/2024 ("the Regulations"), there is a power for the Secretary of State to issue waivers if it appears to the Secretary of State in the interests of the health service that the disability in regulation 11 (which prevents a chair or a member of the Board from taking part in the consideration or discussion of, or voting on any question with respect to, a matter in which they have a pecuniary interest) should be removed.

### **Standards of Business Conduct**

- 9.1. **Policy** - All Directors of the Trust shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.2. **Interest of Directors/Officers in Contracts** - If it comes to the knowledge of a Board Director or an officer of the Trust that a contract in which they have any pecuniary interest not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive of the fact that they are interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 9.3. An officer must also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a member of their family or of someone with whom they have a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. A register of declared interests of staff shall be kept and maintained by means of an annual review.
- 9.4. **Canvassing of, and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 9.5. A Director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 9.6. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 9.7. **Relatives of Directors or Officers** - Candidates for any staff appointment shall, when making application, disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 9.8. The Directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 9.9. On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board whether they are related to any other Director or holder of any office under the Trust.
- 9.10. Where the relationship of an officer or another Director to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Directors in proceedings on account of pecuniary interest' (SO 8) shall apply.
- 9.11. Relationships to which this order applies are those of father, mother, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the member, their spouses or partners living together.
- 9.12. **Acceptance of Gifts and Hospitality** - The Secretary shall ensure that all staff are made aware of the Trust policy on acceptance of gifts and other benefits in kind by staff. The central register, held by the Secretary will record all gifts and hospitality accepted.

### **Resolution of Disputes with Council of Governors**

- 10.1. Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.
- 10.2. The Chair, or Vice Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.

- 10.3. Failing resolution under 10.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.5. The Chair or Vice Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.2 above shall be repeated.
- 10.6. If, in the opinion of the Chair or Vice Chair (if the dispute involves the Chair) and following the further discussions prescribed in 10.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Vice Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and Board of Directors accordingly.
- 10.7. On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.8. On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires and acting through the Lead Governor, from informing NHS England that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

### **Board of Directors' Performance**

- 11.1 The Chair shall, at least annually, lead a performance assessment process for the Board of Directors. This process should act as the basis for determining individual and collective professional development programs for Directors.

### **Miscellaneous**

- 12.1. **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions in accordance with the Code of Conduct requirements. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.
- 12.2. **Documents having the Standing of Standing Orders** - Standing Financial Instructions and Matters Reserved for the Board and the Scheme of Delegation shall have the effect as if incorporated into SOs.

- 12.3. **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Trust. Any amendments to these Standing Orders identified by the review must be approved by the Audit Committee and the Board of Directors before being annexed to the Constitution. The requirement for review extends to all documents having the effect as if incorporated in SOs.
- 12.4. **Indemnity** - A Director, or officer of the Trust, who has acted honestly and in good faith will not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their functions as a Director save where the Director has acted recklessly. Any costs arising in this way will be met by the Trust. On behalf of the Directors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

### **Custody of Seal and Sealing of Documents**

- 13.1 **Custody of Seal** - the Secretary shall have charge of the Trust's seal which will be kept in a secure place.
- 13.2 **Sealing of Documents** – As stated in paragraph 43.2 of the Constitution the seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a Committee, where the Board has delegated its powers. Before any building, engineering, property or capital document is sealed it must be approved and signed by the Chief Executive Officer (or an Officer named by them) and authorised and countersigned by the Chair (or an Officer nominated by them who shall not be within the originating directorate).
- 13.3 **Register of Sealing**- An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings should be made to the Trust via the Audit Committee on an annual basis. (The report shall contain details of the seal number, the description of the document and the date of sealing).
- 13.4 **Use of Common Seal** - The use of the common seal shall be confined to the purpose outlined below and to such other purposes as may in future be designated by law.
- Contracts made by the Trust as per the Trust's tendering and contract procedure.
  - Documents relating to the purchase of stocks and shares in accordance with the Trust's policy on charitable funds.
  - Issue of training certificates.
  - Any other contracts, indemnity, deed or undertaking, which by law require the use of the Trust's seal.

## Annex 8 – Further Provisions relating to members

### Disqualification from membership

1. In addition to paragraph 10 of the Constitution, a person may not become a member of the Trust if:
  - 1.1. They have been banned from Trust premises in accordance with the Trust's policy on "Dealing with Violence and Aggression" or prosecuted for criminal or unacceptable behaviour; or
  - 1.2. They have demonstrated unacceptable levels of violent or aggressive behaviour towards staff and/or patients and been subject to an application of the Trust's policy on "Dealing with Violence and Aggression"; or
  - 1.3. They have been declared by the Council of Governors or one of its sub-committees to be a vexatious complainant or where they fail to abide by the Trust's Values.
  - 1.4. They do not agree to (or, having agreed to, fail to abide by) the Trust Values.
2. It is the responsibility of the member to ensure their eligibility and not the Trust, but where the Trust is on notice that a member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

### Termination of membership

3. A member shall cease to be a member if:
  - 3.1. They die;
  - 3.2. They resign by notice to the Secretary;
  - 3.3. They cease to be entitled under this Constitution to be a member of the public constituency;
  - 3.4. They are expelled under this Constitution;
  - 3.5. If it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a member of the Trust.
4. A member may be expelled by a resolution of the Council of Governors at a General Meeting. The following procedure is to be adopted:
  - 4.1. Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
  - 4.2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
    - 4.2.1. dismiss the complaint and take no further action; or
    - 4.2.2. arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
  - 4.3. If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

- 4.4. At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 4.5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 4.6. A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 4.7. Where a person has been expelled from membership under the provisions of this paragraph, they may submit a written appeal within a 6-month period from the expulsion to the Secretary. A Chair of another foundation trust will be appointed to consider the appeal and their decision on the matter will be final.
- 4.8. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a General Meeting.

## **Commitments**

### **5. Representative membership**

- 5.1. The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:
  - 5.1.1. the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,
  - 5.1.2. the Council of Governors shall present to each annual members' meeting a report on:
    - 5.1.2.1. steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the Staff Constituency is representative of those eligible for such membership;
    - 5.1.2.2. the progress of the membership strategy;
    - 5.1.2.3. any changes to the membership strategy.

## **Openness**

- 5.2. In conducting its affairs, the Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

## **Prohibiting distribution**

- 5.3. The profits or surpluses of the Trust are not to be distributed either directly or indirectly in any way at all among members of the Trust.

## **Framework**

- 5.4. The affairs of the Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this Constitution and the Trust's NHS provider licence. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this Constitution.

## **Members**

- 5.5. Members may attend and participate at members' meetings, vote in elections to, and, if eligible, stand for election to, the Council of Governors, and take such other part in the affairs of the Trust as is provided in this Constitution.

**Dispute resolution procedures**

- 5.6. In the event of a dispute with a member or applicant in relation to matters of eligibility and disqualification, such member or applicant shall be invited to discuss the grounds of dispute with the Secretary, in the first instance. If not resolved, the issue will be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusion on all parties.
  
- 5.7. Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## **Annex 9 – Annual Members’ Meeting**

1. The Trust is to hold a members’ meeting (the “Annual Members’ Meeting”) within nine months of the end of each financial year. All members’ meetings other than annual meetings are called special members’ meetings and shall, insofar as possible, follow the requirements and provisions of this Annex.
2. Members’ meetings are open to all members of the Trust, Governors and Directors, representatives of the Trust’s financial auditor and to the public. The Council of Governors may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend the Annual Members’ Meeting.
3. The Annual Members’ Meeting is to be convened by the Secretary by order of the Council of Governors. The Trust may, if agreed by at least half of the whole of the Council of Governors, combine the Annual Members’ Meeting with the Council of Governors’ meeting which is held for the purpose of considering the Trust’s Annual Report and Accounts.
4. The Council of Governors may decide where an Annual Members’ Meeting is to be held and may also for the benefit of members arrange for the Annual Members’ Meeting to be held in different venues each year.
5. At the Annual Members’ Meeting, the Board of Directors shall present to the members:
  - 5.1 the annual accounts
  - 5.2 any report of the financial auditor
  - 5.3 any report of any other external auditor of the Trust’s affairs
  - 5.4 forward planning information for the next financial year;
- 6 The Council of Governors shall present to the members:
  - 6.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public and staff constituencies is representative of those eligible for such membership;
  - 6.2 the progress of the membership strategy
  - 6.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors
  - 6.4 the results of any election and appointment of Governors and the appointment of Non- Executive Directors will be announced.
- 7 Notice of the Annual Members’ Meeting is to be given:
  - 7.1 by notice to all members;
  - 7.2 by notice prominently displayed at the head office and at all of the Trust’s places of business; and
  - 7.3 by notice on the Trust’s website;
  - 7.4 at least 14 working days before the date of the meeting.
- 8 The notice must:
  - 8.1 be given to the Council of Governors and the Board of Directors, and to the financial auditor;
  - 8.2 give the time, date and place of the meeting; and
  - 8.3 indicate the business to be dealt with at the meeting.
- 9 Before an Annual Members’ Meeting can do business there must be a quorum present. Except where this Constitution says otherwise a quorum is one member present from each of the Trust’s constituencies.

- 10** Subject to the requirements of the Constitution, the Trust may make arrangements for members to vote by post, or by using electronic communications.
- 11** It is the responsibility of the Council of Governors, the Chair of the meeting and the Secretary to ensure that at the Annual Members' Meeting:
  - 11.1 the issues to be decided are clearly explained;
  - 11.2 sufficient information is provided to members to enable rational discussion to take place.
- 12** The Chair of the Trust, or in their absence the Vice Chair of the Trust, or in their absence one of the other Non-Executive Directors shall preside at all members' meetings of the Trust. If neither the Chair nor the Vice Chair, nor any other Non- Executive Directors are present, the meeting shall be adjourned to such time and place as the Chair may subsequently determine.
- 13** If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 14** A resolution put to the vote at a members' meeting shall be decided upon by a poll.
- 15** Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second or casting vote.
- 16** The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## **Annex 10 – Election Rules**

(Paragraph 13.2)

### **Part 1 - Interpretation**

1. Interpretation

### **Part 2 – Timetable for election**

2. Timetable
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### **Part 3 – Returning officer**

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

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**Part 8 – Disposal of documents**

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60. Election expenses
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## Part 1 - Interpretation

### Interpretation

- 1.1 In these rules, unless the context otherwise requires:
- “*2006 Act*” means the National Health Service Act 2006;
  - “*corporation*” means the public benefit corporation subject to this Constitution;
  - “*Council of Governors*” means the Council of Governors of the corporation;
  - “*declaration of identity*” has the meaning set out in rule 21.1;
  - “*election*” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;
  - “*e-voting*” means voting using either the internet, telephone or text message;
  - “*e-voting information*” has the meaning set out in rule 24.2;
  - “*ID declaration form*” has the meaning set out in rule 21.1; “*internet voting record*” has the meaning set out in rule 26.4(d);
  - “*internet voting system*” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;
  - “*lead Governor*” means the Governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (NHS England, December 2013) or any later version of such code.
  - “*list of eligible voters*” means the list referred to in rule 22.1, containing the information in rule 22.2;
  - “*method of polling*” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;
  - “*NHS England*” means the corporate body known as NHS England as provided by section 61 of the 2012 Act, which operates with the National Health Service Trust Development Authority as NHS Improvement.”;
  - “*numerical voting code*” has the meaning set out in rule 57.2(b) “*polling website*” has the meaning set out in rule 26.1;
  - “*postal voting information*” has the meaning set out in rule 24.1;
  - “*telephone short code*” means a short telephone number used for the purposes of submitting a vote by text message;
  - “*telephone voting facility*” has the meaning set out in rule 26.2; “*telephone voting record*” has the meaning set out in rule 26.5 (d); “*text message voting facility*” has the meaning set out in rule 26.3; “*text voting record*” has the meaning set out in rule 26.6 (d);
  - “*the telephone voting system*” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;
  - “*the text message voting system*” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;
  - “*voter ID number*” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,
  - “*voting information*” means postal voting information and/or e-voting information

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

## Part 2 – Timetable for election

### **Timetable**

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

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

### **Computation of time**

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

## Part 3 – Returning officer

### **Returning officer**

- 4.1 Subject to rule 62, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

### **Staff**

- 5.1 Subject to rule 62, 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.

## **Expenditure**

- 6.1 The corporation is to pay the returning officer:
- a) any expenses incurred by that officer in the exercise of their functions under these rules,
  - b) such remuneration and other expenses as the corporation may determine.

## **Duty of co-operation**

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

## **Part 4 - Stages Common to Contested and Uncontested Elections**

### **Notice of election**

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

### **Nomination of candidates**

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- a) is to supply any member of the corporation with a nomination form, and
  - b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

### **Candidate's particulars**

- 11.1 The nomination form must state the candidate's:
- a) full name
  - b) contact address in full (which should be postal address although an e-mail address may also be provided for the purpose of the electronic communication), and
  - c) constituency, or class within a constituency, of which the candidate is a member.

### **Declaration of interests**

- 11.1 The nomination paper must state:
- a) any financial interest that the candidate has in the corporation, and
  - b) whether the candidate is a member of a political party, and if so, which party,

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

### **Declaration of eligibility**

- 12.1 The nomination form must include a declaration made by the candidate:
- a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and
  - b) for a member of the public constituency of the particulars of their qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

### **Signature of candidate**

- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- a) they wish to stand as a candidate,
  - b) their declaration of interests as required under rule 11, is true and correct, and
  - c) their declaration of eligibility, as required under rule 12, is true and correct.
- 13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

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

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- a) decides that the candidate is not eligible to stand,
  - b) decides that the nomination paper is invalid,
  - c) receives satisfactory proof that the candidate has died, or
  - d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- a) that the form is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
  - b) that the form does not contain the candidate's particulars, as required by rule 10;
  - c) that the form does not contain a declaration of the interests of the candidate, as required by rule 11,
  - d) that the form does not include a declaration of eligibility as required by rule 12, or
  - e) that the form is not signed and dated by the candidate, as required by rule 13.

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

### **Publication of statement of candidates**

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
  - a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
  - b) the declared interests of each candidate standing, as given in their nomination form
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

### **Inspection of statement of nominated candidates and nomination papers**

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

### **Withdrawal of candidates**

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

### **Method of election**

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

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

## Part 5 – Contested elections

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

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

## **The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

- 21.1 The corporation shall require each voter who participates in an election for a public constituency to make a declaration confirming:
- (a) that the voter is the person:
    - (i) to whom the ballot paper was addressed, and/or
    - (ii) to whom the voter ID number contained within the e-voting information was allocated,
  - (b) that he or she or she has not marked or returned any other voting paper in the election, and
  - (c) the particulars of their qualification to vote as a member of the constituency or class within the constituency or which the election is being held,

("declaration of identity")

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

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

*Action to be taken before the poll*

**List of eligible voters**

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
  - (b) the members email address, if this has been provided to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

**Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
  - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
  - (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
  - (g) the address for return of the ballot papers,
  - (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
  - (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
  - (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
  - (k) the date and time of the close of the poll,
  - (l) the address and final dates for applications for replacement voting information, and
  - (m) the contact details of the returning officer.

**Issue of voting documents by returning officer**

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
  - (b) the ID declaration form (if required)
  - (c) information about each candidate standing for election, pursuant to rule 54 of these rules, and
  - (d) a covering envelope.

("postal voting information")

- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/or rule 19.4 may cast his or her vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter's voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 57 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
  - (d) contact details of the returning officer.

("e-voting information")

- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
  - (b) only be sent e-voting information; or
  - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

### **Ballot paper envelope and covering envelope**

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

### **E-voting systems**

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

- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as “the telephone voting facility”).
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the text message voting facility”).
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast their vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of Governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote and how to make a declaration of identity,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record (“internet voting record”) that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - (i) the voter’s voter ID number;
    - (ii) the voter’s declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter’s vote,
  - (e) if the voter’s vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - (f) prevent any voter from voting after the close of poll.
- 26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:
- (a) require a voter to
    - (i) enter his voter ID number in order to be able to cast his or her vote; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;

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

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

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

## *The poll*

### **Eligibility to vote**

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

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

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

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

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

### **Lost voting information**

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
  - (b) has no reason to doubt that the voter did not receive the original voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
  - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
  - (c) the voter ID number of the voter.

### **Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers"):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

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

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

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

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

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

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

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

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

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

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

#### **Receipt of voting documents**

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

## **Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed, and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper "disqualified",
  - (b) if there is an ID declaration form, accompanying the ballot paper, mark it as "disqualified" and attach it the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list (the "list of disqualified documents"); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified",
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.

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

- 38.1 Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to:
- (a) mark the ID declaration form "disqualified",
  - (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and
  - (c) place the ID declaration form, in a separate packet.

## **De-duplication of votes**

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

- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
  - (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number
- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
  - (d) place the document or documents in a separate packet; and
  - (e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
  - (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
  - (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

### **Sealing of packets**

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
  - (b) the ID declarations forms if required,
  - (c) the list of spoiled ballot papers,
  - (d) the list of lost ballot papers,
  - (e) the list of eligible voters, and
  - (f) the list of tendered ballot papers.

## **Part 6 - Counting the votes**

### **STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

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

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

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

### **The count**

- 43.1 The returning officer is to:
- (a) count and record the number of :
    - (i) ballot papers that have been returned, and
    - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 41.2(ii) where vote counting software is being used
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

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

- STV44.1 Any ballot paper:
- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
  - (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
  - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (d) which is unmarked or rejected because of uncertainty,

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

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

STV44.3 Any text voting record:

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

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

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

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the subparagraphs (a) to (c) of rule STV44.3.

**FPP44. Rejected ballot papers and rejected text voting records**

FPP44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty, shall, subject to rules 43.2 and 43.3, be rejected and not counted.

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

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

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

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

FPP44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 43.2 and 43.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty, shall, subject to rules 43.7 and 43.8, be rejected and not counted.

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

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

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

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

FPP44.9 The returning officer is to:

- (a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules 43.7 and 43.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

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

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

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

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

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

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

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

**STV46. The quota**

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

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

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

**STV47. Transfer of votes**

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

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

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

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

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

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

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

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

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

**STV49. Exclusion of candidates**

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
  - (b) subject to rule STV50, one or more vacancies remain to be filled,
- the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

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

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

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

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

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

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he or she has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

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

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

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

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

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

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

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

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

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

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

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

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

STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

#### **FPP51 Equality of votes**

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

### **Part 7 – Final proceedings in contested and uncontested elections**

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

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she or she has declared elected:
  - (i) where the election is held under a proposed Constitution pursuant to powers conferred on Dorset County Hospital NHS Foundation Trust by section 33(4) of the 2003 Act, to the Chair of the NHS Trust, or
  - (ii) in any other case, to the Chair of the corporation; and
- (c) give public notice of the name of each candidate whom he or she or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule 43.5,
- (c) the number of rejected text voting records under each of the headings in rule 43.10 available on request.

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

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

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

STV52.2 The returning officer is to make:

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

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

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

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the Chair 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**

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

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

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

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

- 54.2 The returning officer must not open the sealed packets of:
- (a) the disqualified documents, with the list of disqualified documents inside it,
  - (b) the list of spoiled ballot papers and the list of spoiled text message votes,
  - (c) the list of lost ballot documents, and
  - (d) the list of eligible voters,
- or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.
- 54.3 The returning officer must endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.

### **Delivery of documents**

- 55.1 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.

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

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

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

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 51.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1 The corporation may not allow
- (a) the inspection of, or the opening of any sealed packet containing –
    - (i) any rejected ballot papers, including ballot papers rejected in part,
    - (ii) any rejected text voting records, including text voting records rejected in part,
    - (iii) any disqualified documents, or the list of disqualified documents,
    - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
    - (v) the list of eligible voters

- (b) Access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage by any person without the consent of the regulator.
- 58.2 A person may apply to the regulator to inspect any of the documents listed in rule 51.1 and the board of Directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of Directors of the corporations consent may be on any terms or conditions that it thinks necessary, including conditions as to:
- (a) persons,
  - (b) time,
  - (c) place and mode of inspection,
  - (d) production or opening,
- and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- 58.4 On an application to inspect any of the documents listed rule 51.1 the board of Directors of the corporation must:
- (a) in giving its consent, , and
  - (b) in making the documents available for inspection, ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:
    - (i) that his or her vote was given, and
    - (ii) that the regulator has declared that the vote was invalid.

## Part 9 – Death of a candidate during a contested election

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

- FPP59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to
- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
  - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule 52.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under paragraph (52.1)(a), paragraphs (52.4) to (52.7) are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

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

ensure that complex electronic copies of the internet voting records telephone voting records and text voting records crated in accordance with rule 26 are held in a device suitable or the purpose of storage,

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

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (52.4) to (57.6), the returning officer is to deliver them to the Chair of the corporation, and rules 50 and 51 are to apply.

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

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

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

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

## **Part 10 – Election expenses and publicity**

### *Election expenses*

#### **Election Expenses**

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

### **Expenses and payments by candidates**

- 61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- (a) personal expenses,
  - (b) travelling expenses, and expenses incurred while living away from home, and
  - (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

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

- 62.1 No person may:
- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
  - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 56 and 57.

### *Publicity*

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

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and
  - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,
- as it considers necessary.
- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 57, must be:
- (a) objective, balanced and fair,
  - (b) (as far as the information provided by the candidates so allows) equivalent in size and content for all candidates,
  - (c) compiled and distributed in consultation with all of the candidates standing for election, and
  - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- 63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

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

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

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

### **Meaning of "for the purposes of an election"**

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

## **Part 11 – Questioning elections and the consequence of irregularities**

### **Application to question an election**

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

- 66.9 The IEAP may prescribe rules of procedure for the determination of an application, including costs.

## Part 12 – Miscellaneous

### **Secrecy**

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

### **Prohibition of disclosure of vote**

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

### **Disqualification**

- 69.1 A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:
- (a) a member of the corporation,
  - (b) an employee of the corporation,
  - (c) a Director of the corporation, or
  - (d) employed by or on behalf of a person who has been nominated for election.

### **Delay in postal service through industrial action or unforeseen event**

- 70.1 If industrial action, or some other unforeseen event, results in a delay in:
- (a) the delivery of the documents in rule 24, or
  - (b) the return of the ballot papers 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.