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**CONSTITUTION OF**

**SOUTH WEST YORKSHIRE PARTNERSHIP  
NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

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**Amended to reflect the changes to the NHS England Code of Governance for  
NHS Provider Trusts (October 2022), effective from 1 April 2023**

**Version 13 (approved by Trust Board on 31 October 2023 and Members' Council on 17  
November 2023) Effective from 17 November 2023**

# Constitution of South West Yorkshire Partnership NHS Foundation Trust

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## **1. Interpretation and definitions**

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and the Health and Social Care Act 2022.

Headings are for ease of reference only and are not to affect interpretation.

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

|                            |  |
|----------------------------|--|
| “the Accounting Officer”   | means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;  |
| “appointed Governors”      | means those Governors appointed by the appointing organisations;   |
| “appointing organisations” | means those organisations named in this constitution who are entitled to appoint Governors;  |
| “constitution”             | means this constitution and all annexes to it;   |
| “Director”                 | means a member of the Trust Board;   |
| “elected Governors”        | means those Governors elected by the Public constituencies and the classes of the Staff Constituency;  |
| “Financial year”           | means:<br><br>(a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and<br><br>(b) each successive period of twelve months beginning with 1 April; |
| “Local Authority Governor” | means a Governor appointed by one or more local authorities whose area includes the whole or part of an area specified as a public constituency of the Foundation Trust;   |

|                               |   |
|-------------------------------|---|
| “Integrated Care Board”       | An integrated care board is an organisation. Integrated Care Boards (ICB's) are statutory organisations that bring NHS and care organisations together locally to improve population health and establish shared strategic priorities within the NHS.   |
| “Integrated Care Partnership” | An ‘integrated care partnership’ (ICP) is a formal partnership of organisations (commissioners and providers) working together to improve the health and care of the whole population they serve.   |
| “Integrated Care System”      | An integrated care system In England, is an integrated care system (ICS) is a statutory partnership of organisations who plan, buy, and provide health and care services in their geographical area. The organisations involved include the NHS, local authorities, voluntary and charity groups, and independent care providers.                         |
| “Members’ Council”            | means the Council of Governors’   |
| NHS England                   | NHS England<br><br>The Health and Care Act 2022 has merged “Monitor” and the Trust Development Authority (TDA) into NHS England and removed legal barriers to collaboration and integrated care, making it easier for providers to take on greater responsibility for service planning and putting Integrated care Systems (ICSs) on a statutory footing. |
| “partner”                     | means, in relation to another person, a member of the same household living together as a family unit;  |
| “Partnership Governor”        | means a Governor appointed by a partnership organisation;   |
| “Public Governor”             | means a Governor elected by the members of one of the Public Constituencies;  |
| “Secretary”                   | means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;   |

|                          |  |
|--------------------------|--|
| “Staff Governor”         | means a Governor elected by the members of one of the classes of the Staff Constituency;                     |
| “terms of Authorisation” | means the terms of authorisation issued by Monitor under Section 35 of the 2006 Act;                         |
| “the 2006 Act”           | means the National Health Service Act 2006;  |
| “the 2012 Act”           | means the Health and Social Care Act 2012;   |
| “the 2022 Act”           | means the Health and Social Care Act 2022;   |
| “the Foundation Trust”   | means the South West Yorkshire Partnership NHS Foundation Trust;   |
| “Trust Board”            | means the Board of Directors, as set out in 23.1;  |
| “voluntary organisation” | means a body, other than a public or local authority, the activities of which are not carried on for profit. |

## 2. **Name**

The name of the foundation trust is South West Yorkshire Partnership NHS Foundation Trust (“the Foundation Trust”).

## 3. **Principal purpose**

- 3.1 The principal purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation Trust does not fulfil its principle 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 Foundation 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
  - 3.3.2 the promotion and protection of public health.
- 3.4 The Foundation Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principle purpose.

3.5 *Every trust should be led by an effective and diverse board that is innovative and flexible, and whose role it is to promote the long-term sustainability of the trust as part of the ICS and wider healthcare system in England, generating value for members in the case of foundation trusts, and for all trusts, patients, service users and the public*

#### **4. Powers**

4.1 The powers of the Foundation Trust are set out in the 2006 Act.

4.2 All the powers of the Foundation Trust shall be exercised by the Trust Board on behalf of the Foundation Trust.

4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

#### **5. Membership and constituencies**

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

5.1 a public constituency

5.2 a staff constituency

Further provisions as to members' meetings are set out in Annex 11.

#### **6. Application for membership**

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

#### **7. Public Constituency**

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Foundation 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 and Annex 3.

#### **8. Staff Constituency**

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

- 8.1.1 He / she is employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months
  - 8.1.2 He / she has been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Foundation Trust, otherwise than under a contract of employment with the Foundation Trust may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt this does not include individuals who assist or provide services to the Foundation Trust on a voluntary basis.
- 8.3 Those individuals who are eligible for membership of the Foundation Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into seven descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.6 In line with General Data Protection Regulations (GDPR), staff membership is no longer automatic. Staff will be asked if they would like to be a member on appointment.

## **9. Restriction on membership**

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 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.
- 9.3 An individual must be at least 11 years old to become a member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Foundation Trust are set out in Annex11.

## **10. Annual Members' Meeting**



- 10.1 The Foundation Trust shall hold an annual meeting of its members (Annual Members' Meeting). The Annual Members' Meeting shall be open to members of the public.
- 10.2 Further provisions about the Annual Members' Meeting are set out in Annex 11.

## **11. Members' Council – composition**

- 11.1 The Foundation Trust is to have a Council of Governors, referred to as the Members' Council, which shall comprise both elected and appointed Governors.
- 11.2 The composition of the Members' Council is specified in Annex 3.
- 11.3 The members of the Members' Council, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

## **12. Members' Council – election of Governors**

- 12.1 Elections for elected members of the Members' Council shall be conducted in accordance with the Model Election Rules using the single transferable vote method of voting.
- 12.2 The Model Election Rules, as published from time to time by the Department of Health, form part of this constitution. The Model Election Rules current at the date of the Trust's authorisation are attached at Annex 4.
- 12.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution. For the avoidance of doubt, the Foundation Trust cannot amend the Model Election Rules.
- 12.4 An election, if contested, shall be by secret ballot.

## **13. Members' Council - tenure**

- 13.1 An elected Governor shall normally hold office for a period of three calendar years.
- 13.2 An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 13.3 An elected Governor shall be eligible for re-election at the end of his term.

- 13.4 An elected Governor may not hold office for more than nine years in total and shall not be eligible for re-election if he has already held office for more than six consecutive years.
- 13.5 Further provisions as to tenure for appointed Governors are set out at Annex 5.

**14. Members' Council – disqualification and removal**

- 14.1 The following may not become or continue as a member of the Members' Council:
- 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged
  - 14.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it
  - 14.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Members' Council are set out in Annex 5.

**15. Members' Council – Lead Governor / Deputy Lead Governor**

- 15.1 The Trust will ensure a process is in place to appoint a Lead Governor / Deputy Lead Governor for the Members' Council (in accordance with the provisions set out in Annex 5).

**16. Members' Council – duties of Governors**

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

## **17. Members' Council – meetings of Governors**

- 17.1 The Chair of the Foundation Trust (i.e. the Chair of the Trust Board, appointed in accordance with the provisions of paragraph 26) or, in his / her absence the Deputy Chair (appointed in accordance with the provisions of paragraph 27 below) shall preside at meetings of the Members' Council. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor (or Deputy Lead Governor in their absence) will preside over that part of the meeting.
- 17.2 Meetings of the Members' Council shall be open to members of the public unless the Members' Council decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.
- 17.3 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Directors' performance), the Members' Council may require one or more of the Directors to attend a meeting.

## **18. Members' Council – standing orders**

The standing orders for the practice and procedure of the Members' Council, as may be varied from time to time, are attached at Annex 9.

## **19. Members' Council – referral to the Panel**

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

## **20. Members' Council – conflicts of interest of Governors**

- 20.1 A Governor shall disclose to the Members' Council any material interests (as defined below) held by a Governor, their spouse or partner, which shall be recorded in the register of interests of the Members' Council.
- 20.2 Subject to the exceptions below a material interest is:

- 20.2.1 directorships, including non-executive directorships, held in private companies or PLCs (with the exception of those of dormant companies)
- 20.2.2 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 Foundation Trust
- 20.2.3 any interest in an organisation providing health and social care services to the National Health Service
- 20.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care
- 20.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 20.3 The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:
  - 20.3.1 shares not exceeding 1% of the total shares in issue or £5,000 in value held in any company whose shares are listed on any public exchange
  - 20.3.2 an employment contract with the Foundation Trust held by a Staff Governor
  - 20.3.3 an employment contract with a local authority held by a Local Authority Governor
  - 20.3.4 an employment contract with a university held by a University Governor
  - 20.3.5 an employment contract with or other position of authority within a partnership organisation held by a Partnership Governor.
- 20.4 Any Governor who has an interest in a matter to be considered by the Members' Council (whether because the matter involves a firm, company, business or organisation in which the Governor or his spouse or partner has a material interest or otherwise) shall declare such interest to the Members' Council and:
  - 20.4.1 shall withdraw from the meeting and play no part in the relevant discussion or decision
  - 20.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote) their vote shall not be counted).

20.5 Details of any such interest shall be recorded in the register of interests of the Members' Council.

20.6 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.

## **21. Members' Council – travel expenses**

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

## **22. Members' Council – further provisions**

Further provisions with respect to the Members' Council are set out in Annex 5.

## **23. Trust Board – composition**

23.1 The Foundation Trust is to have a Board of Directors, referred to as the Trust Board, which shall comprise both executive and non-executive directors.

23.2 The Trust Board is to comprise:

23.2.1 a non-executive Chair

23.2.2 up to six other non-executive directors

23.2.3 up to six executive directors.

23.2.4 There will be at least one more non-executive director than executive directors, including the Chair of the Trust.

23.3 One of the executive directors shall be the Chief Executive.

23.4 The Chief Executive shall be the Accounting Officer.

23.5 One of the executive directors shall be the finance director.

23.6 One of the executive directors is to be a registered medical practitioner.

23.7 One of the executive directors is to be a registered nurse.

## **24. Trust Board – general duty**

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

The board of directors should develop, embody and articulate a clear vision and values for the trust, with reference to the ICP's integrated care strategy and the trust's role within system and place-based partnerships, and provider collaboratives. This should be a formally agreed statement of the organisation's purpose and section 44 of the Code of Governance for NHS provider trusts (October 2022) effective from 1 April 2023. The board of directors should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the trust's vision, values and strategy, it should seek assurance that management has taken corrective action.

**25. Trust Board – qualification for appointment as a non-executive director**

A person may be appointed as a non-executive director only if

25.1 he / she is a member of a Public Constituency

25.2 where any of the Foundation Trust's hospitals includes a medical or dental school provided by a university, he / she exercises functions for the purposes of that university, and

25.3 he / she is not disqualified by virtue of paragraph 29 below or Annex 7.

**26. Trust Board – appointment and removal of Chair and other non-executive directors, including associate non-executive directors**

26.1 The Members' Council at a general meeting of the Members' Council shall appoint or remove the chair of the Foundation Trust and the other non-executive directors including associate non-executive directors.

26.2 Removal of the Chair or another non-executive director, including associate non-executive directors, shall require the approval of three-quarters of the members of the Members' Council.

26.3 Further provisions as to the appointment and removal of the Chair and other non-executive directors including associate non-executive directors are set out at Annex 7.

**27. Trust Board – appointment of Deputy Chair**

The Members' Council at a general meeting of the Members' Council shall appoint one of the non-executive directors as a Deputy Chair. If the Chair is unable to discharge his / her office as Chair of the Foundation Trust the Deputy Chair of the Trust Board shall be acting Chair of the Foundation Trust.

**28. Trust Board – appointment and removal of the Chief Executive and other executive directors**

28.1 The non-executive directors shall appoint or remove the Chief Executive.

28.2 The appointment of the Chief Executive shall require the approval of the Members' Council.

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.

## **29. Trust Board – disqualification**

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

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

29.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

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

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust Board are set out at Annex 7.

## **30. Trust Board – meetings**

30.1 Meetings of the Trust Board shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

30.2 Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

30.3 Before holding a meeting, the Trust Board must send a copy of the agenda of the meeting to the Members' Council. As soon as practicable after holding a meeting, the Trust Board must send a copy of the minutes of the meeting to the Members' Council.

## **31. Trust Board – standing orders**

The standing orders for the practice and procedure of the Trust Board, as may be varied from time to time, are attached at Annex 10.

## **32. Trust Board – conflicts of interest of directors**

32.1 The duties that a Director of the Foundation 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 Foundation 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 this 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
  - 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, “the third party” means a person other than:
  - 32.4.1 the Foundation Trust
  - 32.4.2 a person acting on its behalf.
- 32.5 If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation 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 Foundation Trust enters into the transaction or arrangement.
- 32.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 32.9 A Director need not declare an interest:
  - 32.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest
  - 32.9.2 if, or to the extent that, the Directors are already aware of it
  - 32.9.3 if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
    - 32.9.3.1 by a meeting of the Board of Directors



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

32.10 Any Director who has an interest in a matter to be considered by the Board of Directors that is required to be declared in accordance with paragraph 32 of this Constitution shall declare such interest to the Board of Directors and:

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

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

32.11 Details of any such interest shall be recorded in the register of interests of the Directors.

32.12 Any Director who fails to disclose any interest required to be disclosed under these provisions may be removed from office in accordance with the process for removing such a Director, as set out in this constitution.

### **33. Trust Board – remuneration and terms of office**

33.1 The Members' Council at a general meeting of the Members' Council shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.

33.2 The Foundation Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

### **34. Registers**

The Foundation Trust shall have:

34.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

34.2 a register of members of the Members' Council

34.3 a register of interests of Governors

34.4 a register of directors

34.5 a register of interests of the directors.

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

- 35.1 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.
- 35.2 The Secretary is to send to NHS England a list of persons who were first elected or appointed as Governors and Directors.

**36. Registers – inspection and copies**

- 36.1 The Foundation 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 Foundation 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 Foundation 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
  - 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 Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

**37. Documents available for public inspection**

- 37.1 The Foundation Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 37.1.1 a copy of the current constitution
  - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them
  - 37.1.3 a copy of the latest annual report.
- 37.2 The Foundation Trust shall also make the following documents relating to special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final

- report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act
- 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act
  - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act
  - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act
  - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act
  - 37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to the 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) of the 2006 Act
  - 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 or extract.
- 37.4 If the person requesting a copy or extract is not a member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

### **38. Auditor**

- 38.1 The Foundation Trust shall have an auditor.
- 38.2 The Members' Council shall appoint or remove the auditor at a general meeting of the Members' Council.
- 38.3 Further provisions as to the auditor are set out at Annex 12.

### **39. Audit committee**

The Foundation Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

### **40. Accounts**

40.1 The Foundation 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 Foundation Trust as to the content and form of its accounts.

40.3 The accounts are to be audited by the Foundation Trust's auditor.

40.4 The Foundation 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 Foundation Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

40.6 Further provisions as to accounts are set out at Annex 12.

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

41.1 The Foundation Trust shall prepare an Annual Report and send it to Monitor. Further provisions as to Annual Reports are set out at Annex 12.

41.2 The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.

41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

41.4 In preparing the document, the directors shall have regard to the views of the Members' Council.

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 Foundation Trust proposes to carry on

41.5.2 the income it expects to receive from doing so.

41.6 Where a forward plan contains a proposal that the Foundation Trust carries on an activity of a kind mentioned in paragraph 41.5.1, the Members' Council must:

- 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its principal purpose or the performance of its other functions
- 41.6.2 notify the Directors of the Foundation Trust of its determination.
- 41.7 A Foundation Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Members' Council of the Foundation Trust voting approve its implementation.

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

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

## **43. Instruments**

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

## **44. Amendment of the constitution**

- 44.1 No amendment shall be made to this constitution (including its Annexes) unless:
  - 44.1.1 it has been approved by more than half of the Governors present and voting at a meeting of the Members' Council duly called in accordance with this constitution.

- 44.1.2 it has been approved by more than half of the Directors present and voting at a meeting of the Trust Board duly called in accordance with this constitution; and
- 44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions of 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 Members' Council (or otherwise with respect to the role that the Members' Council has as part of the Foundation Trust):
  - 44.3.1 at least one member of the Members' Council must attend the next Annual Members' Meeting and present the amendment
  - 44.3.2 the Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 44.5 Amendments by the Foundation Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

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

- 45.1 The Foundation Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Members' Council.
- 45.2 The Foundation Trust may enter into a significant transaction only if more than half of the members of the Members' Council of the Foundation Trust voting approve entering into the transaction.
- 45.3 The Constitution does not contain any descriptions of the terms 'significant transaction' for the purpose of section 51A of the 2006 Act (Significant Transactions). The Foundation Trust will refer to guidance issued by NHS England or the Department of Health in determining what constitutes a significant transaction.

## **ANNEX 1 – THE PUBLIC CONSTITUENCIES**

(Paragraphs 7.1 and 7.3)

The Public Constituencies are:

- 1.1 Barnsley (the area covered by Barnsley Council)
- 1.2 Calderdale (the area covered by Calderdale Council)
- 1.3 Kirklees (the area covered by Kirklees Council)
- 1.4 Wakefield (the area covered by Wakefield Council)
- 1.5 Rest of Yorkshire, the Humber, Cumbria, Durham, Lancashire, Greater Manchester, Derbyshire, Nottinghamshire, and Lincolnshire (covering all local authorities within these counties).

*(Non-Executive Directors and Associate Non-Executive Directors recruited from the above public constituency (1.5), MUST be able to demonstrate a commitment to, and significant knowledge of, the communities the Trust serves.)*

The minimum number of members of the above Public Constituencies is to be 10.

## **ANNEX 2 – THE STAFF CONSTITUENCY**

(Paragraphs 8.4 and 8.5)

The Staff Constituency will consist of the following classes:

- 1.1 registered medical practitioners and registered pharmacists
- 1.2 registered nurses
- 1.3 nursing support
- 1.4 allied healthcare professionals
- 1.5 psychological therapies
- 1.6 social workers
- 1.7 non-clinical support services, including management

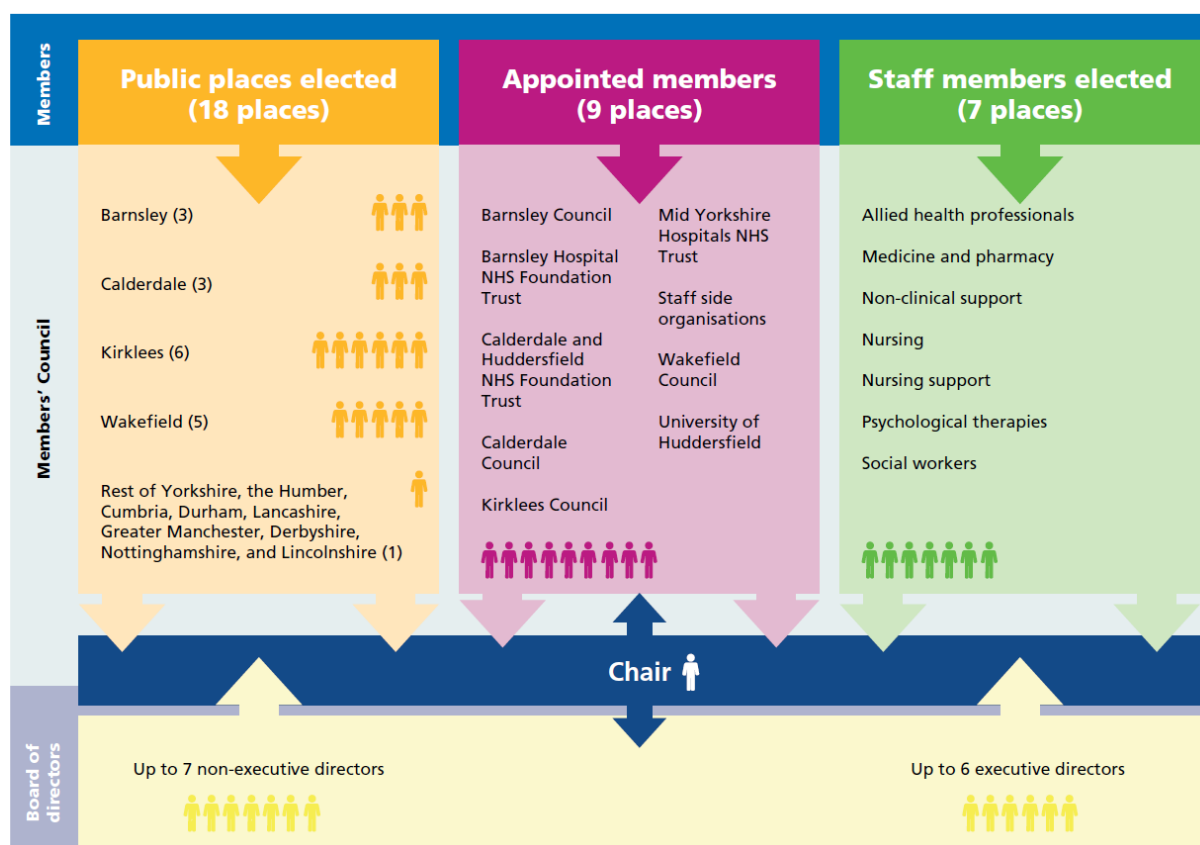
The minimum number of members of the above Staff Constituency is to be 4.



## ANNEX 3 – COMPOSITION OF MEMBERS’ COUNCIL

(Paragraphs 11.2 and 11.3)

1. The aggregate number of Public Governors is to be more than half of the total number of members of the Members’ Council.
  2. The Members’ Council, subject to the 2006 Act, shall seek to ensure that through the composition of the Members’ Council:
    - 2.1 the interests of the community served by the Foundation Trust are appropriately represented
    - 2.2 the level of representation of the Public Constituency, the classes of the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust’s affairs
- and, to this end, the Members’ Council:
- 2.3 shall at all times maintain a policy for the composition of the Members’ Council which takes account of the involving people strategy
  - 2.4 shall from time to time and not less than every three years review the policy for the composition of the Members’ Council
  - 2.5 when appropriate shall propose amendments to this constitution.



3. The Members' Council of the Foundation Trust is to comprise:
  - 3.1 Eighteen Public Governors from the Public Constituencies as follows:
    - 3.1.1 Barnsley – three Public Governors
    - 3.1.2 Calderdale – three Public Governors
    - 3.1.3 Kirklees – six Public Governors
    - 3.1.4 Wakefield – five Public Governors
    - 3.1.5 Rest of Yorkshire, the Humber, Cumbria, Durham, Lancashire, Greater Manchester, Derbyshire, Nottinghamshire, and Lincolnshire – one public Governor
  - 3.2 seven Staff Governors from the following classes;
    - 3.2.1 Registered medical practitioners and registered pharmacists – one Staff Governor
    - 3.2.2 Registered nurses – one Staff Governor
    - 3.2.3 Nursing support – one Staff Governor
    - 3.2.4 Allied healthcare professionals – one Staff Governor
    - 3.2.5 Psychological therapies – one Staff Governor
    - 3.2.6 Social workers
    - 3.2.7 Non-clinical support staff, including management – one Staff Governor
  - 3.3 four Local Authority Governors to be appointed by each of Barnsley Council, Calderdale Council, Kirklees Council and Wakefield Council;
  - 3.4 five Partnership Governors to be appointed by partnership organisations.
  - 3.5 The Members Council has the authority to stand up and stand down forums e.g. young persons, carers, voluntary sector, to support the delivery of their workplan and objectives as part of their constitution.
4. The partnership organisations which are specified for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act and may appoint a Partnership Governor are:
  - 4.1 Calderdale and Huddersfield NHS Foundation Trust;
  - 4.2 The Mid Yorkshire Hospitals NHS Trust;
  - 4.3 Barnsley Hospital NHS Foundation Trust

- 4.4 The University of Huddersfield;
- 4.5 Joint Committee of Staff Organisations (comprising British Medical Association, Chartered Society of Physiotherapists, Amicus, Royal College of Nursing of the United Kingdom, and UNISON (including BOAT))

## **ANNEX 4 –THE MODEL ELECTION RULES**

(Paragraph 12.2)

Sponsored by the Foundation Trust Network (FTN) and endorsed by the Department of Health and Monitor, August 2014

### **PART 1: INTERPRETATION**

1. Interpretation

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

2. Timetable
3. Computation of time

### **PART 3: RETURNING OFFICER**

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

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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
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- 35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
- 37. Validity of votes
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- 39. De-duplication of votes
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## **PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
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- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
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- FPP52. Declaration of result for contested elections
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## **PART 8: DISPOSAL OF DOCUMENTS**

- 54. Sealing up of documents relating to the poll
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## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

- FPP59. Countermand or abandonment of poll on death of candidate
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## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### *Expenses*

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

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- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
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## **PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

- 66. Application to question an election

## **PART 12: MISCELLANEOUS**

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

**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**2. Timetable**

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

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

**3. Computation of time**

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

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

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

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

**4. Returning Officer**

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

**5. Staff**

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

**6. Expenditure**

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

**7. Duty of co-operation**

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

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

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

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

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

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

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

9.2 The returning officer:

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

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

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

10.1 The nomination form must state the candidate's:

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

**11. Declaration of interests**

11.1 The nomination form must state:

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

**12. Declaration of eligibility**

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

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

**13. Signature of candidate**

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

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

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

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

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

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

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

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

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

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

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

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

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

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

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

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

**17. Withdrawal of candidates**

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

**18. Method of election**

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

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

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

**20. The ballot paper**

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

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

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

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



*Action to be taken before the poll*

**22. List of eligible voters**

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

**23. Notice of poll**

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

(m) the contact details of the returning officer.

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

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

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

**26. E-voting systems**

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

26.5

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

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

- (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
  - (f) prevent any voter from voting after the close of poll.

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

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

### *The poll*

## **27. Eligibility to vote**

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

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

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

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

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

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

## **30. Lost voting information**

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

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

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

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

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

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

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

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

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

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

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

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

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

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

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

**36. Receipt of voting documents**

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
  - (b) any other envelope containing an ID declaration form if required, a ballot paper



envelope, or a ballot paper,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**

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

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

**39. De-duplication of votes**

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

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<sup>1</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

applicable) “disqualified”,

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

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

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

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

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

**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

*“stage of the count”* means:

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

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

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

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

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

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

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

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

## **43. The count**

43.1 The returning officer is to:

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

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or

communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

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

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the 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 FPP44.2 and FPP44.3, be rejected and not counted.

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

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

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

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

FPP44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

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

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

- FPP44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
  - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
  - (c) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.
- FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.8 A text voting record on which a vote is marked:
- (a) otherwise than by means of a clear mark,
  - (b) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
- FPP44.9 The returning officer is to:
- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
  - (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.
- FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:
- (a) voting for more candidates than the voter is entitled to,
  - (b) writing or mark by which voter could be identified, and
  - (c) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of text voting records rejected in part.

**STV45. First stage**

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



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

**STV46. The quota**

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

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

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

**STV47. Transfer of votes**

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

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

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

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

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

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

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

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

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

#### **STV49. Exclusion of candidates**

STV49.1 If:

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

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

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

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

- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

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

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

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

**STV50. Filling of last vacancies**

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

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

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

**STV51. Order of election of candidates**

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

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

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

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

**FPP51. Equality of votes**

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

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

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

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

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

FPP52.2 The returning officer is to make:

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

available on request.

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

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

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

STV52.2 The returning officer is to make:

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

available on request.

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

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

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



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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the

poll, or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

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

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

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

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

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

58.1 The corporation may not allow:

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

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

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

58.3 The board of directors of the corporation's consent may be on any terms or conditions

that it thinks necessary, including conditions as to –

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

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

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

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

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

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

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

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

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

rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

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

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

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

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

### *Election expenses*

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

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

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

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

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

- 62.1 No person may:
- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
  - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

### *Publicity*

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

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and
  - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,
- as it considers necessary.
- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,

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

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

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

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

64.2 The information must consist of:

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

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

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

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

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

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

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



**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

## **ANNEX 5 – ADDITIONAL PROVISIONS – MEMBERS’ COUNCIL**

(Paragraphs 13.4, 13.5, 14.3, 15.1 and 22)

### **Elected Governors**

1. A member of the Public Constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant 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, having consulted Barnsley Council, Calderdale Council, Kirklees Council and Wakefield Council is to adopt a process for agreeing the appointment of Local Authority Governors with those local authorities.
3. The Partnership Governors are to be appointed by the partnership organisations, in accordance with a process agreed with the Secretary.

### **Appointment of Lead Governor / Deputy Lead Governor**

4. A Lead Governor / Deputy Lead Governor is to be appointed for the Members’ Council using the following procedure.
5. Publicly elected Governors will be invited to self-nominate supported by a brief written explanation of why they are putting themselves forward and evidencing how they would be able to fulfil the role.
6. The Nominations Committee will shortlist the self-nominations and invite shortlisted candidates to make a brief presentation and answer questions based on their ‘application’.
7. The Nominations Committee will then make a recommendation to the full Members’ Council.

### **Deputising arrangements for the Chair**

8. The Deputy Chair of the Trust Board will chair the Members’ Council in the absence of the Chair.
9. If the person chairing the meeting has a conflict of interest in relation to the business being discussed, the Lead Governor (or the Deputy Lead Governor in their absence) will preside over that part of the meeting.

### **Tenure for appointed Governors**

10. An appointed Governor:
  - 10.1 shall normally hold office for a period of three calendar years

- 10.2 shall be eligible for re-appointment at the end of his term
- 10.3 may not hold office for longer than nine years in total, and shall not be eligible for re-appointment if he has already held office for more than six consecutive years.
- 11. An appointed Governor shall cease to hold office if the appointing organisation which appointed him terminates the appointment.

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

- 12. A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:
  - 12.1 they are a Director of the Foundation Trust or a Governor or director of an NHS body (unless they are appointed by an appointing organisation which is an NHS body)
  - 12.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust
  - 12.3 they are a member of a local authority's Scrutiny Committee covering health matters
  - 12.4 they have been previously removed as a Governor pursuant to paragraph 14 of this Annex 5
  - 12.5 being a member of one of the Public Constituencies, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Members Council
  - 12.6 they are subject to a sex offender order
  - 12.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body
  - 12.8 they are a person whose tenure of office as the Chair or as a member or director of an NHS 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.
- 13. A person holding office as a Governor shall immediately cease to do so if:
  - 13.1 they resign by notice of one month in writing to the Chair of the Trust
  - 13.2 they fail to attend three consecutive meetings of the Members' Council, unless the other Governors are satisfied that:
    - 13.2.1 the absences were due to reasonable causes

- 13.2.2 they will be able to start attending meetings of the Members' Council again within such a period as the other Governors consider reasonable;
- 13.3 they have refused without reasonable cause to undertake any training which the Members' Council requires all Governors to undertake;
- 13.4 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors; (see Annex 6)
- 13.5 they are removed from the Members' Council under the following provisions.
- 14. A Governor may be removed from the Members' Council by a resolution approved by not less than two thirds of the remaining Governors present and voting on the grounds that:
  - 14.1 they have committed a serious breach of the code of conduct
  - 14.2 they have acted in a manner detrimental to the interests of the Foundation Trust
  - 14.3 the Members' Council consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

### **Vacancies amongst Governors**

- 15. Where a vacancy arises on the Members' Council for any reason other than expiry of term of office, the following provisions will apply.
- 16. 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.
- 17. Where the vacancy arises amongst the elected Governors, the Members' Council shall be at liberty either:
  - 17.1 to call an election within three months to fill the seat for the remainder of that term of office
  - 17.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office
  - 17.3 if the unexpired period of the term of office is less than nine months, to leave the seat vacant until the next elections are held.

## **ANNEX 6 – CODE OF CONDUCT FOR GOVERNORS**

### **(Annex 5, 13.4 and Annex 10 4.1.1)**

#### **1. Introduction**

The Code of Conduct seeks to outline the appropriate conduct for Governors of this Trust. It addresses both the requirements of office and of personal behaviour. Ideally, any penalties for non-compliance would not need to be applied; however, it is considered an essential guide for Governors, particularly those who are newly elected.

As a member representative dealing with difficult and confidential issues, Governors are required to act with discretion and care in the performance of their role. Governors are required to maintain confidentiality with regard to information gained through their involvement in the Trust.

This Code seeks to expand on and complements the Constitution of the Trust. Copies of the Constitution will be provided to all Governors on election or appointment.

Governors, once elected or appointed, will be required by the Chair of the Trust to sign a declaration to confirm they will comply with this Code of Conduct in all respects and that, in particular, they support the mission, vision, values and goals of the Trust.

#### **2. Qualification for Office**

Governors must continue to comply with the qualifications required to hold elected office throughout their period of tenure as defined in the Constitution. The Head of Corporate Governance (Company Secretary) should be advised of any changes in circumstances that might or do disqualify the Governor from continuing in office.

All Governors will be expected to understand, agree and promote the Trust's Equality, Involvement, Communication and Membership Strategy in every aspect of their work. There are also a number of other policies to which Governors will be expected to adhere which are all referenced in the Governor handbook and copies of which will be provided on request from the Corporate Governance team.

One of the key objectives of the Members' Council will be to promote local accountability for all communities throughout its work. As such, the development and delivery of initiatives should not prejudice any part of the community on the grounds of age, disability, race, religion or belief, maternity and pregnancy, marriage and civil partnership, sex (gender), gender reassignment, sexual orientation or being a carer. The promotion of any personal or political view that undermines this prime objective is grounds for dismissal from the Member's Council.

### **3. Role and function of the Members' Council**

Governors are expected to:

- a) Actively support the mission, vision, values and goals of the Trust in developing a successful NHS Foundation Trust.
- b) Act in the best interests of the Trust at all times.
- c) Communicate with members and act as a bridge between local communities and Trust Board.
- d) Foundation trust governors should canvass the opinion of the trust's members and the public, and for appointed governors the body they represent, on the NHS foundation trust's forward plan, including its objectives, priorities and strategy, and their views should be communicated to the board of directors. The annual report should contain a statement as to how this requirement has been undertaken and satisfied.
- e) Contribute to the Members' Council in order for it to fulfil its role and functions as defined in the Constitution.
- f) Recognise that the Members' Council exercises collective decision making in the meeting room, which is recorded in the minutes. Outside the meeting room a Governor has no more rights and privileges than any other member.
- g) Recognise that the Members' Council has no managerial role within the Trust.
- h) Value and treat with respect colleagues on the Members' Council and all members of staff with whom the Governor has contact.
- i) Attend meetings of the Members' Council and training events on a regular basis in order to carry out the role of Governor.
- j) Conduct themselves in a manner that enables them to act as an ambassador for the Trust.
- k) Abide by the policies and procedures of the Trust.

### **4. Conflicts of Interest**

Governors should act with the utmost integrity and objectivity and in the best interests of the Trust in performing their duties. They should not use their position for personal advantage or seek to gain preferential treatment.

Any Governor who has a material interest in a matter as defined in the Constitution, should declare such interest to the Members' Council for it to be recorded in the Register of Interests for the Members' Council, and will not be present, except with the permission of the Members' Council, in any discussion of the matter and shall not vote on the issue.

If in any doubt they should seek advice from the Chair of the Trust. It is important that conflicts of interest are addressed and are seen to be actioned in the interests of the Trust and all individuals concerned.

Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.

Information on the Declaration of Interests process is contained in the Governors' information pack.

## **5. Members' Council meetings**

Governors have a responsibility to attend meetings of the Members' Council. When this is not possible they should submit an apology to the Chair of Trust in advance of the meeting.

In accordance with the Constitution, absence from the Members' Council meetings without good reason established to the satisfaction of the Chair and/or the Deputy Chair is grounds for disqualification. Absence from three consecutive meetings, unless the Chair and/or Deputy Chair are satisfied that the absences were due to reasonable causes and they will start attending meetings again within a reasonable period of time, will result in the Governor being deemed to have resigned their position.

Governors should attend the whole of the meeting.

## **6. Personal Conduct**

Governors are required to adhere to the highest standard of conduct in the performance of their duties. In respect to their interaction with others, they are required to agree and adhere to the following statements:

- I acknowledge that the Trust is an apolitical organisation.
- If I am a member of any trade union, political party or other organisation, I recognise that, should I be elected or appointed, I will not be representing those organisations (or the views of those organisations) but will be representing the constituency (public or staff) that elected me or organisation who nominated me.
- I will be honest and act with integrity and probity at all times.
- I will respect and treat with dignity and fairness the public, service users and carers, relatives, NHS staff and partners in other agencies.
- I will seek to ensure that my fellow Governors are valued as colleagues and that judgements about colleagues are consistent, fair and unbiased and are properly founded.
- I will not use language or behaviour that others might find offensive.
- I agree to abide by the directions of the Chair of the meeting.
- I will accept responsibility for my actions.
- I will show my commitment to working as a team member by working with my colleagues in the NHS and wider community.
- I will seek to ensure that the membership of the constituency I represent is properly informed and able to influence services.
- I will seek to ensure that no-one is discriminated against because of their age, disability, race, religion or belief, maternity and pregnancy, marriage and civil partnership, sex (gender), gender reassignment, sexual orientation or being a carer.
- I will, at all times, comply with the Standing Orders and Standing Financial Instructions of the Trust.
- I will respect the confidentiality of individual service users and comply with the confidentiality policies of the Trust.



- I will not make, permit or knowingly allow to be made any untrue or misleading statement relating to my own duties or the functions of the Trust.
- I will seek to ensure that the best interests of the public, service users, carers and staff are upheld in decision-making and the decisions are not improperly influenced by gifts or inducements.
- I will support and assist the Accounting Officer of the Trust (the Chief Executive) in his/her responsibility to answer to the Independent Regulator, Commissioners and the public in terms of fully faithfully declaring and explaining the use of resources and the performance of the total NHS in putting national policy into practice and delivering targets;
- I will uphold the seven principles of public life as defined by the Nolan Committee.

*The Members' Council and Trust Board will follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee). The Members' Council will, therefore, also be expected to adhere to the following principles.*

#### Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

#### Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for awards or benefits, holders of public office should make choices on merit.

#### Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

#### Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

#### Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

#### Leadership

Holders of public office should promote and support these principles by leadership and example.

All Governors are required to respect the confidentiality of the information received in the role as Governor and act with integrity and objectivity in the best interests of the Trust, without any expectation of personal benefit. Any disclosure of confidential information could result in dismissal from the Members' Council.

## **7. Confidentiality**

As a member representative dealing with difficult and confidential issues, Governors are required to act with discretion and care in the performance of their role. Governors are required to maintain confidentiality with regard to information gained through their involvement in the Trust and disclosure of confidential information is likely to result in dismissal from the Members' Council.

## **8. Training and development**

Training and development are essential for Governors to ensure they have the necessary skills and competencies to fulfil their role and there is an obligation on Governors to attend training relevant to their needs.

## **9. Reimbursement of expenses**

Governors will not receive payment for their role; however, they will receive reimbursement of any out of pocket expenses incurred whilst carrying out their duties as a Governor of the Trust. Guidelines are contained in the Governors' information pack. The expenses of Governors will be published in the annual report.

## **10. Visits to SWYPFT premises**

Requests to make formal visits to any Trust service should be made through the Corporate Governance team. This does not apply to personal visits to Trust premises.

## **11. Non-compliance with the Code of Conduct**

Non-compliance with the Code may result in the following action:

- a) Where misconduct takes place, the Chair shall be authorised to take such action as may be immediately required, including the exclusion of the person concerned from a meeting.
- b) Where such misconduct is alleged, it shall be open to the Members' Council to decide, by simple majority of those in attendance, to lay a formal charge of misconduct.
- c) Notifying the Governor in writing of the charge/s, detailing the specific behaviour, which is considered to be detrimental to the Trust, and inviting and considering their response within a defined timescale.
- d) Inviting the Governor to address the Members' Council in person if the matter cannot be resolved satisfactorily through correspondence.
- e) Deciding, by simple majority of those present and voting, whether to uphold the charge of conduct detrimental to the Trust.
- f) Imposing such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses to the removal of the Governor from office.

A Governor may be removed from the Members' Council by a resolution approved by not less than two-thirds of the remaining Governors present and voting at a

General Meeting of the Council of Members.

This Code of Conduct does not limit or invalidate the right of the Governor or the Trust to act under the Constitution.

## **ANNEX 7 – ADDITIONAL PROVISIONS – TRUST BOARD**

(Paragraphs 25.3, 26.3, and 29)

### **Appointment and Removal of Chair and other Non-Executive directors, including Associate Non-Executive Directors**

1. Non-Executive Directors are to be appointed by the Members' Council using the following procedure.
  - 1.1 The Members' Council 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.
  - 1.2 The Trust Board may work with an external organisation recognised as expert at appointments to identify candidates with appropriate skills and experience required for Non-Executive Directors vacancies.
  - 1.3 (An) appropriate candidate(s) will be identified by a Nominations Committee through a process of open competition, which takes account of the policy maintained by the Members' Council and the skills and experience required.
  - 1.4 The Nominations Committee will comprise the Chair of the Foundation Trust (or, when a Chair is being appointed, another non-executive Director), the Chief Executive and at least two Governors selected by the Members' Council. Best practice is that the selection panel for a post should include at least one external assessor from NHS England and/or a representative from a relevant ICB, and the foundation trust should engage with NHS England to agree the approach.
2. The removal of the Chair or another Non-Executive Director shall be in accordance with the following procedures.
  - 2.1 Any proposal for removal must be proposed by a Governor and seconded by not less than three-quarters of the Members' Council of whom at least two must be elected Governors and two must be appointed Governors.
  - 2.2 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.
  - 2.3 In making any decision to remove a Non-Executive Director, the Members' Council shall take into account the annual appraisal carried out by the Chair.
  - 2.4 If any proposal to remove a Non-Executive Director is not approved at a meeting of the Members' Council, 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 disqualification of Directors**

3. A person may not become or continue as a Director of the Foundation Trust if:
  - 3.1 they are a member of the Members' Council or, except with the permission of the Trust Board, a governor or director of an NHS body
  - 3.2 they are the spouse, partner, parent or child of a member of the Trust Board of the Foundation Trust
  - 3.3 they are a member of a local authority's Scrutiny Committee covering health matters
  - 3.4 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986
  - 3.5 they are a person whose tenure of office as a Chair or as a member or director of an NHS 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
  - 3.6 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body
  - 3.7 in the case of a Non-Executive Director they have refused without reasonable cause to fulfil any training requirement established by the Trust Board
  - 3.8 in the case of a Non-Executive Director or Associate Non-Executive Director they are currently employed as a member of staff with the Trust
  - 3.9 in the case of a Non-Executive Director or Associate Non-Executive Director they are not a member of the Trust.
  - 3.10 they have refused to sign and deliver to the Secretary a statement in the form required by the Trust Board confirming acceptance of the declaration and register of fit and proper persons, interests and independence for Directors. (see Annex 8)

### **Expenses**

4. The Foundation Trust may reimburse Non-Executive Directors and Associate Non-Executive Director travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of Non-Executive Directors decides. These are to be disclosed in the annual report.

5. The remuneration, allowances and other terms of office of the Non-Executive Directors are determined by the Members' Council as set out in paragraph 33.1 of the constitution.
6. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

## **ANNEX 8 - TRUST BOARD DECLARATION AND REGISTER OF FIT AND PROPER PERSONS, INTERESTS AND INDEPENDENCE (Annex 7, 3.10)**

### **1. Introduction and background**

In accordance with the Constitution of the Trust, the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012 and Health and Social Care Act 2022) and Monitor's (referred to as NHS England / Improvement) Code of Governance for Foundation Trusts, and in recognition of the Codes of Conduct and Accountability issued by the Department of Health and the UK Corporate Governance Code produced by the Financial Reporting Council, the Trust is required to maintain a Register of Interests of Directors. The Trust is also required, under the new fundamental standard regulations set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, to ensure its Directors meet fit and proper person requirements, which came into force on 1 October 2014.

### **2. Policy development**

The Trust has had a policy in place in relation to Directors' declarations of interests since its inception in April 2002. This Policy was updated in May 2009 when the Trust was authorised as a Foundation Trust.

In September 2011, the Policy was subsequently revised to incorporate the Bribery Act 2010, which came into force on 1 July 2011 and created criminal offences of being bribed, bribing another and failing to prevent bribery for all organisations, including the NHS. Under the Act, bribery is defined as an inducement or reward offered, promised or provided to gain personal, commercial, regulatory or contractual advantage. If a Director is offered, or any attempt is made to offer, any type of possible inducement or reward covered by the Bribery Act, details should be immediately reported to the Trust's Local Counter Fraud Specialist.

In December 2013, a further revision was made to reflect the changes to the Trust's Constitution as a result of the provisions in the Health and Social Care Act 2012 relating to Directors' interests.

In March 2015, a further revision was made to incorporate the fit and proper person requirement for directors set out in the new fundamental standard regulations in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which came into force on 1 April 2015. Within the new regulations, the duty of candour and the fit and proper person requirements for Directors came into force earlier for NHS bodies on 1 October 2014.

In March 2018, a further revision was made to align the Policy with the Trust's Standards of Conduct in Public Service Policy (conflicts of interest policy) which addresses the requirements of the NHS England guidance and model policy for the NHS organisations on managing staff conflicts of interests.

In September 2023, a further revision to the Constitution and policy was agreed to incorporate the changes as a result of the Kark Review (2019) which was commissioned by the government in July 2018 to review the scope, operation and

purpose of the fit and proper person test (FPPT) as it applies under the current regulation 5 of the health and social Care Act 2008 (Regulated Activities) regulations 2014.

NHS organisations are expected to use it for all new board level appointments or promotions and for annual assessments for all board members going forward from 30 September 2023. It should be read alongside the NHS Constitution, NHS People Plan, People Promise and forthcoming NHS Leadership Competency Framework.

The Framework has introduced a requirement for and means of retaining certain information relating to testing the requirements of the FPPT for board members, a set of core elements for the FPPT assessment of all board members, and a new way of completing references.

The purpose of the new Framework is to strengthen individual accountability and transparency for board members, thereby enhancing the quality of leadership within the NHS.

It is a core element of a broader programme of board development, effective appraisals and values-based (as well as competency-based) appointments – all of which are part of the good practice required to build a ‘healthy’ board.

The Framework will help board members build a portfolio to support and provide assurance that they are fit and proper, while demonstrably unfit board members will be prevented from moving between NHS organisations.

The Framework applies to executive and non-executive directors of integrated care boards (ICBs), NHS trusts and foundation trusts, NHS England and the CQC, interim as well as permanent appointments where greater than six weeks and those who are called “directors” within Regulation 5.

The framework has been updated as follows:

- Updates in the NHS Electronic Staff Record (ESR) to record the testing of relevant information about board members’ qualifications and career history.
- A new standard board member reference template for references for all new appointments. For board members who leave their position, organisations must complete and retain locally the new board member reference, whether or not a reference has been requested by a prospective employer.
- An NHS Leadership Competency Framework will provide guidance for the competence categories against which a board member should be appointed, developed and appraised.
- The annual assessment needs to be in line with the FPPT checklist which is set out at appendix 7 of the framework (attached) so organisations should ensure they are familiar with this document.

The duty to store information relevant to the annual assessment (as set out in the checklist) will apply to existing directors (as they will have to comply with the assessment each year) and not only new appointees/promotions.



This Policy applies to all directors and 'equivalents', which, for this Trust, includes both Non-Executive and Executive Directors of the Trust, and other Directors forming the Executive Management Team.

### **3. Fit and proper person requirement for directors**

The fit and proper person requirement for directors states that individuals who have authority in organisations that deliver care are responsible for the overall quality and safety of that care and, as such, can be held accountable if standards of care do not meet legal requirements. It applies to all directors and 'equivalents', which, for this Trust, includes both Non-Executive and Executive Directors of the Trust, and other Directors forming the Executive Management Team. It is the responsibility of the Chair to ensure that all Directors meet the fitness test and do not meet any of the 'unfit' criteria.

In addition to the usual requirements of good character, health, qualifications, skills and experience, the regulation bars individuals who are prevented from holding the office (for example, under a director's disqualification order) and excludes from office people who:

*"have been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity, or discharging any functions relating to any office or employment with a service provider."*

The Care Quality Commission (CQC) is the body that will decide whether a person is not fit to be a director on the basis of any previous misconduct or incompetence in a previous role for a service provider. This would be the case even if the individual was working in a more junior capacity at that time, or working outside England.

The regulation requires the Chair to:

- Confirm to the CQC that the fitness of all new directors has been assessed in line with the regulations.
- Declare to the CQC in writing that they are satisfied that they are fit and proper individuals for that role.

A notification is required following a new director-level appointment. The CQC will cross-check notifications about new directors against other information they hold or have access to, to decide whether it wants to look further into the individual's fitness. The CQC will also have regard to any other information they hold or obtain about directors in line with current legislation on when convictions, bankruptcies or similar matters are to be considered 'spent'.

Where a director is associated with serious misconduct or responsibility for failure in a previous role, the CQC will have regard to the seriousness of the failure, how it was managed, and the individual's role within that. There is no time limit for considering such misconduct or responsibility. Where any concerns about an existing director come to the attention of the CQC, it may also ask the Trust to provide the same assurances.

Should the CQC use its enforcement powers to ensure all directors are fit and proper for their role, it will do so by imposing conditions on the provider's registration to ensure the provider takes appropriate action to remove the director.

#### **4. Fit and proper person requirement – Trust duties**

To meet the requirements of the fit and proper person test, the Trust must carry out all necessary checks to confirm that persons who are appointed to the role of director in the Trust are:

- Of good character (Schedule 4, Part 2 of the regulations).  
Have the appropriate qualifications, are competent and skilled (including that they show a caring and compassionate nature and appropriate aptitude).
- Have the relevant experience and ability (including an appropriate level of physical and mental health, taking account of any reasonable adjustments).
- Exhibit appropriate personal behaviour and business practices.

In addition, persons appointed to these roles must not have been responsible for, or known, contributed to or facilitated any serious misconduct or mismanagement in carrying on a regulated activity.

The Trust will ensure it has procedures in place to assess an individual against the fit and person requirements for new Director appointments prior to that appointment. The Head of Corporate Governance (Company Secretary) is responsible for ensuring procedures are in place and implemented for Non-Executive Director appointments and the Director of Human Resources and Organisational Development for Executive and 'other' Director appointments.

The CQC does recognise that the Trust may not have access to all relevant information about a person, or that false or misleading information may be supplied to it; however, the CQC does expect the Trust to demonstrate due diligence in carrying out checks and that it has made every reasonable effort to assure itself about an individual by all means available to it.

If the Trust decides to appoint a director, or continues to employ or appoint a Director, who does not meet the 'fit and proper person' test, it will need a strong rationale for doing so, which is defensible by the Chair both to the CQC and to NHS England / Improvement. Currently, the only outcome if the CQC decides an individual is not a 'fit and proper person' is removal.

#### **5. Fit and proper person requirement – individual responsibilities**

Although the obligation is on the Trust to ensure it meets the regulation particularly in relation to new appointments, Trust Board agreed in September 2014 that Directors have a responsibility to continue to make a declaration that they meet the fit and proper person requirement as part of the annual declaration of interests process and should their circumstances change.

The criteria for a 'fit and proper person' are as follows.

- The individual is of good character.

- The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed or appointed.
- The individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed.
- The individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.
- None of the grounds for unfitness specified in Part 1 of Schedule 4 apply to the individual (see below):

#### Schedule 4 criteria

##### *Fit and proper*

1. The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
2. The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.
3. The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.
4. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
5. The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.
6. The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment.

##### *And for good character*

7. Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence.
8. Whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.

## **6. Conflicts of interest – duties of Directors**

Meeting the fit and proper person requirement as set out above does not remove the responsibility of Directors of the Trust to adhere to the duties of a Director of the Trust, as set out in the Trust's Constitution, which include the following.

1. A duty to avoid any situation where a Director has (or could have) a direct or indirect interest that conflicts (or may possibly conflict) with the interests of the Trust. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest or the matter has been authorised in accordance with the Constitution.

2. A duty not to accept a benefit from a third party because they are a Director or doing (or not doing) anything in this capacity. This duty is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest. (A “third party” means a person other than the Trust or a person acting on its behalf.)

The Trust’s *Standards of Conduct in Public Service Policy* (conflicts of interest policy), which addresses the requirements of the NHS England guidance and model policy for the NHS organisations on managing staff conflicts of interests, applies to Directors of the Trust as ‘decision making staff’. The policy describes the requirements for declaring interests including gifts, hospitality, outside employment, shareholdings and other ownership issues, patents, loyalty interest, donations, sponsored events, sponsored research, sponsored posts, and clinical private practice. Further to this, Directors are expected to:

- a) Refuse gifts, benefits, hospitality or sponsorship of any kind that might reasonably be seen to compromise their personal judgement or integrity and / or exert influence to obtain preferential consideration. All such gifts should be returned and hospitality refused other than isolated gifts of a trivial nature, such as, calendars, or conventional hospitality, such as working lunches.
- b) Declare and register gifts, benefits and sponsorship of any kind within two weeks of it being offered, whether refused or accepted. If an individual is unsure whether the offer constitutes hospitality, gifts or rewards as defined by the Trust’s policy, then they should declare.

This applies to both implicit and explicit offers and whether or not linked to the awarding of contracts or a change in working practices.

If a Director of the Trust has 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 Trust Board. If a declaration proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. Any declaration must be made before the Trust enters into the transaction or arrangement.

If the Director is not aware of an interest, or where the Director is not aware of the transaction or arrangement in question, no declaration is required.

A Director need not declare an interest:

- a) If it cannot reasonably be regarded as likely to give rise to a conflict of interest.
- b) If, or to the extent that, the Directors are already aware of it.
- c) If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered either by a meeting of the Board of Directors or by a committee of the Directors appointed for the purpose under the Constitution.

All declarations will be entered into the Trust’s Register of Interests maintained by the Head of Corporate Governance (Company Secretary).

## **7. Declaration of interest – duties of Directors**

In a spirit of openness and transparency, Directors are also encouraged to declare all relevant and material interests. These apply to the Director as well as the husband / wife, partner, parent, child or sibling of the Director and can be defined as follows.

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS or which may conflict with the interests of the Trust.
- c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS or which may conflict with the interests of the Trust.
- d) A position of authority in a charity 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 NHS Foundation Trust, including but not limited to, lenders or banks.

If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair.

Details of any such interests will be recorded in the register of interests of the Directors as outlined below.

## **8. Declaration of interest – conduct at meetings**

Any Director who fails to disclose any interest required to be disclosed under the Constitution and as set out in this Policy may be removed from office in accordance with the process for removing a Director as set out in the Trust's Constitution.

Any Director who has an interest in a matter to be considered by Trust Board that needs to be declared should declare such interest to Trust Board and:

1. Withdraw from the meeting and play no part in the relevant discussion or decision.
2. Not vote on the issue (and, if by inadvertence, they do remain and vote, their vote shall not be counted).

At the time an interest is declared, it should be recorded in Trust Board meeting minutes. Any changes in interests should be officially declared at the next Trust Board meeting following the change occurring. The Trust should be informed in writing within four weeks of becoming aware of the existence of, or a change to, an interest. The Register of Interests will be amended on receipt within seven working days and the interest notified to the next relevant meeting.

During the course of a Trust Board meeting, if a conflict of interest is established, the Director(s) 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, a majority will resolve the issue with the Chair having the casting vote.

## **9. Register of interests**

Details of any interests declared by Directors will be recorded in the Register of Interests of the Directors.

The details of Directors' interests recorded in the Register will be kept up-to-date by means of a monthly review of the Register by the Head of Corporate Governance (Company Secretary) during which any changes of interests declared during the preceding month will be incorporated.

An annual review process will be undertaken by the Head of Corporate Governance (Company Secretary) and the Register of Interests presented to Trust Board on an annual basis (usually in March each year). As part of this process, Trust Board will assess any apparent conflicts and / or any risks an interest might present to the Trust. This annual review is over and above the requirement for Directors to declare interests during the year and is a standing item on each public Trust Board meeting agenda.

Subject to contrary regulations being passed, the Register will be available for inspection by the public free of charge and will be available on the Trust's website. The Head of Corporate Governance (Company 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. Copies or extracts of the Register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register, informed by guidance from the Information Commissioner.

## **10. Determination of independence**

Monitor's (NHS England / Improvement) Code of Governance also requires the Board to identify in the Trust's annual report those Non-Executive Directors it considers to be independent in character and judgement and whether there are any relationships or circumstances likely to affect, or could appear to affect, the Director's judgement. In addition to the above fit and proper person requirements and declaration of interests, Non-Executive Directors are also asked to declare whether he / she:

- a) Has been an employee of the Trust within the last five years.
- b) Has, or has had within the last three years, a material business relationship with the Trust either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the Trust.
- c) Has received or receives additional remuneration from the Trust apart from the Non-Executive Directors' fee, participates in the Trust's performance related pay scheme, or is a member of the Trust's pension scheme.
- d) Has close family ties with any of the Trust's advisers, Directors or senior employees.
- e) Holds cross-directorships or has significant links with other Directors through involvement in other companies or bodies.

- f) Has served on the Trust Board for more than nine years from the date of their first appointment.

Non-Executive Directors have a responsibility to continue to make a declaration of independence as part of the annual declaration of interests process and should their circumstances change.

## **11. Appendices**

- Fit and proper person declaration by the Chair and Directors of the Trust form.
- Declaration of interests by the Chair and Directors of the Trust form.
- Declaration of independence by the Chair and Non-Executive Directors of the Trust form.

## **ANNEX 9 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE MEMBERS' COUNCIL**

(Paragraph 18)

### **1. Calling Meetings**

- 1.1 The Members' Council is to meet at least four times in each financial year (excluding the Annual Members' Meeting) at such times and places as the Council may determine.
- 1.2 Meetings of the Members' Council may be called by the Secretary, or by the Chair, or by ten Governors including at least two elected Governors and two appointed Governors who give written notice to the Secretary specifying the business to be carried out.

### **2. Admission of the Public**

- 2.1 All meetings of the Members' Council are to be General Meetings open to members of the public unless the Members' Council decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Members' Council if they are interfering with or preventing the proper conduct of the meeting.

### **3. Notice of Meetings**

- 3.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary will give at least seven days' notice of the date and place of every meeting of the Members' Council to all Governors. Notice will also be published on the Trust's website.
- 3.2 After the receipt of a request to call a meeting the Secretary shall send notice to all Governors, specifying the business to be carried out, as soon as possible after the receipt of such a request. The Secretary shall call a meeting on at least 14 but not more than 28 days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or 10 Governors, whichever is the case, shall call such a meeting.
- 3.3 The notice of the meeting specifying the business proposed to be transacted at it shall be delivered to every Governor, so as to be available to him / her at least five clear days before the meeting.
- 3.4 Lack of service of the notice shall not affect the validity of a meeting.
- 3.5 In the case of a meeting called by the Chair or the Governors in default of the Secretary, the Chair or those Governors shall sign the notice and no business shall be transacted at the meeting other than that specified in the notice.



- 3.6 In such a case, failure to serve such a notice on more than 20 Governors will invalidate the meeting.

#### **4. Setting the Agenda**

- 4.1 The Foundation Trust may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 4.2 In accordance with the Constitution every agenda for meetings of the Members' Council will draw to the attention of Governors the declaration they are required to make in clause 9.1 stating that they are qualified to vote as a member of the Trust and that they are not prevented from being a member of the Members' Council. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Members' Council.
- 4.3 Any Governor wishing to submit an agenda item must notify the Secretary in writing at least ten clear days prior to the meeting at which it is to be considered. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the Chair.

#### **5. Chair of the Meeting**

- 5.1 The Chair of the Trust or, in their absence, the Deputy Chair is to preside at meetings of the Members' Council.
- 5.2 If the Chair has a conflict of interest in relation to the business being discussed, the Deputy Chair will chair that part of the meeting.
- 5.3 If the person chairing the meeting has a conflict of interest in relation to the business being discussed, the Lead Governor (Deputy Lead Governor in their absence) will preside over that part of the meeting.
- 5.4 If a vote concerns matters relating to the Chair and / or Non-Executive Directors, neither the Chair of the Trust nor any other Non-Executive Director should preside over the meeting. In this instance the Lead Governor (Deputy Lead Governor in their absence) should preside over that part of the meeting and have the casting vote.

#### **6. Annual Members' Meeting**

- 6.1 The Foundation Trust will publicise and hold an Annual Members' Meeting in accordance with the Constitution.

#### **7. Motions**

- 7.1 Motions may only be submitted by a Governor and must be received by the Secretary in writing at least one week prior to the meeting at which they are to be considered.

- 7.2 Emergency motions may only be submitted by a Governor and must be received by the Secretary before the commencement of the meeting. Acceptance of such motions for inclusion on the Agenda will be at the discretion of the Chair.
- 7.3 Any other business should be notified to the Chair at the commencement of the meeting. Acceptance of such items of business for inclusion on the agenda will be at the discretion of the Chair.
- 7.4 Notice of a motion to rescind a previous Minute must be received by the Secretary at least 21 days before the meeting and must be signed by a majority of members. Such a motion should not be taken until at least 30 minutes after the start of the meeting.
- 7.5 An amendment that does not directly negate a resolution may be moved by any member. No further amendments may be moved until the first amendment is disposed of. If an amendment is passed it shall become part of the substantive motion and subject to further amendment.

## **8. Chair's Ruling**

- 8.1 Statements of Governors made at meetings of the Members' Council 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.

## **9. Voting**

- 9.1 An elected Governor may not vote at a meeting of the Members' Council unless, before attending the meeting, they have made a declaration in the form specified by the Members' Council of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Members' Council. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Members' Council, and every agenda for meetings of the Members' Council will draw this to the attention of elected Governors.
- 9.2 Subject to the Constitution questions arising at a meeting shall be determined by a majority of the votes of the Governors 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.
- 9.3 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 9.4 In accordance with the Constitution the appointment of the Chair and any Non-Executive Director of the Trust is subject to the approval of a majority of the votes of the Governors present.

- 9.5 In accordance with the Constitution the removal of the Chair and any Non-Executive Director of the Trust is subject to a three-quarters majority of all the members of the Council of Members, voting at the meeting, of which at least two must be elected and two appointed.
- 9.6 In accordance with the Constitution the appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Members present and voting at a meeting.
- 9.7 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 9.8 Subject to the Constitution, and subject to clause 9.5, questions arising at a meeting of the Members' Council shall be decided by a majority of votes.
- 9.9 No resolution of the Members' Council shall be passed if all the Public Governors present unanimously oppose it.
- 9.10 All decisions taken in good faith at a meeting of the Members' Council or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

## **10. Attendance**

- 10.1 Governors who are unable to attend the Members' Council meeting should advise the Secretary in advance of the meeting so that their apologies may be submitted.
- 10.2 The Members' Council may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute the presence of the person at the meeting.
- 10.3 The Members' Council may invite the Chief Executive or any other member or members of the Trust Board, or a representative of the Trust's auditors or other advisors to attend a meeting of the Members' Council.

## **11. Minutes**

- 11.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting. The person presiding at that meeting will sign them.
- 11.2 No discussion shall take place upon the Minutes except upon their accuracy or where the Chair considers discussion appropriate (for example, consideration of matters arising). Any amendment to the Minutes shall be agreed and recorded at the next meeting.
- 11.3 Minutes shall be circulated in accordance with the Governors' wishes. Where

providing a record of a public meeting the Minutes shall be made available to the public.

## **12. Record of Attendance**

- 12.1 The names of the Governors present at the meeting shall be recorded in the minutes.

## **13. Suspension of Standing Orders**

- 13.1 Except where this would contravene the Constitution or any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council are present, and that a majority of those present vote in favour of suspension.
- 13.2 A decision to suspend Standing Orders shall be recorded in the minutes of the Meeting.
- 13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 13.4 No formal business may be transacted while Standing Orders are suspended.

## **14. Variation and Amendment of Standing Orders**

- 14.1 These Standing Orders may only be amended in accordance with paragraph 44 of this constitution. A motion to change the Standing Orders must be submitted to the Secretary in writing at least 21 days before the meeting.

## **15. Quorum**

- 15.1 The quorum for the Members' Council will be one-third of the membership of the Council provided that a minimum of half of this one-third are publicly elected Governors.
- 15.2 Any Governor who 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 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.
- 15.3 In accordance with the Constitution if at any meeting there is no quorum within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for seven days and upon reconvening, those present shall constitute a quorum.

## **16. Committees**

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

## ANNEX 10 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE TRUST BOARD

(Paragraph 31)

To be read in conjunction with the Standing Financial Instructions, Reservation of Powers to the Board and Scheme of Delegation.

### 1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Secretary to the Board).

Any expression to which a meaning is given in the National Health Service Act 1977, National Health Service and Community Care Act 1990, the National Health Service Act 2006, the Health and Social Care Act 2012 and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and Standing Financial Instructions and in addition:

**"Accounting Officer"** refers to the Chief Executive who is responsible and accountable to Parliament for ensuring the proper stewardship of public funds and assets.

**"Associate Non-Executive Director"** - means a non-voting director of the Trust who is not an employee of the Trust

**"Trust"** means the South West Yorkshire Partnership NHS Foundation Trust.

**"Trust Board"** means the Chair, executive and non-executive directors of the Trust collectively as a body.

**"Constitution"** means the Constitution of the Trust and all annexes to it.

**"Budget"** means 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.

**"Budget holder"** means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.

**"Chair of the Board" (or Trust)"** is the person appointed by the Members' Council to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chair of the Trust" shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

**"Chief Executive"** means the chief officer of the Trust, who is also the Accounting Officer.

**"Commissioning"** means the process for determining the need for and for obtaining the supply of healthcare and related services within available resources.

**"Committee"** means a committee or sub-committee created and appointed by the Trust.

**"Committee members"** means persons formally appointed by the Board to sit on or to chair specific committees.

**"Contracting and procuring"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

**"Governor"** means a person elected or appointed to serve on the Members' Council.

**"Deputy Chair"** means the non-executive director appointed by the Members' Council to take on the Chair's duties if the Chair is absent for any reason.

**"Director of Finance and Resources"** means the Chief Financial Officer of the Trust.

**"Executive Director"** means a director of the Trust who is an employee of the Trust.

**"Funds held on trust"** shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under S.90 of the NHS Act 1977, as amended. Such funds may or may not be charitable.

**"Members' Council"** is the body established according to the constitution to represent the interests of stakeholders.

**"Monitor"** (or successor organisation) is the Regulator appointed under the National Health Service Act 2006.

**"Nominated officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

**"Non-Executive Director"** means a director of the Trust who is not an employee of the Trust.

**"Officer"** means employee of the Trust or any other person holding a paid appointment or office with the Trust.

**"Secretary"** means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust's compliance with the law, Standing Orders, and guidance issued by the Department of Health and NHS England.

**"SFIs"** means Standing Financial Instructions.

**"SOs"** means Standing Orders.

**"Trust Board member"** means an executive or non-executive director of the Board as the context permits.

## **2. INTRODUCTION**

### **2.1 Statutory Framework**

South West Yorkshire Partnership NHS Foundation Trust is a public benefit corporation established in accordance with the provisions of the National Health Service Act 2006 and was authorised on 1 May 2009. The Standing Orders of the Trust are designed to facilitate effective working of the Trust Board and to reflect the standards for business conduct and probity that are set out in the NHS England Code of Governance for NHS Provider Trusts (October 2022), effective from 1 April 2023. .

2.1.1 The Trust is a specialist NHS foundation trust providing community, mental health and learning disability services to the people of Barnsley, Calderdale, Kirklees and Wakefield.

It also provides medium secure services for West Yorkshire and local low secure services and is the lead provider for the West Yorkshire secure services provider collaborative and the lead for the South Yorkshire secure services collaborative.

The Trust is also the lead provider across Yorkshire and Humber for community forensic Child and adolescent Mental Health Serviced (CAMHS)and provides CAMHS services in Wetherby Youth Offending Institute (YOI) and Adel Beck Secure Children's Home.

The headquarters of the Trust is Fieldhead Hospital, Ouchthorpe Lane, Wakefield, WF1 3SP.

2.1.2 NHS Foundation Trusts are governed mainly by the National Health Service Act 2006, the Health and Social Care Act 2012 and the Health and Social Care Act 2022, and are subject to regulation by NHS England.

2.1.3 The functions of the Trust are conferred by this legislation.

2.1.4 The Trust must comply with each provision of the revised Code of Governance (October 2022) with effect from 1 April 2023, or, where appropriate, explain in each case why the trust has departed from the code.

2.1.4 As a statutory body, the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable as well as to the Secretary of State for Health.



The Trust is required to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals. The Trust is additionally required to draw up a schedule of decisions that are reserved for the Board and to ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The documents setting out the Reservation of Powers to the Board and Scheme of Delegation, and the Standing Financial Instructions have effect as if incorporated into the Standing Orders.

The Trust is also bound by such other statutes and legal provisions which govern the conduct of its affairs. In addition to the statutory requirements, the Secretary of State through the Department of Health issues further directions and guidance. These are normally issued under cover of a circular or letter.

## **2.2 Dissemination of the Trust Board standing orders**

The Chief Executive is responsible for ensuring all existing directors and staff and all new appointees to the Trust Board are notified of and understand their responsibilities within Standing Orders, Standing Financial Instructions and the Scheme of Delegation.

## **2.3 Changes to Standing Orders**

Changes to the Standing Orders are subject to the following conditions.

- A notice of motion under SO 4.4 has been given.
- The amendment has been approved in accordance with paragraph 45 of the constitution.

## **2.4 Review of standing orders**

These standing orders will be reviewed biannually by the Trust Board or when required. This review will include all documents having the effect as if incorporated into Standing Orders.

# **3. THE TRUST BOARD: COMPOSITION AND THE ROLE AND TERMS OF OFFICE OF DIRECTORS**

## **3.1 Role of Directors**

The Board will function as a unitary board. Executive and Non-Executive Directors will be full and equal members of the Board which will act as the corporate decision body. Their role as members of the Trust Board will be to consider the key strategic, risk and governance issues facing the Trust in carrying out its statutory and other functions.

## **3.2 Chair**

The Chair should promote a culture of honesty, openness, trust and debate by facilitating the effective contribution of non-executive (section 46 Code of governance for NHS provider trusts Provision Requirement) directors in

particular and ensuring a constructive relationship between executive and non-executive directors.

The Chair shall be responsible for the operation of the Trust Board and chair all meetings of the Trust Board and the Members' Council when present. The Chair must comply with the terms of appointment and with these Standing Orders.

The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

The Chair will meet at least four times per year with the Non-Executives without the Executive Directors present.

### **3.3 Non-Executive Directors**

The Non-Executive Directors shall not be granted, nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

#### **3.3.1 Associate Non-Executive Directors**

The Associate non-executive directors shall not be granted, nor shall they seek, individual or collective executive powers or authority when in attendance at Trust committees and Board. Associate non-executives do not have voting rights at Board or its sub committees.

### **3.4 Executive Directors**

Executive Directors shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

### **3.5 Chief Executive**

The Chief Executive is the Accounting Officer for the Trust and is responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accounting Officer Memorandum for NHS Foundation Trust Chief Executives.

### **3.6 Director of Finance and Resources**

The Director of Finance and Resources is responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He / she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

### **3.7 Composition of the Trust Board**

In accordance with the constitution the composition of the Trust Board shall be:

- (1) the Chair of the Trust (appointed by the Members' Council);
- (2) up to six non-executive directors (appointed by the Members' Council);
- (3) up to six executive directors including:
  - the Chief Executive who is the accounting officer;
  - the Director of Finance and Resources
  - the Director of HR and OD
  - a registered medical practitioner
  - a registered nurse

There will be at least one more non-executive director than executive directors, including the Chair of the Trust.

### **3.8 Appointment of Chair and Non-Executive Directors of the Trust**

Provisions covering the appointment and removal of the Chair and Non-Executive Directors of the Trust Board are set out in paragraphs 26 of the constitution and Annex 7 of the constitution: Additional Provisions. The Chair and Non-Executive Directors will be appointed by the Members' Council for an initial period of three years or as determined by the Nominations Committee. The Chair may be re-appointed for a further three years (up to a maximum of nine years in total) subject to the approval of the members' Council. Appointment of Non-Executive directors may be re-appointed for a further three years (up to a maximum of nine years in total), subject to approval by the Members' Council following confirmation by the Chair that they have performed effectively and remain committed to the role. Appointments beyond six years will be subject to annual review.

On appointment the Chair must meet the 'independence' criteria set out in the NHS England Code of Governance for NHS Provider Trusts (October 2022), effective from 1 April 2023.

The Members' Council will be responsible for agreeing the remuneration of the Chair and Non-Executive Directors.

The senior independent director will meet annually with the Non-Executive Directors to review the Chair's performance. Any further arrangements for appraisal of the chair will be agreed with the Members' Council.

### **3.9 Appointment of Chief Executive and Executive Directors**

The Chief Executive will be appointed by a Committee of the Trust Board, consisting of the Chair, other Non-Executive Directors, and a representative from the Members' Council. The Committee shall be advised by an independent assessor, who will have no formal role in making an appointment. Appointment of the Chief Executive will be subject to approval by the Members' Council at the first general meeting after appointment.

Executive Directors of the Trust Board will be appointed by a Committee of the Trust Board consisting of Chair, the Chief Executive and other non-executive directors.

### **3.10 Appointment and Powers of Deputy Chair**

The Members' Council will appoint a Non-Executive Director to be the Deputy Chair for a period of three years or for the remainder of their term as a member of the Trust Board (if less than three years) or for any other period determined by the Members' Council.

Any member so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Members' Council may thereupon appoint another member as Deputy Chair.

Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Deputy Chair.

### **3.11 Appointment of a Senior Independent Director**

The Trust Board shall appoint one of the independent non-executive directors to act as the Senior Independent Director. This will be done in consultation with the Members' Council. The Senior Independent Director may be, but need not necessarily be, the Deputy Chair.

The Senior Independent Director will be available to directors and Governors if they have concerns which they cannot resolve with the Chair, Chief Executive or Director of Finance, Estates and Resources.

### **3.12 Company Secretary**

The Trust Board shall appoint a senior member of staff to carry out the functions of a Company Secretary to provide advice on corporate governance issues to the Chair, the Trust Board and the Members' Council and monitor the Trust's compliance with these standing orders, the Constitution, the terms of authorisation, statutory provisions and guidance and directions given by NHSE. The Secretary will ensure good information flows between the Trust Board, its committees and the Members' Council.

### **3.13 Corporate role of the Board**

- (1) All business shall be conducted in the name of the Trust.
- (2) All funds received in trust shall be held in the name of the Trust as corporate trustee.

### **3.14 Schedule of Matters reserved to the Board and Scheme of Delegation**

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are

set out in the 'Schedule of Matters Reserved to the Board' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

### **3.15 Lead Roles for Board Members**

The Chair will ensure that the designation of lead roles or appointments of Board members as required by commissioners or as set out in any statutory or other relevant guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Member with responsibilities for Infection Control or Child Protection Services etc.).

### **3.16 Indemnity for Directors**

Directors may, at the Trust's expense, seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective decision by the majority of directors.

A director who acts honestly and in good faith will not have to meet out of his / her personal resources any personal civil liability incurred in the execution of the functions of the Trust Board, save where he has acted recklessly. Any costs arising from a director acting honestly and in good faith will be met by the Trust. The Board of Directors may make any arrangements it considers appropriate for the provision of indemnity insurance to meet any liabilities which are properly the liability of the trust.

## **4. MEETINGS OF THE TRUST**

### **4.1 Calling meetings**

4.1.1 Ordinary meetings of the Board shall be held sufficiently regularly to enable the Board to discharge its duties effectively at such times and places as the Board may determine subject to the conditions set out in Annex 7 of the constitution (Additional provisions for the Trust Board).

4.1.2 The Chair of the Trust may call a meeting of the Board at any time.

4.1.3 Meetings of the Trust Board may be called by the Secretary or the Chair or by four directors who give notice to the Secretary specifying the business to be carried out. The Secretary will send notice to all directors as soon as possible after receipt of such a request. The Secretary will call a meeting at least 14 days but not more than 28 days after receipt of such a notice to discuss the specified business. If the Secretary fails to do so, then the Chair or the directors may call such a meeting.

### **4.2 Notice of Meetings and the Business to be transacted**

4.2.1 At least 14 days notice of the date, time and place of meetings will be given except in an emergency.

4.2.2 In the case of a meeting called by directors in default of the Chair calling the meeting, the notice shall be signed by those directors.

- 4.2.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 4.5.
- 4.2.4 A director desiring a matter to be included on an agenda shall make his / her request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.2.5 Before each public meeting of the Board notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the Trust's website at least three clear days before the meeting

#### **4.3 Agenda and Supporting Papers**

The agenda will be sent to Trust Board directors at least six clear days before the meeting and supporting papers, whenever possible, will accompany the agenda, unless there are exceptional circumstances and the Chair and Secretary have agreed to one or more papers being circulated later. Failure to serve such a notice on any director shall not affect the validity of a meeting.

#### **4.4 Notice of Motion**

- 4.4.1 Subject to the provision of Standing Orders 4.6 'Motions: Procedure at and during a meeting' and 4.7 'Motions to rescind a resolution', a member of the Board wishing to move a motion shall send a written notice to the Secretary who will ensure that it is brought to the immediate attention of the Chair.
- 4.4.2 The notice shall be delivered at least 10 clear days before the meeting. The Secretary shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

#### **4.5 Emergency Motions**

Subject to the agreement of the Chair, and subject also to the provision of Standing Order 4.6 'Motions: Procedure at and during a meeting', a director of the Board 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 Trust 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.

#### **4.6 Motions: Procedure at and during a meeting**

##### **4.6.1 Who may propose?**

A motion may be proposed by the Chair of the meeting or any director present. It must also be seconded by another director.

##### **4.6.2 Contents of motions**

The Chair may exclude from the debate at their discretion any motion not included in the notice summoning the meeting except motions relating to:

- the receipt of a report
- consideration of any item of business before the Trust Board
- the accuracy of minutes
- that the Board proceed to next business
- that the Board adjourn
- that the question be now put.

#### 4.6.3 **Amendments to motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

#### 4.6.4 **Rights of reply to motions**

##### a) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment but may not otherwise speak on it.

##### b) Substantive / original motion

The director who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

#### 4.6.5 **Withdrawing a motion**

A motion, or an amendment to a motion, may be withdrawn.

#### 4.6.6 **Motions once under debate**

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion
- the adjournment of the discussion, or the meeting
- that the meeting proceeds to the next business
- that the question should be now put
- referral of the matter to a committee of the Trust Board
- that a director be not further heard
- a motion resolving to exclude the public (see Standing Order 4.17).

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity

these should only be put forward by a director of the Board who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote. No resolution will be passed if it is opposed by all of the Non-Executive Directors or all of the Executive Directors.

#### **4.7 Motion to Rescind a Resolution**

4.7.1 Notice of motion to 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 three other directors, and before considering any such motion of which notice shall have been given, the Trust Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

4.7.2 When any such motion has been dealt with by the Trust Board it shall not be competent for any director other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

#### **4.8 Chair of meeting**

At any meeting of the Trust Board the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair, if present, shall preside.

#### **4.9 Chair's ruling**

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

#### **4.10 Quorum**

4.10.1 One third of the whole number of directors, including not less than one executive director (one of whom must be the Chief Executive, or another executive director nominated by the Chief Executive) and not less than two non-executive directors (one of whom must be the Chair or deputy Chair of the Trust Board) shall form a quorum.

The Trust Board may agree that its members can participate in its meeting by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

If the Chair or director has been disqualified from participating in the discussion on any matter and / or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.8) that person 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.

#### **4.11 Voting**

4.11.1 The following Directors are entitled to vote as per the composition of the Trust Board:

- a non-executive Chair
- up to six other non-executive directors
- up to six executive directors including:
  - one of the executive directors shall be the Chief Executive.
  - one of the executive directors shall be the finance and resources director.
  - one of the executive directors is to be a registered medical practitioner.
  - one of the executive directors is to be a registered nurse.
- up to two other Executive Directors may be eligible for voting rights at the discretion of the Chair and Chief Executive to a maximum of six Executive Directors being able to vote as there will be at least one more non-executive director than executive directors voting, including the Chair of the Trust.

4.11.2 Except for the provisions made in Standing Orders 4.13 - Suspension of Standing Orders and 4.14 - Variation and Amendment of Standing Orders), every question put to a vote at a meeting shall be determined by a majority of the votes of directors present and voting on the question. In the case of an equal vote, the person presiding (i.e. the Chair of the meeting) shall have the casting vote.

4.11.3 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

4.11.4 If at least one third of the directors present so request, the voting on any question may be recorded so as to show how each director present voted or did not vote (except when conducted by paper ballot).

4.11.5 If a director so requests, their vote shall be recorded by name.

4.11.6 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.

4.11.7 A manager who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Director.

4.11.8 A manager attending the Trust Board meeting 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. The status of people when attending a meeting will be recorded in the minutes.

4.11.9 Where the office of a director of the Board is shared jointly by more than one person, either or both of those persons may attend or take part in meetings of the Board:

- if both are present at a meeting, they should cast one vote if they agree;
- in the case of disagreements, no vote should be cast;
- the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 4.10 - Quorum.

4.11.10 No resolution of the Trust Board shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.

## **4.12 Disputes**

Where directors have issues that cannot be resolved about the running of the NHS Foundation Trust or a proposed action, this should be recorded in the minutes. The Chief Executive, as Accounting Officer, should follow the procedure set out by NHS England in the Accounting Officer's memorandum for advising the Trust Board and Members' Council and for recording and submitting objections to decisions on matters of propriety or regularity or on the wider responsibilities of the Accounting Officer

## **4.13 Suspension of Standing Orders**

4.13.1 Except where this would contravene any statutory provision or the rules relating to the Quorum (SO 4.10), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the directors of the Board are present (including at least one director who is a Non-Executive Director and one of whom is an Executive Director of the Trust) and that at least two-thirds of those directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Trust Board's minutes.

4.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and directors of the Trust.

4.13.3 No formal business may be transacted while Standing Orders are suspended.

4.13.4 The Audit Committee shall review every decision to suspend Standing Orders.

## **4.14 Variation and amendment of Standing Orders**

No amendment shall be made to these Standing Orders unless:

- notice of motion has been given in accordance with Standing Order 4.4;
- the amendment has been approved in accordance with paragraph 46 of the constitution.

#### **4.15 Record of Attendance**

The names of the Chair and Directors present at the meeting shall be recorded. Where a director arrives late or leaves before the end of the meeting, this will be reflected in the minutes. A record of each director's attendance at meetings of the trust Board and Committees of the Board will be kept and reported to the Members' Council on request.

#### **4.16 Minutes**

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendments to the minutes will be agreed and recorded prior to being signed as a true record.

Minutes will be circulated in accordance with the wishes of the Chair and, where the minutes provide a record of a public meeting, will be made available to the public as required by the Code of Practice on Openness in the NHS, the Freedom of Information Act and the NHS England Code of Governance for NHS Provider Trusts (October 2022), effective from 1 April 2023.

#### **4.17 Admission of public and the press**

##### **4.17.1 Admission and exclusion on grounds of confidentiality of business to be transacted**

Meetings of the Trust Board shall be open to members of the public. Members of the public may be excluded from a meeting of the Trust Board for special reasons, which shall include, but not be limited to, the following reasons.

- Discussion of matter which contains confidential personally identifiable information relating to a member of staff or a service user or carer.
- Discussion of any matter which contains commercially sensitive information relating to the Trust or a third party.
- In the interests of public order, in accordance with Standing Order 4.17.2 below.

##### **4.17.2 General disturbances**

The Chair or the person presiding over the meeting shall give such directions as he / she thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust's business shall be conducted without interruption

and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Trust Board resolving as follows:

- “That, in the interests of public order, the meeting adjourns for (the period to be specified) to enable the Trust Board to complete its business without the presence of the public”.

#### **4.17.3 Business proposed to be transacted when the press and public have been excluded from a meeting**

Matters to be dealt with by the Trust Board following the exclusion of representatives of the press, and other members of the public, as provided in 4.17.1 and 4.17.2 above, shall be confidential to the members of the Board.

Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

#### **4.17.4 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings**

Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Trust or Committee thereof. Such permission shall be granted only upon resolution of the Trust.

Use of recording devices may be permitted, in agreement with the Chair, to support disability requirements and if recordings are to be for personal use only and will not be shared in line with Trust policies. If a recording device is to be used, it will be declared at the beginning of a meeting.

#### **4.18 Observers at Trust meetings**

The Trust will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Trust Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

## **5. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES**

### **5.1 Appointment of Committees**

Subject to the constitution, Terms of Authorisation, statutory provision and directions given by NHS England, (or successor organisation), the Trust Board may appoint committees of the Trust made up of Directors of the Trust.

The Trust shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees.

Committees of the Board may appoint sub-committees consisting wholly or partly of members of the committee, whether or not they include directors, or wholly of persons who are not members of the committee, whether or not they include Directors.

Each committee or sub-committee will have terms of reference and powers approved by the Trust Board, which will have the effect of being incorporated into the Standing Orders.

### **5.3 Applicability of Standing Orders and Standing Financial Instructions to Committees**

The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Trust. In which case the term “Chair” applies to the Chair of the committee, and the term “member” is to be read as a reference to a member of the committee. There is no requirement to hold meetings of committees established by the Trust in public.

### **5.4 Terms of Reference**

Each committee will have terms of reference and powers and will be subject to conditions, such as a requirement to report to the Trust Board, which will be determined by the Trust Board. The terms of reference will have effect as if incorporated into the Standing Orders.

### **5.5 Delegation of powers by Committees to Sub-Committees**

Where committees are authorised to establish sub-committees, they may not delegate executive powers to the sub-committee unless expressly authorised by the Trust Board.

### **5.6 Approval of Appointments to Committees**

The Trust Board will approve the appointments to each of the committees which it has formally constituted. The Board will define the powers of such appointees and will agree allowances, including reimbursement for loss of earnings, and / or expenses in accordance where appropriate with national guidance.

### **5.7 Appointments for Statutory functions**

Where the Trust Board is required to appoint persons to a committee and / or to undertake statutory functions, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with the regulations and / or directions made by Monitor.

## **5.8 Committees established by the Trust Board**

Without prejudicing the formation of other committees or sub-committees as are considered necessary by the trust, the major committees are:

### **5.8.1 Audit Committee**

The Audit Committee provides the Trust Board with an independent and objective view on its systems of control, including the adequacy of the governance arrangements and the systems for financial control and financial reporting. At least one of the Non-Executive directors on the Audit Committee must have relevant financial experience. The purpose of the committee is defined in its terms of reference.

### **5.8.2 Clinical Governance and Clinical Safety Committee**

The Clinical Governance and Clinical Safety Committee provides assurance to the Trust Board on matters of service quality and the effectiveness of clinical risk management, practice effectiveness and standards of clinical and professional practice. The purpose of the committee is defined in its terms of reference.

### **5.8.3 Equality, Inclusion, and Involvement Committee**

The Equality, Inclusion and Involvement Committee's role is to ensure the Trust improves the diversity of its workforce and embeds diversity and inclusion in everything it does. The purpose of the committee is defined in its terms of reference.

### **5.8.4 Finance, Investment and Performance Committee**

The Finance, Investment and Performance Committee's role is to provide oversight and challenge of the Trust's financial performance and financial plans to ensure the Trust and the services it provides remain financially sustainable. The purpose of the committee is defined in its terms of reference,

### **5.8.5 Mental Health Act Committee**

The Mental Health Act Committee is responsible for ensuring the organisation operates within the legal requirements of the Mental Health Act and Mental Capacity Act. The purpose of the committee is defined in its terms of reference.

### **5.8.6 People and Remuneration Committee**

The People and Remuneration Committee will be made up of at least three Non-Executive Directors, all of whom must meet the independence criteria set out in the NHS England Code of Governance for NHS Provider Trusts (October 2022), effective from 1 April 2023. The purpose of the committee is defined in its terms of reference.

#### **5.8.7 Collaborative Committee**

The Collaborative Committee's role is to ensure delineation between provision and commissioning responsibilities (finance, contracting, planning and quality assurance) of the West Yorkshire Adult Secure Provider Collaborative and other specialised mental health provider collaboratives as appropriate and to provide oversight and assurance of the Trust's commissioning responsibilities as a Lead Provider.

#### **5.8.8 Other Committees**

The Trust Board may also establish such other committees or sub-committees as required to discharge the Trust's responsibilities. The Trust Board will determine those duties that can be delegated to committees or sub-committees.

##### **5.8.8.1 Nominations Committee**

The Nominations Committee is a committee of the Members' Council and is responsible for overseeing the appointment of Non-Executive Directors. Its membership will include the Chair of the Trust Board, at least two members of the Members' Council. The Chief Executive is in attendance as an advisor to the committee. The purpose of the committee is defined in its terms of reference.

##### **5.8.8.2 Charitable Funds Committee**

In line with its role as a corporate trustee for any funds held in trust, either as charitable or non charitable funds, the Trust Board has established a Charitable Funds Committee of the Corporate Trustee to administer those funds in accordance with any statutory or other legal requirements or directions set out by the Charity Commission. The purpose of the committee is defined in its terms of reference.

##### **5.8.8.3 West Yorkshire Mental Health Services Collaborative (WYMHSC) Committee in Common**

The WYMHSC Committee in Common is responsible for overseeing a comprehensive system wide collaborative programme to deliver the objective of a more collaborative model of care for acute and specialist mental health services in West Yorkshire. Membership of the committee includes the Trust Chair and Chief Executive. The purpose of the WYMHSC and the committee is defined in the Memorandum of Understanding, which includes the terms of reference.

Committees are expected to conduct their business in accordance with the 7 principles of public life (Nolan principles): selflessness, integrity, objectivity; accountability; openness; honesty; and leadership.

## **6. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION**

## **6.1 Delegation of Functions to Committees and Officers or other bodies**

- 6.1.1 Subject to paragraph 3 of the constitution, the Board may make arrangements for any of its functions to be carried out on its behalf by a committee, Executive Team or Executive Director, subject to approval by the Trust Board and to restrictions and conditions which will be agreed by the Board.

## **6.2 Emergency Powers and urgent decisions**

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 3.14) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Trust Board in public session for formal ratification.

## **6.3 Delegation to Committees**

- 6.3.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees.

## **6.4 Delegation to Executive Directors**

- 6.4.1 Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committee or sub-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he / she will perform personally and shall nominate officers to undertake the remaining functions for which he / she will still retain accountability to the Trust.
- 6.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying decision making rights and accountability. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.
- 6.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability of the Director of Finance and Resources to the Trust Board to provide information and advise the Board in accordance with statutory duties. Outside these statutory requirements the roles of the Director of Finance and Resources shall be accountable to the Chief Executive for operational matters.
- ## **6.5 Schedule of Matters Reserved to the Trust and Scheme of Delegation of powers**
- 6.5.1 The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect as if incorporated in these Standing Orders.



## **6.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions**

If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action (which may include disciplinary action) or ratification. All members of the Trust Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## **6.7 Confidentiality**

A member of a committee will not disclose a matter dealt with by or brought before the committee without its permission until the committee has reported to the Board or has otherwise concluded on the matter.

A Director of the Trust or a member of a committee will not disclose any matter reported to the Trust Board or otherwise dealt with by the committee, whether or not it has been reported to the Trust Board, if the Trust Board or the Committee resolve that it should remain confidential.

## **7. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS**

### **7.1 Policy statements: general principles**

The Trust Board will from time to time agree and approve Policy statements which will apply to all, or specific groups of staff employed by South West Yorkshire Partnership NHS Foundation Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Trust Board minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

### **7.2 Specific Policy statements**

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Standards of Business Conduct in Public Service Policy (including Declarations of Interests) for South West Yorkshire Partnership NHS Foundation Trust staff
- the staff disciplinary and appeals procedures adopted by the Trust.

### **7.3 Standing Financial Instructions**

Standing Financial Instructions adopted by the Trust Board in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

### **7.4 Specific guidance**

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Secretary of State for Health:

- Caldicott Guardian 1997
- Human Rights Act 1998
- Freedom of Information Act 2000.

## **8. DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS**

### **8.1 Declaration of Interests**

Trust Board directors are required to comply with the provisions set out in paragraph 32 of the constitution.

Directors should declare any interests required to be declared by paragraph 32 of the constitution in writing to the Secretary as soon as practicable. Declarations of interest should be made on appointment to the Trust Board or as soon as the Director becomes aware of the interest.

Any changes in interests should be declared at the next Trust Board meeting following the change occurring and recorded in the minutes of that meeting.

Declared interests of Board members should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

### **8.2 Register of Interests**

The Chief Executive will ensure that a Register of Interests of the Directors is established to record formally declarations of interests of Board members. The Register will include details of any directorships held by any of the Directors and any interests declared pursuant to paragraph 34 of the constitution by any Executive Director or Non-Executive Director of the Trust Board. The Register will be available to the public.

### **8.3 Standards of Business Conduct**

All Trust staff and members of the Trust Board must comply with the Trust's Standards of Business Conduct in Public Service Policy and the national guidance contained in HSG (93)5 on 'Standards of Business Conduct for NHS staff'.

#### **8.3.1 Interest of Officers in Contracts**

- i) Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he / she has any pecuniary interest, direct or indirect, the Officer shall declare

their interest by giving notice in writing of such fact to the Chief Executive or Trust's Company Secretary as soon as practicable. In the case of spouses or persons cohabiting as partners, the interest of one spouse or partner shall, if known to the other, be deemed to be also the interest of the other.

- ii) An Officer should also declare to the Chief Executive any other employment or business or other relationship of his / her, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- iii) The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

### **8.3.2 Canvassing of and Recommendations by Directors in Relation to Appointments**

- i) Canvassing of directors of the Trust or 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.
- ii) Directors 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.

### **8.3.3 Relatives of Directors or Officers**

- i) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust 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 him liable to instant dismissal.
- ii) The Chair and every director and officer of the Trust shall disclose to the Trust Board any relationship between himself and a candidate of whose candidature that director or officer is aware. It is the duty of the Chief Executive to report to the Trust Board any such disclosure made.
- iii) On appointment, directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- iii) Where the relationship to a director of the Trust is disclosed, that director will have no part in the appointment process.

## **9. RESOLUTION OF DISPUTES WITH THE MEMBERS' COUNCIL**

In the event of a dispute between the Trust Board and the Members' Council which cannot be resolved by the Chair, the Chair may at his / her discretion seek to bring in independent facilitation or mediation.

On satisfactory completion of the disputes process, the Board of Directors will implement the agreed changes.

On unsatisfactory completion of the process, the view of the Board of Directors will prevail.

The Members' Council will not be prevented from informing NHS England that the Board of Directors has not responded constructively to the concerns of the Members' Council or reporting a failure of the Trust to meet the terms of its Authorisation.

## **10. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS**

### **10.1 Custody of Seal**

The common seal of the Trust shall be kept by the Chief Executive or a nominated Manager by him / her in a secure place.

### **10.2 Sealing of Documents**

The Seal of the Trust will not be fixed to any documents unless the sealing has been authorised by a resolution of the Trust Board or a committee of the Board or where the Trust Board has delegated its powers.

Where it is necessary that a document be sealed, the seal shall be affixed in the presence of the Chief Executive (or his / her nominated deputy) and witnessed by the company secretary. Before any building, engineering, property or capital document is sealed, it must be approved and signed by the Director of Finance, Estates and Resources or an officer nominated by him and authorised and countersigned by the Chief Executive or an officer nominated by him, who will not be from the originating directorate.

The form of attestation of documents will be 'The Common Seal of South West Yorkshire Partnership NHS Partnership Foundation Trust was hereto affixed in the presence of....'.

### **10.3 Register of Sealing**

An entry of every sealing will be made and numbered consecutively in a register provided for that purpose and will be signed by the person who approved and authorised the document and those who attested the seal. A report of each sealing will be made quarterly to the Trust Board.

### **10.4 Signature of documents**

Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

The Chief Executive or nominated officers will be authorised by resolution of the Trust Board to sign on behalf of the Trust any agreement or other document not required to be executed as a deed, the subject matter of which has been approved by the Trust Board or committee or sub-committee to which the Trust Board has delegated authority.

## **ANNEX 11 – ADDITIONAL PROVISIONS – MEMBERSHIP**

(Paragraphs 5, and 10.2)

### **1. DISQUALIFICATION FROM MEMBERSHIP**

1.1 An individual may not become a member of the Foundation Trust if:

- 1.1.1 they are under 11 years of age; or
- 1.1.2 within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer.

### **2. TERMINATION OF MEMBERSHIP**

2.1 A member shall cease to be a member if:

- 2.1.1 they resign by notice to the Secretary
- 2.1.2 they die
- 2.1.3 they are expelled from membership under this constitution
- 2.1.4 they cease to be entitled under this constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency
- 2.1.5 it appears to the Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Members' Council, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust
- 2.1.6 they behave in a way that is incompatible with the Code of Conduct for members.

2.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.

- 2.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.
- 2.2.2 If a complaint is made, the Members' Council 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:

2.2.2.1 dismiss the complaint and take no further action

2.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution

2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Members' Council.

2.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Members' Council, 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.

2.2.4 At the meeting the Members' Council will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.

2.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

2.3 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.

2.4 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' Council present and voting at a General Meeting.

### **3. MEMBERS' MEETINGS**

3.1 The Foundation Trust shall hold its Annual Members' Meeting within nine months of the end of each financial year.

3.2 All members' meetings, other than Annual Members' Meeting, are called special members' meetings.

3.3 The Annual Members' Meeting is open to the public, all members of the Foundation Trust, Governors and Directors, and representatives of the auditor.

3.4 Special Members' Meetings are open to all members of the Foundation Trust, Governors and Directors, but not to members of the public unless the Trust Board decides otherwise.

- 3.5 The Trust Board may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a Members' Meeting whether Annual or Special.
- 3.6 All members' meetings are to be convened by the Secretary by order of the Trust Board.
- 3.7 The Trust Board may decide where a members' meeting is to be held and may also for the benefit of members:
  - 3.7.1 arrange for the annual members' meeting to be held in different venues each year:
  - 3.7.2 make provisions for a members' meeting to be held at different venues simultaneously or at different times. In making such provision the Trust Board shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 3.8 At the annual members' meeting:
  - 3.8.1 the Trust Board shall present to the members:
    - 3.8.1.1 the annual accounts
    - 3.8.1.2 any report of the auditor
    - 3.8.1.3 a copy of the annual reportand
    - 3.8.1.4 forward planning information for the next Financial Year
  - 3.8.2 the Members' Council shall present to the members a report on:
    - 3.8.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership
    - 3.8.2.2 the progress of the membership strategy
    - 3.8.2.3 any proposed changes to the policy for the composition of the Members' Council and of the non-executive Directors
- 3.9 Notice of a members meeting is to be given:



- 3.9.1 by notice to all members
  - 3.9.2 by notice prominently displayed at the head office and at all of the Foundation Trust's places of business
  - 3.9.3 by notice on the Foundation Trust's website
- at least 14 clear days before the date of the meeting. The notice must:
- 3.9.4 be given to the Members' Council and the Trust Board, and to the auditor
  - 3.9.5 state whether the meeting is an annual or special members' meeting
  - 3.9.6 give the time, date and place of the meeting
  - 3.9.7 indicate the business to be dealt with at the meeting.
- 3.10 Before a members' meeting can do business there must be a quorum present. A quorum is at least two Governors' present from the Foundation Trust's public constituencies, and one staff Governor, and one appointed Governor.
- 3.11 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 3.12 It is the responsibility of the Trust Board, the Chair of the meeting and the Secretary to ensure that at any members' meeting:
- 3.12.1 the issues to be decided are clearly explained
  - 3.12.2 sufficient information is provided to members to enable rational discussion to take place.
- 3.13 The Chair of the Foundation Trust, or, in their absence, the Deputy Chair of the Trust Board, shall act as chair at all members' meetings of the Foundation Trust. If neither the Chair nor the Deputy Chair of the Trust Board is present, the members of the Members' Council present shall elect one of their number to be Chair and if there is only one Governor present and willing to act, they shall be Chair.
- 3.14 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 Trust Board 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.
- 3.15 A resolution put to the vote at a members' meeting shall be decided upon by a show of hands unless a poll is requested by the Chair of the meeting.

- 3.16 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 and casting vote.
- 3.17 The result of any vote will be declared by the Chair and recorded in the minutes.

## **ANNEX 12 – FURTHER PROVISIONS**

(Paragraphs 38.3, 40.6 and 41.1)

### **1. COMMITMENTS**

- 1.1 The Foundation Trust shall exercise its functions effectively, efficiently and economically.

#### **Representative membership**

- 1.2 The Foundation 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:

1.2.1 the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Members' Council, and shall be reviewed by them from time to time, and at least every three years

1.2.2 the Members' Council shall present to each annual members' meeting a report on:

1.2.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership

1.2.2.2 the progress of the membership strategy;

1.2.2.3 any changes to the membership strategy.

#### **Co-operation with NHS bodies and local authorities**

- 1.3 In exercising its functions, the Foundation Trust shall co-operate with NHS bodies and local authorities.

#### **Openness**

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

#### **Prohibiting distribution**

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

## **2. FRAMEWORK**

- 2.1 The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Members' Council and the members in accordance with this constitution and the Foundation Trust's authorisation. The members, the Members' Council and the Trust Board are to have the roles and responsibilities set out in this constitution.

### **Members**

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

### **Members' Council**

- 2.3 The roles and responsibilities of the Members' Council, which are to be carried out in accordance with this constitution and the Foundation Trust's terms of Authorisation, are:

2.3.1 at a General Meeting:

- 2.3.1.1 to appoint or remove the Chair and the other non-executive Directors
- 2.3.1.2 to approve an appointment (by the non-executive Directors) of the Chief Executive
- 2.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors
- 2.3.1.4 to appoint or remove the Foundation Trust's auditor
- 2.3.1.5 to be presented with the annual accounts, any report of the auditor on them and the annual report
- 2.3.2 to provide their views to the Trust Board when the Trust Board is preparing the document containing information about the Foundation Trust's forward planning;
- 2.3.3 to respond as appropriate when consulted by the Trust Board in accordance with this constitution
- 2.3.4 to undertake such functions as the Trust Board shall from time-to-time request
- 2.3.5 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the

composition of the Members' Council and of the non-executive Directors and when appropriate to make recommendations for the revision of this constitution.

### **Board of Directors**

- 2.4 The business of the Foundation Trust is to be managed by the Trust Board, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.

## **3. SECRETARY**

- 3.1 The Foundation Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:

- 3.1.1 acting as Secretary to the Members' Council and the Trust Board, and any committees
- 3.1.2 summoning and attending all members' meetings, meetings of the Members' Council and the Trust Board, and keeping the minutes of those meetings
- 3.1.3 keeping the register of members and other registers and books required by this constitution to be kept
- 3.1.4 having charge of the Foundation Trust's seal
- 3.1.5 publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs
- 3.1.6 preparing and sending to NHS England and any other statutory body all returns which are required to be made.

- 3.2 Minutes of every members' meeting, of every meeting of the Members' Council and of every meeting of the Trust Board are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 3.3 The Secretary is to be appointed and removed by the Trust Board, in consultation with the Members' Council.
- 3.4 The Board of Directors of the applicant NHS Trust shall appoint the first Secretary of the Foundation Trust.

#### **4. FURTHER PROVISIONS AS TO AUDITOR**

- 4.1 A person may only be appointed as the auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 4.2 The auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS England and / or the Department of Health on behalf of the Secretary of State on standards, procedures and techniques to be adopted.

#### **5. FURTHER PROVISIONS AS TO ACCOUNTS**

- 5.1 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 5.1.1 the accounts
  - 5.1.2 any records relating to them
  - 5.1.3 any report of the auditor on them.
- 5.2 In preparing its annual accounts, the Accounting Officer shall cause the Foundation Trust to comply with any directions given by NHS England and / or the Department of Health on behalf of the Secretary of State with the approval of the Treasury as to:
  - 5.2.1 the methods and principles according to which the accounts are to be prepared
  - 5.2.2 the information to be given in the accountsand shall be responsible for the functions of the Foundation Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.
- 5.3 The Accounting Officer shall cause the Foundation Trust to:
  - 5.3.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament
  - 5.3.2 once it has done so, send copies of those documents to NHS England or the Secretary of State (as required by the 2006 Act, from time to time) within such period as NHS England may direct.

#### **6. FURTHER PROVISIONS AS TO ANNUAL REPORTS**

- 6.1 The annual reports are to give:
  - 6.1.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff

Constituency is representative of those eligible for such membership

6.1.2 any other information NHS England and/or the Department of Health requires.

6.2 The Foundation Trust is to comply with any decision NHS England and/or the Department of Health makes as to:

6.2.1 the form of the reports

6.2.2 when the reports are to be sent to it

6.2.3 the periods to which the reports are to relate.

## **7. INDEMNITY**

Members of the Members' Council and the Trust Board and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Members' Council and the Trust Board and the Secretary.

## **8. DISPUTE RESOLUTION PROCEDURES**

8.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:

8.1.1 a member

8.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute

8.1.3 any person bringing a claim under this constitution

8.1.4 an office-holder of the Foundation Trust

will be determined by the Chair of the Trust, whose decision will be final and binding except in the case of manifest error. If a dispute is brought by or against the Chair of the Trust, the dispute will be determined by the Trust Board (excluding the Chair) whose decision will be final and binding except in the case of manifest error. In the event that the dispute is referred to the Chair (or the Trust Board if it is by or against the Chair) and the Chair considers that he / she has a perceived or real interest in the outcome of the dispute (or the Trust Board considers it has a perceived or real interest in the outcome of the dispute) and / or that the dispute would be better resolved externally, then the Chair may refer the dispute for resolution under the Rules of the Chartered Institute for Arbitrators.

- 8.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Members' Council 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.

**9. DISSOLUTION**

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

**10. HEAD OFFICE**

The Foundation Trust's head office is at Fieldhead, Ouchthorpe Lane, Wakefield, WF1 3SP or such other place as the Trust Board shall decide.

**11. NOTICES**

- 11.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.
- 11.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 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.