

Birmingham and Solihull Mental Health NHS Foundation Trust

(Updated as per the Health and Social Care Act 2012)

**CONSTITUTION
Election Rules
Standing Orders - Board of Directors
Standing Orders - Council of Governors**

Constitution

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1. Name

The name of the foundation trust is The Birmingham and Solihull Mental Health NHS Foundation Trust (the trust).

2. Principal purpose

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

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

2.3 The trust may provide goods and services for any purposes related to:

2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

2.3.2 the promotion and protection of public health.

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

3. Powers

3.1 The powers of the trust are set out in the 2006 Act, subject to any restrictions in the terms of authorisation.

3.2 The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

3.3 Any of these powers may be delegated to a committee of directors or to an executive director or (if in accordance with and for the purpose of provisions made by or under the Mental Health Act 1983) otherwise as resolved by the Board of Directors.

4. Membership and constituencies

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

4.1 a public constituency;

- 4.2 the staff constituency; or
- 4.3 the service users' and carers' constituency
- 4.4 the roles for the Rest of England and Wales (public) and the Rest of England and Wales (Service User) will be co-opted

5. Application for membership

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

6. Public Constituency

- 6.1 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 trust.
- 6.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 6.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

7. Staff Constituency

- 7.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:
 - 7.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 7.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into three 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.

- 7.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

- 7.6** An individual who is:

7.6.1 eligible to become a member of the Staff Constituency, and

7.6.2 invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a member of the trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he/she informs the trust that he/she does not wish to do so.

8. Service Users' and Carers' Constituency

- 8.1** An individual who has, within the period specified below, attended any of the trust's hospitals as either a patient or as the carer of a patient may become or continue as a member of the trust.

- 8.2** The period referred to above shall be the period from 5 July 1948 to the date of an application by the patient or carer to become a member of the trust.

- 8.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Service Users' and Carers' Constituency.

- 8.4** The Service Users' and Carers' Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Service Users' and Carers' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Service Users' and Carers' Constituency.

- 8.5** An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Service Users' and Carers' Constituency

- 8.6** The minimum number of members in each class of the Service Users' and Carers' Constituency is specified in Annex 3.

Automatic membership by default - patients

8.7 An individual who is:

8.7.1 eligible to become a member of the Service Users' and Carers' Constituency (otherwise than as a carer of a patient), and

8.7.2 invited by the trust to become a member of a specified constituency and a member of a specified class within that specified constituency,

shall become a member of the trust as a member of that specified constituency and specified class without an application being made, unless he informs the trust that he does not wish to do so.

8.8 The constituency and, where applicable, the class to be specified:

8.8.1 if he is eligible to be a member of any public constituency, is that constituency,

8.8.2 otherwise, is the Service Users' and Carers' Constituency and, where applicable, the class of which he is eligible to become a member.

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 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 – Further Provisions.

10. Council of Governors – composition

10.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

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

10.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The maximum number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

11. Council of Governors – election of governors

11.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

11.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 5.

11.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.

11.4 An election, if contested, shall be by secret ballot.

11.5 A vacant Governor post may be filled without an election where permitted by the Model Rules as they apply to the Trust or by paragraph 7 of Annex 9.

11.6 The provisions in this constitution take priority over the Election Rules in the event of conflict.

12. Council of Governors - tenure

12.1 An elected governor shall hold office for an initial term of 3 years and shall be eligible for re-election for subsequent terms of not more than 3 years, subject to paragraph 12.3.

12.2 An elected governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.

12.3 An elected governor shall be eligible for re-election at the end of his/her term, subject to a maximum period of office of 12 years.

13. Council of Governors – disqualification and removal

13.1 The following may not become or continue as a member of the Council of Governors:

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

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

17. Council of Governors – travel expenses

The trust may pay traveling and other expenses to members of the Council of Governors at rates determined by the trust.

18. Council of Governors – further provisions

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

19. Board of Directors – composition

19.1 The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

19.2 The Board of Directors is to comprise:

19.2.1 a non-executive Chair

19.2.2 up to 6 other non-executive directors; and

19.2.3 up to 6 executive directors.

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

19.4 The Chief Executive shall be the Accounting Officer.

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

19.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

19.7 One of the executive directors is to be a registered nurse or a registered midwife.

20. Board of Directors – qualification for appointment as a non-executive director

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

- 20.1 he is a member of the Public Constituency, or
- 20.2 he is a member of the Service Users' and Carers' Constituency, or
- 20.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, he/she exercises functions for the purposes of that university, and
- 20.4 (in a case falling under either of the preceding sub-paragraphs of this paragraph) he/she is not disqualified by virtue of paragraph 26 below.

21. Board of Directors – appointment and removal of Chair and other non-executive directors

- 21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the trust and the other non-executive directors.
- 21.2 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 21.3 The initial Chair and the initial non-executive directors are to be appointed in accordance with paragraph 22 below.

22. Board of Directors – appointment of initial Chair and initial other non-executive directors

- 22.1 The Chair of the applicant NHS Trust shall be appointed as the initial Chair of the trust if he/she wishes to be appointed.
- 22.2 The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.
- 22.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial Chair and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 22.4 An individual appointed as the initial Chair or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his/her term of office as Chair or (as the case may be) non-executive

director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he/she shall be appointed for 12 months.

23. Board of Directors – appointment of deputy Chair

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as deputy Chair.

24. Board of Directors - appointment and removal of the Chief Executive and other executive directors

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

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

24.3 The initial Chief Executive is to be appointed in accordance with paragraph 25 below.

24.4 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

25. Board of Directors – appointment and removal of initial Chief Executive

25.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if he/she wishes to be appointed.

25.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

26. Board of Directors – disqualification

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

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

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

26.3 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.

27. Board of Directors – standing orders

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

28. Board of Directors - conflicts of interest of directors

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

29. Board of Directors – remuneration and terms of office

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

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

30. Registers

The trust shall have:

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

30.2 a register of members of the Council of Governors;

30.3 a register of interests of governors;

30.4 a register of directors; and

30.5 a register of interests of the directors.

31. Registers – inspection and copies

- 31.1** The trust shall make the registers specified in paragraph 29 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 31.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of –
- 31.2.1** any member of the Service Users’ and Carers’ Constituency; or
 - 31.2.2** any other member of the trust, if he so requests.
- 31.3** So far as the registers are required to be made available:
- 31.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 31.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 31.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

32. Documents available for public inspection

- 32.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 32.1.1** a copy of the current constitution;
 - 32.1.2** a copy of the current authorisation;
 - 32.1.3** a copy of the latest annual accounts and of any report of the auditor on them;
 - 32.1.4** a copy of the latest annual report;
 - 32.1.5** a copy of the latest information as to its forward planning; and
 - 32.1.6** a copy of any notice given under section 52 of the 2006 Act.
- 32.2** The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 32.2.1** 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.

32.2.2 a copy of any report laid under section 65D (appointment of trust special administrator), of the 2006 Act.

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

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

32.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.

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

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

32.2.8 a copy of any final report published under section 65I (administrator's final report),

32.2.9 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.

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

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

32.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

33. Auditor

33.1 The trust shall have an auditor.

33.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

34. Audit committee

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

35. Accounts

- 35.1** The Trust must keep proper accounts and proper records in relation to the accounts. Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 35.2** The accounts are to be audited by the trust's auditor.
- 35.3** The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 35.4** The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

36. Annual report and forward plans and non-NHS work

- 36.1** The trust shall prepare an Annual Report and send it to Monitor.
- 36.2** The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 36.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 36.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 36.5** Each forward plan must include information about –
 - 36.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
 - 36.5.2** the income it expects to receive from doing so.
- 36.6** Where a forward plan contains a proposal that the trust carry on an

activity of a kind mentioned in sub-paragraph 36.5.1 the Council of Governors must –

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

36.6.2 notify the directors of the trust of its determination.

37 Significant Transactions

37.1 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation. The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors. The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust present and voting at the meeting of the Council of Governors approve entering into the transaction.

37.2 For the purposes of paragraph 37.1 above, a “Significant Transaction” is not defined.

38. Meeting of Council of Governors to consider annual accounts and reports

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

38.1 The annual accounts

38.2 Any report of the auditor on them

38.3 The annual report.

38.4 The documents shall also be presented to the members of the Trust at the Annual Members’ Meeting by at least one member of the Board of Directors in attendance.

38.5 The Trust may combine a meeting of the Council of Governors with the Annual Members’ Meeting.

39. Instruments

39.1 The trust shall have a seal.

39.2 The seal shall not be affixed except under the authority of the Board of Directors.

39.3 The trust shall have a register of sealings, which shall be maintained by the Company Secretary

40. 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.

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

The 2006 Act is the National Health Service Act 2006.

The 2012 Act is the Health and Social Care Act 2012.

Council of Governors is the name the Trust gives to its Board of Governors.

Monitor is the body corporate known as Monitor, as provided by section 61 of the 2012 Act.

Secretary is 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;**

Service Users' and Carers' Constituency is the name the Trust gives to its Patients' constituency.

Terms of authorisation are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

Voluntary organisation is a body, other than a public or local authority, the activities of which are not carried on for profit.

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

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

Public Constituency	Minimum number of members
South Birmingham and Worcestershire*	10
Central, West Birmingham and Staffordshire*	10
East, North Birmingham and Black Country Boroughs*	10
Solihull, Coventry and Warwickshire*	10
Rest of England and Wales *	10

* refers to the area (defined as in Annex 1) in which the public member is resident.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 6.4 and 6.5)

Class of Staff Constituency	Minimum number of members
Medical staff	10
Non- medical clinical staff	10
Non-clinical staff	10

ANNEX 3 – THE SERVICE USERS’ AND CARERS’ CONSTITUENCY

Class of Service Users’ and Carers’ Constituency	Minimum number of members
Service User: South Birmingham and Worcestershire*	10
Service User: Central, West Birmingham and Staffordshire*	10
Service User: East, North Birmingham and Black Country Boroughs*	10
Service User: Solihull, Coventry and Warwickshire*	10
Carer: South Birmingham and Worcestershire*	10
Carer: Central, West Birmingham and Staffordshire*	10
Carer: East, North Birmingham and Black Country Boroughs*	10
Carer: Solihull, Coventry and Warwickshire*	10

* refers to the area (defined as in Annex 1) in which the Service User is resident.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 9.2 and 9.3)

Elected Governors

Public Constituency	Number of Governors
South Birmingham and Worcestershire	1
Central, West Birmingham and Staffordshire	1
East, North Birmingham and Black Country Boroughs	1
Solihull, Coventry and Warwickshire	1
Total Public Governors	4
Service Users' and Carers' Class	
South Birmingham and Worcestershire Service User	1
Central, West Birmingham and Staffordshire Service User	1
East, North Birmingham and Black Country Boroughs Service User	1
Solihull, Coventry and Warwickshire Service User	
South Birmingham and Worcestershire Carer	1
Central, West Birmingham and Staffordshire Carer	1
East, North Birmingham and Black Country Boroughs Carer	1
Solihull, Coventry and Warwickshire Carer	1
Total Service Users' and Carers' Governors	8
Staff class	
Non-medical clinical staff	1
Medical staff	1
Non – clinical staff	1
Total staff	3

Appointer	Number of governors
Birmingham City Council	1
Solihull Metropolitan Borough Council	1
Birmingham and Solihull Councils for Voluntary Services	1
University of Birmingham	1
Birmingham City University	1
West Midlands Police	1

Co-opted roles	Number of Governors
Rest of England and Wales (Public)	1

ANNEX 5

MODEL ELECTION RULES 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

PART 4 – STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

PART 5 - CONTESTED ELECTIONS

19. Poll to be taken by ballot
 20. The ballot paper
 21. The declaration of identity (public and patient constituencies)
- Action to be taken before the poll
22. List of eligible voters
 23. Notice of poll
 24. Issue of voting information by returning officer
 25. Ballot paper envelope and covering envelope
 26. E-voting systems

The poll

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

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

36. Receipt of voting documents
37. Validity of votes
38. Declaration of identity but no ballot (public and patient constituency)
39. De-duplication of votes

40. Sealing of packets

PART 6 - COUNTING THE VOTES

STV41. Interpretation of Part 6

42. Arrangements for counting of the votes

43. The count

STV44. Rejected ballot papers and rejected text voting records

FPP44. Rejected ballot papers and rejected text voting records

STV45. First stage

STV46. The quota

STV47 Transfer of votes

STV48. Supplementary provisions on transfer

STV49. Exclusion of candidates

STV50. Filling of last vacancies

STV51. Order of election of candidates

FPP51. Equality of votes

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PART 1 - INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2 – TIMETABLE FOR ELECTIONS

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.

PART 3 - RETURNING OFFICER

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

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
- 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.

PART 5 - CONTESTED ELECTIONS

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 office 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)#

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.

It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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 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 spoiled ballot papers and the list of spoiled 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.

PART 6 - COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

“stage of the count” means:

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

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

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

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

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.

FPP448 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

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 Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation; and
- (c) give public notice of the name of each candidate whom he or she 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 Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

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

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

PART 8 - DISPOSAL OF DOCUMENTS

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 Chair of the corporation.

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –

- (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.

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

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

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

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

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

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

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

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

DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if 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 Chair of the corporation, and rules 57 and 58 are to apply.
- STV59. Countermand or abandonment of poll on death of candidate
- STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10 - ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

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

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

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

PART 11 - QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor.

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

66.3 An application may only be made to Monitor by:

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

66.4 The application must:

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as Monitor may require.

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

66.6 If Monitor requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

66.8 The determination by the person or panel of persons nominated in accordance with rule 66.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 Monitor may prescribe rules of procedure for the determination of an application including costs.

PART 12 MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or

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

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

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

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

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

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 12.3)

Persons also may not become or continue as a Governor of the Trust if:

1. they are a Director of the Trust, or an employee of the Trust with the courtesy title “director”, or a Governor or Director of another NHS body, or an employee of another NHS body with the courtesy title “director”, or a director or senior employee of an independent/private sector health care provider that competes with the Trust. These restrictions do not apply to Appointed Governors;
2. being a member of a public constituency, they were (or were entitled to be) a member of one of the classes of the staff constituency at any point during the preceding two years;
3. they are on the register of sex offenders;
4. they have had their name removed, by a direction under section 46 of the 1977 NHS Act from any list prepared under Part II of that Act or have otherwise been disqualified or suspended from any healthcare profession, and have not subsequently had their name included in such a list or had their qualification re-instated or suspension lifted and/or they are the subject of an alert letter;
5. they fail to, or indicate that they are unwilling to, act in the best interests of the Trust and in accordance with The Seven Principles of Public Life laid out by the Committee on Standards in Public Life in its First Report, set out in Part A of Annex 10 as amended from time to time;
6. they fail to agree (or, having agreed, fail) to abide by the values of the Trust Principles set out in Part B of Annex 10

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

(Paragraph 14)

**THE BIRMINGHAM AND
SOLIHULL MENTAL HEALTH
NHS FOUNDATION TRUST**

**Standing Orders
COUNCIL of Governors**

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1. INTRODUCTION

Statutory Framework

The Birmingham and Solihull Mental Health NHS Foundation Trust (The Trust) is a statutory body which became a public benefit corporation on [] following its approval as an NHS Foundation Trust by Monitor - the Independent Regulator of NHS Foundation Trusts (Independent Regulator) pursuant to the National Health Service Act 2006 (the 2006 Act).

The principal place of business of the Trust is:

*Unit B1
50 Summer Hill Road
Ladywood
Birmingham B1 3RB*

The Trust operates across 90 sites in the Birmingham and Solihull area.

NHS Foundation Trusts are governed by Act of Parliament, mainly the 2006 Act, by their constitutions and by terms of their authorisation granted by the Independent Regulator (Regulatory Framework).

The functions of the Trust are conferred by the Regulatory Framework. As a body corporate it has specific 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. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

The Regulatory Framework requires the Council of Governors to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

2. INTERPRETATION

- 2.1 Save as permitted by law and subject to the Constitution, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Secretary).
- 2.2 Any expression to which a meeting is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in the interpretation and in addition:

"TRUST" means The Birmingham and Solihull Mental Health NHS Foundation Trust.

"COUNCIL OF GOVERNORS" means the Council of Governors of the Trust as defined in the Constitution and **"Board"** means the Council of Governors, unless the context otherwise requires.

"BOARD OF DIRECTORS" means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body.

"CHAIR OF THE BOARD" or **"Chair of the Trust"** is the person appointed by the Board of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. Except where the context otherwise requires, the expressions **"the Chair of the Board"** and **"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 executive officer of the Trust.

"COMMITTEE" means a committee of the Council of Governors

"CONSTITUTION" means the constitution of the Trust.

"COMMITTEE MEMBERS" means the Chair and the Governors or Directors formally appointed by the Council of Governors or Board of Directors to sit on or to chair specific committees.

"DEPUTY CHAIR" means the Non-Executive Director appointed from amongst the Non-Executive Directors as Deputy Chair by the Council of Governors to take on the Chair's duties in his/her capacity as chair of the Council of Governors if the Chair is absent for any reason.

"EXECUTIVE DIRECTOR" means a Member of the Board of Directors who holds an executive office of the Trust.

"GOVERNOR" means a Governor of the Trust. (Governor in relation to the Council of Governors does not include the Chair).

"NON-EXECUTIVE DIRECTOR" means a member of the Board of Directors who does not hold an executive office with the Trust.

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

"SOs" means these Standing Orders.

"SECRETARY TO THE TRUST" means a person who may be 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 Regulatory Framework and these standing orders.

3. THE COUNCIL OF GOVERNORS

Composition of the Board of Governors

The composition of the Council of Governors shall be in accordance with the Constitution of the Foundation Trust.

Role of the Chair

The Chair is not a Governor. However under the Regulatory Framework, he/she presides at meetings of the Council of Governors and has a casting vote.

- 3.1 Where the Chair of the Trust has died or has ceased to hold office, or where he/she has been unable to perform his/her 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 his/her 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 his/her duties, be taken to include references to the Deputy Chair.

Role and Responsibilities of the Council of Governors

The roles and responsibilities of the Council of Governors, to be undertaken in accordance with the Trust Constitution, are:

- To appoint and remove the Chair and other Non-Executive Directors of the Foundation Trust at a general meeting (except for the initial Chair and Non-Executive Directors)
- To approve at a general meeting the appointment by the Non-Executive Directors of the Chief Executive (except for the initial Chief Executive)
- To appoint or remove the auditor at a general meeting
- To be consulted by the Trust's Board of Directors on forward planning and to have the Board of Governors' views taken into account
- To be presented with the Trust's Annual Report and Accounts and the report of the auditor on the Accounts at a meeting

The 2006 Act provides that all the powers of the Foundation Trust are to be exercised by its Directors. The Council of Governors does not have the right to veto decisions made by the Board of Directors.

The Council of Governors, and individual Governors, are not empowered to speak on behalf of the Trust, and must seek the advice and views of the Chair concerning any contact from the media or any invitation to speak publicly about the Trust or their role within it. For the avoidance of doubt, in this context the Chair acts as Chair of the Trust not as chair of the Council of Governors and in his/her absence Governors should seek the advice and views of the Deputy Chair of the Trust acting as the Senior Independent Director.

4. MEETINGS OF THE BOARD

4.1 Admission of the Public

4.1.1. The public shall be afforded facilities to attend publically notified formal meetings of the Council of Governors except where the Council resolves:

- (a) That members of the public be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public; and/or
- (b) That in the interests of the public order the meeting adjourn for a period to be specified in such resolution to enable the Council to complete business without the presence of the public.

4.1.2 Nothing in these Standing Orders shall require the Council to allow members of the public to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council.

4.2 Calling Meetings

Ordinary meetings of the Council shall be held at such times and places as the Council may determine and there shall be not less than 3 or more than 6 formal meetings in any year except in exceptional circumstances.

The Chair of the Trust may call a meeting of the Council at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of Members of the Council, has been presented to him/her, or if, without so refusing, the Chair does not call meeting within seven days after such requisition has been presented to him at Trust's Headquarters, such one third or more Members of the Council may forthwith call a meeting.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf shall be delivered to every Governor, or sent by post to the usual place of residence of such

Governor, so as to be available to him at least three clear days before the meeting.

- 4.3.2 Want of service of the notice on any Governor shall not affect the validity of a meeting.
- 4.3.3 In the case of a meeting called by Members of the Council in default of the Chair, the notice shall be signed by those Members of the Council and no business shall be transacted at the meeting other than specified in the notice.
- 4.3.4 Agendas will be sent to Members of the Council before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.
- 4.3.5 Before each meeting of the Council a public notice of the time and place of the meeting shall be displayed at the Trust's Headquarters at least three clear days before the meeting.

4.4 Setting the agenda

- 4.4.1 The Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.4.2 A Governor 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.

Petitions

- 4.5.1 Where a petition has been received by the Trust, the Chair of the Council shall include the petition as an item for the agenda of the next Council meeting.

Chair of Meeting

- 4.6.1 At any meeting of the Council the Chair of the Trust, if present, shall preside unless she has a conflict of interest. If the Chair is absent from the meeting or has a conflict of interest the Deputy Chair, if he/she is present, shall preside unless he has a conflict of interest. If the Chair and Deputy Chair are absent or have a conflict of interest such Non-Executive Director as the Members of the Council present shall choose shall preside unless he has a conflict of interest. Where the Chair of the Trust, Deputy Chair and other Non-Executive Directors are all absent or have a conflict of

interest, the Council of Governors shall select one of their number to preside at the meeting. The person presiding at the meeting shall have a casting vote.

4.7 Notices of Motion

4.7.1 A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.

4.8 Withdrawal of Motion or Amendments

4.8.1 A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

4.9 Motion to Rescind a Resolution

4.9.1 Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council, it shall not be competent for any member other than the Chair to propose a motion to the same effect within six months, however the Chair may do so if he/she considers it appropriate.

Motions

4.10.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

4.10.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

an amendment to the motion
the adjournment of the discussion or the meeting
that the meeting proceed to the next business (*)
the appointment of an ad hoc committee to deal with a specific item of business
that the motion be now put. (*)
a motion resolving to exclude the public under SO 4.1.1.

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

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

Chair's Ruling

Statements of Members of the Council made at meetings of the 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 final.

Voting

- 4.12.1 If a question is put to the vote, it shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 4.12.2 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 Members of the Council present so request.
- 4.12.3 If at least one-third of the Members of the Council present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.12.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than paper ballot).
- 4.12.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

Minutes

- 4.13.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 4.13.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting.
- 4.13.3 Minutes shall be circulated in accordance with the members' wishes.

Suspension of Standing Orders

- 4.14.1 Except where this would contravene any statutory provision or any direction made by the Independent Regulator, 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, including two public governors, and that a majority of those present vote in favour of suspension.
- 4.14.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

4.14.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Members of the Council.

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

Variation and Amendment of Standing Orders

4. 15.1 These Standing Orders shall be amended only if:

a notice of a motion under Standing Order 4.7 has been given; and
no fewer than half the total of the Trust's Governors vote in favour of amendment; and
at least two-thirds of the Council Members are present; and
the variation proposed does not contravene a statutory provision or direction made by the Independent Regulator.

Record of Attendance

4.16.1 The names of the Chair and Members of the Council present at the meeting shall be recorded in the minutes.

Quorum

4.17.1 No business shall be transacted at a meeting unless at least one third of the Governors appointed are present, of which there must be at least two groups of governors represented. The groups are: staff, service user, public, stakeholder and carer governors.

4.17.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6, 7 or 8) he/she 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.

5. COMMITTEES

5.1 Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Council may, and if so required by the Independent Regulator, shall, appoint committees of the Council to assist the Council in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly of the Chair and Members of the Council of Governors.

5.2 A committee appointed under this regulation may, subject to such guidance as may be given by the Independent Regulator or restriction imposed by the Council, appoint sub-committees consisting wholly of members of the committee.

- 5.3 The Standing Orders of the Council, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council. In which case the term “Chair” is to be read as a reference to the Chair of the Committee as the context permits, and the term “Governor” is to be read as a reference to a member of the committee also as the context permits.
- 5.4 Subject to Standing Order 5.5, each sub-committee shall have such terms of reference and power and be subject to such conditions (as to reporting back to the Council), as the Council shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by the Independent Regulator. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 The Council may not delegate any decision-making or executive powers to any committee or sub-committee.
- 5.6 The Council shall approve the appointments to each of the committees which it has formally constituted.
- 5.7 The committees and sub-committees established by the Council shall be such committees as are required to assist the Board in discharging its responsibilities.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

Declaration of Interests

- 6.1.1 The Regulatory Framework requires Council Members to declare interests which are relevant and material to the Council of which they are a Member. All existing Council Members should declare such interests. Any Council Members appointed subsequently should do so on appointment.

Interests which should be regarded as “relevant and material” are defined in the Trust’s Constitution as follows:

any pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors

- 6.1.3 At the time Board members’ interests are declared, they should be recorded in the Council minutes. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 6.1.4 Council members’ directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust’s Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.

- 6.1.5 During the course of an Council Meeting, if a conflict of interest is established, the Council Members concerned shall withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.1.6 There is no requirement for the interests of Council members' spouses or partners to be declared. However Standing Order 7, which is based on the regulations, requires that the interests of Governors's spouses, if living together, in contracts should be declared. Therefore the interests of Council Members' spouses and cohabiting partners should also be regarded as relevant.

6.2 Register of Interests

- 6.2.1 The Secretary to the Trust will ensure that a Register of Interests is established to record formally declarations of interests of Council Members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by Council Members, as defined in Standing Order 6.1.2.
- 6.2.2 These details will be kept up to date by means of a monthly review of the Register in which any changes to interests declared will be incorporated.
- 6.2.3 The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.2.4 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by the Independent Regulator.

7. DISABILITY OF CHAIR AND MEMBERS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Order, if the Chair or another Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2 The Council may exclude the Chair (or Governor) from a meeting of the Council while any contract, proposed contract or other matter in which he/she has pecuniary interest, is under consideration.
- 7.3 For the purpose of this Standing Order the Chair or Governor shall be treated, subject to SO 7.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) he/she, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or

is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;

Or

- (b) he/she, is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

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

7.4 The Chair or a Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- (a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in a company, body or person with which he/she is connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.5 Where a Governor:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

7.6 The Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Council and applies to a Governor of any such committee or sub-committee as it applies to a Governor.

8. STANDARDS OF BUSINESS CONDUCT POLICY

8.1 Governors should comply with the Trust Constitution, the NHS Foundation Trust Code of Governance, published by the Independent Regulator, the requirements of the Regulatory Framework, and any guidance and directions issued by the Independent Regulator.

8.2 Interest of Governors in Contracts

8.2.1 If it comes to the knowledge of a Governor that a contract in which he/she has any pecuniary interest not being a contract to which he/she is a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Secretary of the Trust of the fact that he/she is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

8.2.2 A Governor should also declare to the Secretary of the Trust any other employment or business or other relationship of his/hers, or of cohabitating spouse, which might reasonably be predicted could conflict with the interests of the Trust.

8.3 Canvassing of and recommendations by Governors in Relation to Appointments

8.3.1 Canvassing of Governors of the Trust or of any Committee of the Council of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment.

8.3.2 A Governor 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 Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

8.3.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

8.4 Relatives of Governors or Officers

8.4.1 Candidates for any staff appointment under the Trust, shall when making application, disclose in writing to the Trust whether they are related to any Member of the Board of Directors or Council of Governors 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.

The Chair and every Governor and officer of the Trust shall disclose to the Chief Executive any relationship between him/herself and a candidate of whose candidature that Governor or Officer is aware.

8.4.3 On appointment, Governors (and prior to acceptance of an appointment in the case of officer members) should disclose to the Board whether they are related to any other Governor or holder of any office in the Trust.

8.4.4 Where the relationship to a Governor of the Trust is disclosed, the Standing Order headed Disability of Chair and Members of the Board in proceedings on account of pecuniary interest (SO 7) shall apply.

9. SENIOR INDEPENDENT DIRECTOR

9.1 The Council of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.

9.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Job Specification", as amended from time to time.

10. MISCELLANEOUS

10.1 Standing Orders to be given to Governors

10.1.1 It is the duty of the Secretary to the Trust to ensure that existing Governors and all new appointees are notified of and understand their responsibilities within these Standing Orders. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

10.2 Review of Standing Orders

10.2.1 Standing Orders shall be reviewed every two years. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

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

(Paragraph 26)

Birmingham and Solihull Mental Health NHS Foundation Trust

Standing Orders for the Practice and Procedure of The Board of Directors

2012

FOREWORD

Trust Boards have a responsibility to agree Standing Orders and Schedules of Reservation of Powers and Delegation of Powers to their boards.

The documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfill the dual role of protecting the Trust's interests by ensuring for example, all transactions maximize the benefit to the Trust and protecting staff from possible accusations that they have acted less than properly. This is provided of course, staff have followed the correct procedures outlined in the relevant document.

The Standing Orders, Delegated Powers and Standing Financial Instructions provide a comprehensive business framework. All Board directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

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CODE OF BUSINESS CONDUCT

INTRODUCTION

The principal place of business of the Trust is Trust Headquarters, 50 Summer Hill Road, Ladywood, Birmingham, B1 3RB.

NHS Foundation Trusts are governed by a Regulatory Framework that confers the functions of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 (“the 2006 Act”); their

constitutions; the terms of their authorisation granted by the Independent Regulator of NHS Foundation Trusts (‘the Independent Regulator’); and binding guidance issued by the Independent Regulator.

The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the practice and procedure of the Board of Directors.

1. INTERPRETATION

- 1.1 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 he/she should be advised by the Trust’s Secretary).
- 1.2 Any expression to which a meaning is given in the 2006 Act 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 in addition:
 - 1.2.1 **“Board of Directors”** means the Chair, executive and non-executive directors of the Trust collectively as a body as constituted in accordance with the constitution and the 2006 Act.
 - 1.2.2 **“Chief Executive”** means the Chief Officer of the Trust
 - 1.2.3 **“Committee”** means a committee appointed by the Trust
 - 1.2.4 **“Committee members”** mean persons formally appointed to the Board of Directors to sit or to chair specific committees
 - 1.2.5 **“Director of Finance”** means the chief financial officer of the Trust.
 - 1.2.6 **“Executive Director”** means a Director who is also an officer of the Trust.
 - 1.2.7 **“Director”** means an executive (including the Chief Executive) or non-executive director (including the Chair) of the Board.
 - 1.2.8 **“Nominated Officer”** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
 - 1.2.9 **“Non-executive Director”** means a director of the Trust who is not an officer of the Trust, except where the Director is a nominee of the university that provides the Trust’s medical school.

- 1.2.9.1 “**Officer**” means employee of the Trust or any other person holding a paid appointment of office within the Trust.

2. THE TRUST

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Board of Directors as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.3 Directors acting on behalf of the Trust as a corporate trustee are acting as quasitrustees. Accountability for charitable funds held on trust is to the Charity Commission.
- 2.4 The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the document entitled ‘Reservation of powers to the Board of Directors and Scheme of Delegation’ 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 that document also.
- 2.4 **Appointment and Powers of Deputy Chair** – For the purposes of allowing the proceedings of the Board of Directors to be conducted in the absence of the Chair for any reason and subject to Standing Order 2.6 below, the Council of Governors may appoint a non-executive director to be Deputy Chair, for such period, not exceeding the remainder of his/her term as a Director, as they may specify on appointing him.
- 2.5 Any non-executive director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another non-executive director as Deputy Chair in accordance with the provisions of Standing Order 2.5.
- 2.6 Where the Chair of the Trust has died or has ceased to hold office, or where he/she has been unable to perform his/her 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 his/her 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 his/her duties, be taken to include references to the Deputy Chair.
- 2.7 **Appointment and Powers of Senior Independent Director** - Subject to Standing Order 2.9 below, the Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of his term as a Member of the Board of Directors, as they may specify on appointing him. The Senior Independent Director shall perform the role set

out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board of Directors.

- 2.8 Any Member of the Board of Directors so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors may thereupon in consultation with the Council of Governors appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of Standing Order 2.8 above.
- 2.10 **Role of Directors** – The Board of Directors will function as a corporate decision-making body, Executive and Non-Executive Directors will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

3. MEETINGS OF THE BOARD OF DIRECTORS

- 3.1 **Admission of the Public and the Press** - Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons. Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 3.2 The Chair (or Deputy Chair) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors' 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 Board of Directors resolving as follows:
"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public".
- 3.3 **Confidentiality.**
- 3.3.1 Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Board of Directors. Proceedings shall not be transmitted in any manner whatsoever without the prior agreement of the Board of Directors.
- 3.3.2 Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public shall be confidential to the members of the Board of Directors.

- 3.3.2 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 Board of Directors meeting, without the express permission of the Board of Directors. This prohibition shall apply equally to the content of any discussion during the Board of Directors' meeting which may take place on such reports or papers.
- 3.4 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.5 The Chair of the Trust may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.6 **Notice of Meetings** - Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least three clear days before the meeting.
- 3.7 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 3.7 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.9 Agendas will wherever possible be sent to Directors at least five clear days before the meeting and supporting papers, whenever possible.
- 3.10 Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.
- 3.11 **Setting the Agenda** - The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
- 3.12 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.

- 3.13 **Petitions** - Where a petition has been received by the Trust the Chair of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for Board of Directors' meetings.
- 3.14 **Chair of Meeting** - At any meeting of the Board of Directors, the Chair of the Board of Directors, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and he/she is present, shall preside. If the Chair and Vice -Chair are absent such Director (who is not also an officer of the Trust) as the Directors present shall choose shall preside.
- 3.15 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such non-executive director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or to the interests of the non-executive Directors as a class, neither the Chair nor any of the other non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the other non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.16 **Annual Public Meeting** – The Trust will publicise and hold an annual public meeting.
- 3.17 **Notices of Motion** - A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to Standing Order 3.8.
- 3.18 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.19 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been

passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however the Chair may do so if he/she considers it appropriate.

3.20 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

3.21 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

- An amendment to the motion.
- The adjournment of the discussion or the meeting.
- That the meeting proceeds to the next business. (*)
- The appointment of an ad hoc committee to deal with a specific item of business.
- That the motion be now put. (*)
- A motion resolving to exclude the public (including the press).

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

3.22 **Chair's Ruling** - Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

3.23 **Voting** - Every question put to a vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.

3.24 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

3.25 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

3.26 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

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

- 3.28 An officer who has been appointed formally by the Board of Directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be an executive director.
- 3.29 An officer attending the Board of Directors to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.
- 3.30 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.31 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.32 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 3.33 **Suspension of Standing Orders** - Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 3.34 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.35 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 3.36 No formal business may be transacted while Standing Orders are suspended.
- 3.37 The Audit Committee shall review every decision to suspend Standing Orders.
- 3.37 **Waiver of Standing Orders** - Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.

- 3.38 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 3.39 The Audit Committee shall review every decision to waive Standing Orders.
- 3.40 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 3.17 has been given; and
 - no fewer than half the total of the Trust's non-executive directors vote in favour of amendment; and
 - at least two-thirds of the Directors are present; and
 - the variation proposed does not contravene any provision of the Regulatory Framework.
- 3.41 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
- 3.42 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one half of the whole number of the Directors appointed, (including at least one non-executive director and one executive director) are present.
- 3.43 An officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.
- 3.44 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) he/she 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. The above requirement for at least one executive director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee). The above requirement for at least one non-executive Director to form part of the quorum shall not apply where the non-executive Directors are excluded from a meeting.
- 3.45 **Adjournment of Meetings** - The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 3.46 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.

- 3.47 **Observers at Board of Directors meetings** - The Board of Directors 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 Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.

4. **ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

- 4.1 Subject to the Regulatory Framework, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions subject to such restrictions and conditions as the Board of Directors thinks fit by:
- a) committee or sub-committee appointed by virtue of Standing Order 5 or by a Director or an officer of the Trust; or
 - a) in the case of delegation for the purposes of a provision of, or made under, the Mental Health Act 1983, in such other manner as is permitted by the relevant provision in each case subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.
- 4.2 **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders (Standing Order 2.4) may in emergency 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 Board of Directors for noting.
- 4.3 **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees, or subcommittees, which it has formally constituted. The constitution and terms of reference of these committees, or joint committees, and their specific executive powers shall be approved by the Board of Directors.
- 4.4 When the Directors are not meeting as the Board of Directors in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Board of Directors in public session.
- 4.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or otherwise for the purposes of and in accordance with the Mental Health Act 1983 shall be exercised on behalf of the Board of Directors 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 Board of Directors.
- 4.5 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals, which shall be considered and approved by the Board of Directors, subject to any amendment, agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.

- 4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other executive Director to provide information and advise the Board of Directors in accordance with the Constitution, Terms of Authorisation, any statutory requirements or provisions required by the Independent Regulator of NHS Foundation Trusts. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 4.7 The arrangements made by the Board of Directors as set out in the “Reservation of Powers to the Board of Directors and Delegation of Powers” document shall have effect as if incorporated in these Standing Orders.
- 4.8 **Overriding Standing Orders** - 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 of Directors for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

5. COMMITTEES

- 5.1 Subject to the Regulatory Framework, the Board of Directors may appoint committees of the Board of Directors. The Board of Directors 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 subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.
- 5.2 A committee appointed under this regulation may, subject to their terms of reference and the Regulatory Framework, appoint sub-committees consisting wholly of members of the committee.
- 5.3 The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “Director” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Board of Directors in public.)
- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 5.6 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. The Chair of each Board of Directors sub-committee shall be a non-executive Director.

- 5.7 The committees and sub-committees, established by the Board of Directors shall include an Audit Committee, a Nomination Committee and a Remuneration and Terms of Service Committee.
- 5.8 The Board of Directors may elect to change the committees and sub-committees of the Board of Directors, as necessary, without requirement to amend these Standing Orders.
- 5.9 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 5.10 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 Declaration of Interests - The Constitution requires Directors to declare interests which are relevant and material to the Board of Directors. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by the Independent Regulator of NHS Foundation Trusts and include:
- a) Directorships, including non-executive directorships held in private companies or PLC's (with the exception of those of dormant companies).
 - b) Ownership or part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - d) A position of trust in a charity or voluntary organisation in the field of health and social care.
 - e) Any connection with a voluntary or other organisation contracting for NHS services.
 - f) Research funding/grants that may be received by an individual or their department.
 - g) Interests in pooled funds that are under separate management.
 - h) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
 - i) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means.
 - j) Any other commercial interest in the decision before the meeting.
- 6.3 At the time Directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next Board of Directors meeting following the change occurring. It is the obligation of the Director to inform the Secretary of the Trust in writing within 7 days of becoming

aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 5 working days.

- 6.4 Directors' directorships of companies in 6.2(a) above and Directors' directorships of companies likely or possibly seeking to do business with the NHS in 6.2(b) above should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.5 During the course of a Board of Directors meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.6 There is no requirement for the interests of Directors' family or close personal relationships to be declared. However Standing Order 7 requires that the interest of Directors' family or close personal relationships, if living together, in contracts should be declared.
- 6.7 If Directors have any doubt about the relevance of an interest, this should be Discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 6.8 **Register of Interests** - 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 Secretary in which any changes to interests declared during the preceding month will be incorporated.

The Register will be available to the public and the Chair 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.

7. EXCLUSION OF CHAIR AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Order if the Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2 The Board of Directors may exclude the Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 7.3 Any remuneration, compensation or allowances payable to the Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order a Director shall be treated, subject to Standing Order 7.2 and Standing Order 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

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

Or

(b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and in the case of family or close personal relationship, the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

7.5 The Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- (a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which he/she is connected as mentioned in Standing Order 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.6 Where a Director has:

- (a) an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his/her duty to disclose his/her interest.

7.8 Standing Order 7 applies to a committee or sub-committee as it applies to the Board of Directors and applies to a member of any such committee or sub-committee (whether or not he/she is also a Director) as it applies to a Director.

8. STANDARDS OF BUSINESS CONDUCT POLICY

8.1 **Policy** - Staff must comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B). This Section of Standing Orders should be read in conjunction with this document.

8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a director or

an officer of the Trust that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a member of his/her family or of someone with whom he/she has a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared to be entered in a register of interests of staff.
- 8.4 **Canvassing of and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors or of any Committee of the Board 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.
- 8.5 A Director 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.
- 8.5 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.7 **Relatives of Directors or Officers** - Candidates for any staff appointment shall, when making 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/her liable to instant dismissal.
- 8.8 Every Director and officer of the Trust shall disclose to the Chief Executive any relationship between himself/herself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 8.9 On appointment, Directors (and prior to acceptance of an appointment in the case of executive Directors) should disclose to the Board of Directors whether they are related to any other Director or holder of any office in the Trust.
- 8.9 Where the relationship to a Director is disclosed, the Standing Order headed 'Disability of Chair and Directors in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.
- 8.10 No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

9. TENDERING AND CONTRACT PROCEDURE

9.1 The procedure for making all contracts by or on behalf of the Trust shall comply with: the Regulatory Framework; these Standing Orders (except where Standing Order 3.33 or 3.37 is applied); and the Trust's Standing Financial Instructions. Such contracts involving charitable funds shall comply with the requirements of the Charities Act and the trust deed.

10. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

10.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Chief Executive or his/her nominated officer in a secure place.

10.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers. The Seal shall be used whenever required by law, or on the advice of the Trust's solicitor. Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

10.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer nominated by him/her who shall not be within the originating directorate).

10.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors and to the Audit Committee at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

11. SIGNATURE OF DOCUMENTS

11.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

11.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, 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 Board of Directors or any committee, sub-committee, or standing committee with delegated authority.

12. MISCELLANEOUS

12.1 **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and put into a position to understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. Copies shall also be placed

on the Trusts Intranet to allow ease of access, by Directors and officers, to the latest version. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

- 12.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board of Directors and Delegation of Powers shall have effect as if incorporated into Standing Orders.
- 12.3 **Review of Standing Orders** - Standing Orders shall be reviewed by the Board of Directors at least once in each financial year, and shall be amended if and as agreed appropriate by the Board of Directors. The Trust will maintain records necessary for the appropriate delegation and control of this process. This requirement extends to all documents having the effect as if incorporated in Standing Orders.

APPENDIX A CODE OF BUSINESS CONDUCT

Standards of Business Conduct for NHS staff January 1993

Part A

Bribery Act 2010 - summary of main provisions

Acceptance of gifts by way of Inducements or reward

1. Under the Bribery Act 2010, it is an offence for Employees, governors or non-executive Directors, corruptly to accept any gifts or consideration as an inducement or reward for:
 - doing, or refraining from doing, anything in their official capacity; or
 - showing favour or disfavour to any person in their official capacity.
2. Under the Bribery Act 2010 any money, gift or consideration received by an employee in public service from a person or organisation holding or seeking to obtain a contract will be deemed by the courts to have been received corruptly unless the employee proves the contrary.

Part B

NHS Management Executive (NHSME) - general guidelines

Introduction

1. These guidelines, which are intended by the NHSME to be helpful to all NHS employers and their employees, re-state and reinforce the guiding principles previously set out in Circular HM(62)21 (now cancelled), relating to the conduct of business in the NHS.

Responsibility of NHS employers

2. NHS employers are responsible for ensuring that these guidelines are brought to the attention of all employees; also that machinery is put in place for ensuring that they are effectively implemented.

Responsibility of NHS staff

3. It is the responsibility of staff to ensure that they are not placed in a position which risks, or appears to risk, conflict between their private interests and their NHS duties. This primary responsibility applies to *all NHS Staff*, i.e. those who commit NHS resources directly (e.g. by the ordering of goods) or those who do so indirectly (e.g. by the prescribing of medicines). A further example would be staff who may have an interest in a Private nursing home and who are involved with the discharge of patients to residential facilities.

Guiding principle in conduct of public business

4. It is a long established principle that public sector bodies, which include the NHS, must be impartial and honest in the conduct of their business, and that their employees should remain beyond suspicion. It is also an offence under the Bribery Act 2010 for an employee, governor or Non-Executive Director corruptly to accept any inducement or reward for doing, or refraining from doing anything, in his or her official capacity, or corruptly showing favour, or disfavour, in the handling of contracts (see PART A).

Staff will need to be aware that a breach of the provisions of these Acts renders them liable to prosecution and may also lead to loss of their employment and superannuation rights in the NHS

Principles of conduct in the NHS

5. NHS staff are expected to:
 - ensure that the interest of patients remains paramount at all times;
 - be impartial and honest in the conduct of their official business;
 - use the public funds entrusted to them to the best advantage of the service, always ensuring value for money.
6. It is also the responsibility of staff, governors and Non-Executive Directors to ensure that they do **not**:
 - abuse their official position for personal gain or to benefit their family or friends;

- seek to advantage or further private business or other interests, in the course of their official duties.

Implementing the guiding principles

Casual gifts

7. Casual gifts offered by contractors or others, e.g. at Christmas time, may not be in any way connected with the performance of duties so as to constitute an offence under the Bribery Acts. Such gifts should nevertheless be politely but firmly declined. Articles of low intrinsic value such as diaries or calendars, or small tokens of gratitude from patients or their relatives, need not necessarily be refused. In cases of doubt staff should either consult their line manager or politely decline acceptance.

Hospitality

8. Modest hospitality provided it is normal and reasonable in the circumstances, e.g. lunches in the course of working visits, may be acceptable, though it should be similar to the scale of hospitality which the NHS as an employer would be likely to offer.
8. Staff, governors and non-executive directors should decline all other offers of gifts, hospitality or entertainment. If in doubt they should seek advice from their line manager.

Declaration of interests

10. NHS employers need to be aware of all cases where an employee, or his or her close relative or associate, has a controlling and/or significant financial interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any other activity or pursuit, which may compete for an NHS contract to supply either goods or services to the employing authority.
11. All NHS staff should therefore declare such interests to their employer, either on starting employment or on acquisition of the interest, in order that it may be known to and in no way promoted to the detriment of either the employing authority or the patients whom it serves.
12. One particular area of potential conflict of interest which may directly affect patients is when NHS staff hold a self beneficial interest in private care homes or hostels. While it is for staff to declare such interests to their employing authority, the employing authority has a responsibility to introduce whatever measures it considers necessary to ensure that its interests and those of patients are adequately safeguarded. This may for example take the form of a contractual obligation on staff to declare any such interests. Advice on professional conduct issued by the General Medical Council recommends that when a doctor refers a patient to a private care home or hostel in which he or she has an interest, the patient must be informed of that interest before referral is made.
13. In determining what needs to be declared, employers and employees will wish to be guided by the principles set out in paragraph 5 above; also the more detailed guidance to staff contained in Part D.

13. NHS employers should:
- ensure that staff are aware of their responsibility to declare relevant interests (perhaps by including a clause to this effect in staff contracts)
 - consider keeping registers of all such interests and making them available for inspection by the public.
 - develop a local policy, in consultation with staff and local staff interests, for implementing this guidance. This may include the disciplinary action to be taken if an employee fails to declare a relevant interest, or is found to have abused his or her official position, or knowledge, for the purpose of self-benefit, or that of family or friends.

Preferential treatment in private transactions

15. Individual staff must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of their NHS employer. (This does not apply to concessionary agreements negotiated with companies by NHS management, or by recognised staff interests, on behalf of all staff - for example, NHS staff benefits schemes.)

Contracts

16. All staff who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to professional standards of the kind set out in the Ethical Code of the Institute of Purchasing and Supply (IPS), reproduced at PART E.

Favouritism in awarding contracts

17. Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of NHS Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:
- no private, public or voluntary organisation or company which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the NHS employer, such as a long-running series of previous contracts.
 - each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfil them.
18. NHS employers should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff who are known to have a relevant interest play no part in the selection.

Warnings to potential contractors

19. NHS employers will wish to ensure that all invitations to potential contractors to

tender for NHS business include a notice warning tenderers of the consequences of engaging in any corrupt practices involving employees of public bodies.

Outside employment

20. NHS employees are advised not to engage in outside employment which may conflict with their NHS work, or be detrimental to it. They are advised to tell their NHS employing authority if they think they may be risking a conflict of interest in this area: the NHS employer will be responsible for judging whether the interests of patients could be harmed, in line with the principles in paragraph 5 above. NHS employers may wish to consider the preparation of local guidelines on this subject.

Private practice

21. Consultants (and associate specialists) employed under the Terms and Conditions of Service of Hospital Medical and Dental Staff are permitted to carry out private practice in NHS hospitals subject to the conditions outlined in the handbook "A Guide to the Management of Private Practice in the NHS". (See also PM (79)11). Consultants who have signed new contracts with Trusts will be subject to the terms applying to private practice in those contracts.
22. Other grades may undertake private practice or work for outside agencies, providing they do not do so within the time they are contracted to the NHS, and they observe the conditions in paragraph 20 above. All hospital doctors are entitled to fees for other work outside their NHS contractual duties under "Category 2" (paragraph 37 of the TCS of Hospital Medical and Dental staff), e.g. examinations and reports for life insurance purposes. Hospital doctors and dentists in training should not undertake locum work outside their contracts where such work would be in breach of their contracted hours. Career grade medical and dental staff employed by NHS Trusts may agree terms and conditions different from the National Terms and Conditions of Service.

Rewards for Initiative

23. NHS employers should ensure that they are in a position to identify potential intellectual property rights (IPR), as and when they arise, so that they can protect and exploit them properly, and thereby ensure that they receive any rewards or benefits (such as royalties) in respect of work commissioned from third parties, or work carried out by their employees in the course of their NHS duties. Most IPR are protected by statute; e.g. patents are protected under the Patents Act 1977 and copyright (which includes software programmes) under the Copyright Designs and Patents Act 1988. To achieve this, NHS employer should build appropriate specifications and provisions into the contractual arrangements which they enter into *before* the work is commissioned, or begins. They should always seek legal advice if in any doubt in specific cases.
24. With regard to patents and inventions, in certain defined circumstances the Patents Act gives *employees a right* to obtain some reward for their efforts, and employers should see that this is effected. Other rewards may be given voluntarily to employees who within the course of their employment have produced innovative work of outstanding benefit to the NHS. Similar rewards should be voluntarily applied to other activities such as giving lectures and publishing books and articles.
25. In the case of collaborative research and evaluative exercises with manufacturers,

NHS employers should see that they obtain a fair reward for the input they provide. If such an exercise involves additional work for an NHS employee outside that paid for by the NHS employer under his or her contract of employment, arrangements should be made for some share of any rewards or benefits to be passed on to the employee(s) concerned from the collaborating parties. Care should however be taken that involvement in this type of arrangement with a manufacturer does not influence the purchase of other supplies from that manufacturer.

Part E

Institute of Purchasing and Supply - Ethical Code

(Reproduced by kind permission of IPS)

Introduction

The code set out below was approved by the Institute's Council on 26 February 1977 and is binding on IPS members.

Precepts

1. Members shall never use their authority or office for personal gain and shall seek to uphold and enhance the standing of the Purchasing and Supply profession and the Institute by:
 - a. maintaining an unimpeachable standard of integrity in all their business relationships both inside and outside the organisations in which they are employed;
 - b. fostering (the highest possible standards of professional competence amongst those for whom they are responsible;
 - c. optimising the use of resources for which they are responsible to provide the maximum benefit to their employing organisation;
 - d. complying both with the letter and the spirit Of;
 - i. the law of the country in which they practise;
 - ii. such guidance on professional practice as may be issued by the Institute from time to time;
 - ii. contractual obligations;
 - e. rejecting any business practice which might reasonably be deemed improper.

Guidance

1. In applying these precepts, members should follow the guidance set out below:
 - a. Declaration of interest. Any personal interest which may impinge or might reasonably be deemed by others to impinge on a member's impartiality in any matter relevant to his or her duties should be declared.
 - b. Confidentiality and accuracy of information. The confidentiality of information received in the course of duty should be respected and should never be used for personal gain; information given in the course of duty should be true and fair and never designed to mislead.
 - c. Competition. While bearing in mind the advantages to the member's employing organisation of maintaining a continuing relationship with a supplier, any relationship which might, in the long term, prevent the effective operation of fair competition, should be avoided.

- d. Business Gifts. Business gifts other than items of very small intrinsic value such as business diaries or calendars should not be accepted.
- e. Hospitality. Modest hospitality is an accepted courtesy of a business relationship. However, the recipient should not allow him or herself to reach a position whereby he or she might be deemed by others to have been influenced in making a business decision as a consequence of accepting such hospitality; the frequency and scale of hospitality accepted should not be Significantly greater than the recipient's employer would be likely to provide in return.
- f. when it is not easy to decide between what is and is not acceptable in terms of gifts or hospitality, the offer should be declined or advice sought from the member's superior.

ANNEX 9 – FURTHER PROVISIONS

- 1.1 The 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:
 - 1.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 1.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 1.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
 - 1.1.4 having charge of the Trust's seal;
 - 1.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
 - 1.1.6 preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
- 1.2 Minutes of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept by the Secretary. 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.
- 1.3 The Secretary is to be appointed and removed by the Chair and Chief Executive acting jointly.
2. The Company Secretary (if any) and members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, including (but not limited to) any liability arising by reason of the Trust acting as a Corporate Trustee, save where they have acted recklessly and the Trust may also take out and maintain for their benefit insurance against such risks and may participate in risk pooling schemes, including

(but not limited to) insurance and schemes operated by the NHS Litigation Authority. Any costs arising in this way will be met by the Trust.

3.1 The Trust may make amendments to this Constitution with the approval of Monitor, subject to paragraph 3.2 below.

3.2 No proposal for amendment of this Constitution will be put to Monitor unless it has been approved by the Board of Directors and a majority of those governors present and voting at a meeting of the Council of Governors.

4. The validity of any act of the Trust is not affected by any vacancy among the directors or the governors or by any defect in the appointment of any director or governor.

4.1 If:

(a) an executive director is temporarily unable to perform his/her duties due to illness or some other reason (the "Absent Director"); and

(b) the board of directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement director; and

(c) the board of directors agree that the duties of the Absent Director need to be carried out;

then the Chair (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting director as an additional director to carry out the Absent Director's duties temporarily.

4.2 For the purposes of paragraph 4.1 of this Annex, the maximum number of directors that may be appointed under paragraph 19.2.3 of the Constitution shall be relaxed accordingly.

4.3 The acting director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an acting director.

4.4 The acting director shall be an Executive Director for the purposes of the 2006 Act. He shall be responsible for his/her own acts and defaults and he/she shall not be deemed to be the agent of the Absent Director.

- 5 If:
- (a) an executive director post is vacant (“Vacant Position”); and
 - (b) the board of directors agree that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a director as an interim director (“Interim Director”) to fill the Vacant Position pending appointment of a permanent postholder.
- 5.1 The Interim Director will vacate office on the appointment of a permanent postholder or, if earlier, the date on which the persons entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an Interim Director.
- 5.2 The Interim Director shall be an Executive Director for the purposes of the 2006 Act.
6. When a vacancy arises for one or more elected governors, the Council of Governors shall have the option to take from the list of members who stood for election at the most recent election of governors for the class or constituency in question whichever member who was not elected as a governor at the recent election but had secured the next most votes at that time. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Elections as they apply to the trust, shall be available to the Governors on 2 occasions within 12 months of the previous election. Governors appointed in this way shall hold office for a minimum of 6 months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of that Governor whose cessation of office gave rise to the vacancy
7. The Trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the Trust but such persons will not be Directors of the Trust for the purposes of the 2006 Act (“statutory directors”) unless their title includes the title “Chief”, “Executive” or “Non-Executive Director” or “Chair” and will not have the voting rights of statutory directors or any power to bind the Trust.

8. Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.
9. Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:
 - 9.1 not be obliged to send any information or photographs unless received by the Trust from the candidate;
 - 9.2 not be in breach of any obligation to include in any communication, or otherwise provide, information which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;
 - 9.3 have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libellous.
10. The minimum age for membership of the Trust is 12 years old.

11. Management of disputes between the Board and the Council of Governors

In terms of dealing with any disagreements, if at any point the Council of Governors has any concerns about engagement with the Board of Directors, they should raise these in the first instance with the Chair of the Trust. The Council of Governors may require any director to attend a Council of Governors meeting, although this would normally be discussed in the first instance with the Lead Governor, Senior Independent Director and Chair. In exceptional circumstances, Monitor has established a panel for the advising of governors. Questions raised to this panel by the governors will only be addressed if it relates to whether a Trust has failed or is failing to act in accordance with its constitution or to act in accordance with Chapter 5 of the NHS Act 2006. Prior to referring a question to the panel more than half of the members of the Council of Governors voting must approve the referral and the panel will require evidence of this voting process prior to considering a question.

ANNEX 10 – NOLAN PRINCIPLES AND TRUST PRINCIPLES

PART A – NOLAN 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 rewards and 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 that 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.

