

**AGENDA ITEM NO:**

**UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST  
COUNCIL OF GOVERNORS  
MONDAY 24 SEPTEMBER 2012**

<b>Title:</b>	<b>CHANGES TO THE CONSTITUTION - AREA</b>
<b>Responsible Officer:</b>	David Burbridge, Director of Corporate Affairs
<b>Contact:</b>	David Burbridge, Director of Corporate Affairs, Ext 2881

<b>Purpose:</b>	To recommend changes to the Trust's Constitution with regard to the definition of the Area of the Trust.
<b>Confidentiality Level &amp; Reason:</b>	NONE
<b>Key Issues Summary:</b>	<p>Currently, residents within the electoral wards of Birmingham may become Public members of the Trust. Persons living outside of those electoral wards may only become members of the Trust if they are eligible to become Patient members. i.e. they are or have been a patient, or are a carer of a patient, of the Trust.</p> <p>It is proposed that the Constitution of the Trust be amended so that persons living in England may become members of the Trust, irrespective of whether they are already a patient or a carer,</p>
<b>Recommendations:</b>	<p>The Council of Governors is asked to consider this paper and the accompanying document and RESOLVE as follows:</p> <p>That, subject to the approval of Monitor and approval by the Board of Directors, the Constitution of the Trust be amended as set out in the document attached at Appendix A, to be effective from the date of approval by Monitor.</p>

<b>Signed:</b>	<b>Date:</b> September 2012
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**UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST**  
**COUNCIL OF GOVERNORS**  
**MONDAY 24 SEPTEMBER 2012**  
**CHANGES TO THE CONSTITUTION - AREA**  
**DIRECTOR OF CORPORATE AFFAIRS**

**1. Introduction**

- 1.1. Currently, residents within the electoral wards of Birmingham may become Public members of the Trust. Persons living outside of those electoral wards may only become members of the Trust if they are eligible to become Patient members. i.e. they are or have been a patient, or are a carer of a patient, of the Trust.
- 1.2. At present, the Trust is aware of over 200 individuals who have expressed an interest in becoming a member of the Trust but who are not eligible as they live outside of Birmingham and have neither been a patient nor a carer.
- 1.3. Under the Health & Social Care Act 2012, the principal purpose of the Trust is “the provision of goods and services for the purposes of the health service in England”.
- 1.4. The Trust provides services to people locally, regionally and nationally. It is proposed that the Constitution of the Trust be amended so that persons living in England may become members of the Trust, irrespective of whether they are already a patient or a carer,

**2. Proposed Amendments**

- 2.1. It is proposed that the Constitution of the Trust be amended, so that persons living in England may become members of the public constituency of the Trust, irrespective of whether they are already a patient or a carer, by the creation of a new Area of the Trust, being the Rest of England. This would permit the engagement of persons living close to the Trust (e.g. in Solihull and Worcestershire) who are not currently eligible to be members and would better represent the populations served by the Trust.
- 2.2. The proposal is therefore:
  - 2.2.1. one Area, consisting of the Birmingham electoral wards, as currently configured and with eligibility for membership remaining as it is now, i.e. any persons, including patients and carers, resident in that Area are eligible for membership as a Public Member and not as a Patient Member;
  - 2.2.2. one Area, consisting of the Rest of England, with eligibility for membership being: any persons, NOT including patients and carers, resident in that Area are eligible for membership as a Public Member; and

- 2.2.3. the Patients' Constituency remaining as it is now, i.e. patients and carers not resident within the area of Birmingham.
- 2.2.4. Based on current membership and including those persons referred to in paragraph 1.2 above, this would result in an initial public and patient membership as follows:

<b>Constituency/Area</b>	<b>No. of members</b>
Birmingham Area	10,764
Rest of England Area	250*
Patients Constituency	4,205

\*The number of members within the Rest of England category would be expected to grow, as such persons would now be eligible for membership.

- 2.3. If the above changes are approved, the make-up of the Council of Governors will need to be amended. It is proposed that the present provision for three Patient Governors remain and that an additional Public Governor post be created for the new Area of the Rest of England.
- 2.4. The proposed amendments are set out in Appendix A, attached (only those pages with amendments have been included.)

### **3. Recommendation**

- 3.1. The Council of Governors is asked to consider this paper and the accompanying document and RESOLVE as follows:
- 3.2. That, subject to the approval of Monitor and approval by the Board of Directors, the Constitution of the Trust be amended as set out in the document attached at Appendix A, to be effective from the date of approval by Monitor.

**D J Burbridge**  
**Director of Corporate Affairs**

**September 2012**

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**UNIVERSITY HOSPITALS BIRMINGHAM<sup>1</sup>  
NHS FOUNDATION TRUST  
(A PUBLIC BENEFIT CORPORATION)**

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**CONSTITUTION**

*(As amended by resolutions of the Governors dated 11 November 2005, 13 March 2007, 27 June 2007, 25 September 2008 and 17 June 2011 )*

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.

References in this Constitution to legislation include all amendments, replacements, or re-enactments made.

References to legislation include all regulations, statutory guidance or directions.

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

**1. DEFINITIONS**

1.1 In this Constitution:

<b>"the 2012 Act</b>	means the Health and Social Care Act 2012
<b>"the 2006 Act"</b>	means the National Health Service Act 2006;
<b>"the 1977 Act"</b>	means the National Health Service Act 1977;
<b>"Areas of the Trust"</b>	means the Birmingham Area and the Rest of England Area;
<b>"Birmingham Area"</b>	means those areas specified in Annex 1 as an area of the Birmingham Area of the Public Constituency;
<b>"Board of Directors"</b>	means the board of directors as constituted in accordance with this Constitution;
<b>"Council of Governors"</b>	means the Council of Governors as constituted in accordance with this Constitution;

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<sup>1</sup> Name changed from UNIVERSITY HOSPITAL BIRMINGHAM NHS FOUNDATION TRUST by resolution of the Council of Governors dated 5 June 2008

<b>"Carer"</b>	means an individual who has attended any of the Trust's hospitals since 1 April 2001 as the carer of a Patient but not individuals providing care in pursuance of a contract, including a contract of employment, or as a volunteer for a voluntary organisation;
<b>"Chairman"</b>	means the chairman of the Trust;
<b>"Chief Executive"</b>	means the chief executive of the Trust;
<b>"Director"</b>	means a director of the Board of Directors;
<b>"Executive Director"</b>	means a Director appointed in accordance with section 8.8.7;
<b>"Financial Year"</b>	means:  the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and  each successive period of twelve months beginning with 1 April;
<b>"Foundation Secretary"</b>	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
<b>"Governor"</b>	means a Public Governor, Patient Governor, Staff Governor or Stakeholder Governor;
<b>"Governor Vice Chairman"</b>	means a member of the Council of Governors elected by a majority of the Council of Governors present at a duly constituted meeting to chair meetings of the Council of Governors or the Nomination Committee for Non-Executive Directors or equivalent body which relate to matters which affect the interests of the Chairman and/or Non-Executive Directors;
<b>"Local Authority Governor"</b>	means a member of the Council of Governors appointed by Birmingham City Council;
<b>"Member"</b>	means a member of the Trust;
<b>"Monitor"</b>	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;

<b>"NHS Foundation Trust"</b>	means a foundation trust duly authorised in accordance with the 2006 Act;
<b>"NHS Organisation"</b>	means foundation trusts and other health service bodies as mentioned in section 65 of the 2006 Act;
<b>"Nomination &amp; Remuneration Committee for Non-Executive Directors"</b>	means a committee of the Council of Governors constituted in accordance with section 7.23.3;
<b>"Non-Executive Director"</b>	means a Director appointed in accordance with section 7.17.1a);
<b>"Other Partnership Governor"</b>	means a member of the Council of Governors appointed by a partnership organisation specified in section 7.5;
<b>"Patient"</b>	means an individual who has attended any of the Trust's hospitals since 1 April 2001;
<b>"Patient Governor"</b>	means a member of the Council of Governors elected by the Members of the Patients' Constituency;
<b>"PCT Governor"</b>	means a member of the Council of Governors appointed by South Birmingham Primary Care Trust;
<b>"Public Governor"</b>	means a member of the Council of Governors elected by Members of an area of the Public Constituency;
<b>"Rest of England Area"</b>	means the area specified in Annex 1 as the Rest of England Area of the Public Constituency;
<b>"Staff Governor"</b>	means a member of the Council of Governors elected by the Members of the Staff Constituency;
<b>"Stakeholder Governors"</b>	means the Local Authority Governor, the PCT Governor, the University Governor and Other Partnership Governors;
<b>"the Trust"</b>	means University Hospitals Birmingham NHS Foundation Trust;
<b>"University Governor"</b>	means a member of the Council of Governors appointed by the University of Birmingham; and
<b>"Vice Chairman"</b>	means the Vice Chairman of the Trust.

## **2. NAME**

The name of this Trust shall be "University Hospitals Birmingham NHS Foundation Trust".

## **3. PRINCIPAL PURPOSE**

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

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

3.3 The Trust may provide goods and services for any purposes related to:

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

3.3.2 the promotion and protection of public health.

## **4. OTHER PURPOSES**

4.1 The Trust may also carry any activities in addition to those mentioned in section 3 above for the purpose of making additional income available in order better to carry on its principal purpose.

4.2 The Trust may also form, acquire an interest in, invest in, participate in, and dispose of any interest in, joint ventures and partnerships, whether incorporated or not, carrying out any activity the Trust is authorised to carry out.

4.3 References to goods and services in this section 4 include the provision of education, training, accommodation and similar facilities or activities.

## **5. POWERS**

5.1 The Trust shall have all the powers of an NHS Foundation Trust set out in the 2006 Act, subject to the terms of its authorisation, including the power to do anything which appears to the Trust to be necessary or desirable for the purposes of or in connection with its purposes.

5.2 In particular, and without limitation to the generality of section 5.1, the Trust may:

5.2.1 acquire and dispose of property;

- 5.2.2 enter into contracts;
- 5.2.3 accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service); and
- 5.2.4 employ staff.

## **6. MEMBERS**

6.1 The Trust shall have 3 membership constituencies, namely:

- 6.1.1 the "Public Constituency";
- 6.1.2 the "Staff Constituency"; and
- 6.1.3 the "Patients' Constituency".

6.2 Public Constituency

- 6.2.1 The areas for the Public Constituency shall be the areas as named in Column 1 of Annex 1.
- 6.2.2 Members of the Trust who are Members of the Public Constituency shall be individuals who are aged 16 or over and:
  - a) who live in one of the Areas of the Trust; and
  - b) who are not eligible to become Members of the Staff Constituency and are not Members of any other membership constituency or otherwise disqualified for membership under section 6.5; and
  - c) who
    - (i) have each made an application for membership to the Trust; or
    - (ii) are Patients living within the Birmingham Area who have been invited by the Trust to become a Member of the Public Constituency and have not informed the Trust, within 14 days of the issue of such invitation, that they do not wish to do so.
- 6.2.3 The minimum number of Members required for each area of the Public Constituency mentioned in column 1 of Annex 1 is to be the number given in the corresponding entry in column 3 of Annex 1.

6.3 Staff Constituency

- 6.3.1 The Staff Constituency is to be divided into 4 classes as follows:



- a) medical staff;
  - b) nursing staff;
  - c) clinical professions allied to healthcare staff; and
  - d) corporate and support services staff.
- 6.3.2 The Members of the medical staff class are individuals who are Members of the Staff Constituency who are fully registered persons within the meaning of the Medicines Act 1956 who hold a licence to practise and who are employed by or exercise functions for the Trust as doctors.
- 6.3.3 The Members of the nursing staff class are individuals who are Members of the Staff Constituency who hold a professional registration with the Nurses & Midwives Council or the British Association of Dental Nurses or are non-registered nursing staff and who are employed by or exercise functions for the Trust as nurses.
- 6.3.4 The Members of the clinical professions allied to healthcare staff class are individuals who are Members of the Staff Constituency who are other registered clinical professionals who are employed by or exercise functions for the Trust as clinical staff other than doctors and nurses and who are not Members of the classes specified in sections 6.3.2 and 6.3.3. For the purposes of this clause, “registered clinical professional” shall mean an individual who is registered with or affiliated to, whether as a trainee or otherwise, a clinical professional body recognised by the Trust. A list of such bodies shall be maintained by the Foundation Secretary and may be amended from time to time with the approval of the Chairman of the Trust.
- 6.3.5 The Members of the corporate and support services staff class are any individuals who are Members of the Staff Constituency and who do not come within sections 6.3.2 to 6.3.4 above.
- 6.3.6 Members of the Trust who are Members of the Staff Constituency are to be individuals:
- a) who are employed under a contract of employment by the Trust; or
  - b) who are not so employed but who exercise functions for the purposes of the Trust; and
  - c) who satisfy the minimum duration requirements set out in section 3(3) of Schedule 7 to the 2006 Act, that is to say:
    - (i) in the case of employees of the Trust who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months or who have been continuously employed by the Trust for at least 12 months; or

(ii) in the case of individuals falling within section 6.3.6(b) who has exercised functions for the purposes of the Trust continuously for at least 12 months; and

d) in any such case who:

(i) have either made an application for membership to the Trust; or

(ii) have been invited by the Trust to become a Member of that constituency (as a Member of the appropriate staff class) and have not informed the Trust within 14 days of the issue of such invitation, that they do not wish to do so.

6.3.7 The minimum number of Members required for each staff class shall be:

a) for the medical staff class: 10;

b) for the nursing staff class: 10;

c) for the clinical professions allied to healthcare staff class: 10; and

d) for the corporate and support services staff class: 10.

6.3.8 A person who is eligible to be a Member of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency and may not become or continue as a Member of more than one staff class.

## 6.4 Patients' Constituency

6.4.1 The Members of the Trust who are Members of the Patients' Constituency are to be individuals who are:

a) Patients or Carers (as defined in section 1 of the Constitution) who are aged 16 or over; and

b) not eligible to become Members of the Staff Constituency or the Birmingham Area of the Public Constituency and are not otherwise disqualified in accordance with section 6.5; and

c) who

(i) have made an application for membership of the Trust; or

(ii) have been invited by the Trust to become a Member of the Patients' Constituency and have not informed the Trust, within 14 days of the issue of such invitation, that they do not wish to do so.

6.4.2 A Patient who lives in the Birmingham Area of the Trust will not be eligible to be a Member of the Patients' Constituency but shall be eligible to be a Member of the Public Constituency.

6.4.3 The minimum number of Members for the Patients' Constituency shall be 50.

## 6.5 Disqualification for Membership

6.5.1 A person may not be a Member if such person has:

- a) been identified by the Trust as a vexatious complainant in accordance with applicable Trust policy;
- b) verbally or physically assaulted a member of staff, Patient or visitor such that the Trust has, in accordance with applicable Trust policy, determined not to provide treatment for that person or only to provide treatment on special terms;
- c) been dismissed from the employment of the Trust, any of its Subcontractors or any other NHS Organisation, save where such dismissal is on the grounds of redundancy or determined to have been unfair by a competent tribunal;
- d) made a false application for membership;
- e) made a false statement in the process of being nominated, elected or appointed as a Governor.

6.5.2 It is the responsibility of the Member to ensure their eligibility and not the Trust, but where the Trust is on notice that a Member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

6.6 Decisions regarding disqualification shall be made by the Chairman advised by the Chief Executive.

6.7 The dispute resolution procedure referred to in section 17.2 shall apply in relation to any dispute arising under or in respect of any decision made pursuant to this section 6.

## 6.8 Termination of membership

6.8.1 A Member shall cease to be a Member if s/he resigns by notice in writing to the Foundation Secretary.

6.8.2 A Member shall automatically cease to be a Member in the event of their becoming ineligible for Membership of the constituency or area/class of the constituency of which they are a Member, although a person who is/has become eligible to be a Member of another constituency may continue as a Member of that other constituency or area/class of that constituency, provided that a Member may not become or continue as a Member of more than one constituency or area/class of a constituency.

- 6.8.3 If a Member of the Rest of England Area of the Public Constituency subsequently becomes eligible to be a Patient Member, they may elect, by notice in writing to the Foundation Secretary, to become a Member of the Patient Constituency. In the absence of such an election, they shall remain a Member of the Rest of England Area of the Public Constituency, subject to section 6.8.2.
- 6.8.4 The Trust may, at its discretion, terminate the membership of any Member of the Trust who fails to respond to three or more communications from the Trust requesting a response.

## 6.9 Voting at Governor elections

6.9.1 A person may not vote at an election for a Public Governor or a Patient Governor unless prior to the close of the poll that person has made a declaration in the specified form as set out at section 6.9.2 below, stating the particulars of his qualification to vote as a Member of the constituency and class for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

6.9.2 The form referred to in section 6.9.1 above is:

"I declare that I [name] of [address] am the addressee of this ballot paper and that I have not marked or returned any other voting paper in the election. I declare that I am qualified to vote in this election as a Member of the [Public Constituency ([ ] area)]/[Patient Constituency]."

## 7. COUNCIL OF GOVERNORS

7.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Patient Governors, Staff Governors, a PCT Governor, a Local Authority Governor, a University Governor and Other Partnership Governors.

7.2 A Governor shall be aged 16 or over.

7.3 The Council of Governors of the Trust shall include:

7.3.1 10 Public Governors elected in accordance with section 7.8;

7.3.2 3 Patient Governors elected in accordance with section 7.8;

7.3.3 5 Staff Governors elected in accordance with section 7.8, one to be elected by each relevant staff class as detailed in section 6.3.1 except that the nursing staff class shall elect 2;

7.3.4 1 PCT Governor appointed in accordance with section 7.9;

7.3.5 1 Local Authority Governor appointed in accordance with section 7.10;

7.3.6 1 University of Birmingham Governor appointed in accordance with section 7.11;  
and

- 7.3.7 3 Other Partnership Governors appointed in accordance with section 7.12.
- 7.4 The aggregate number of Members of Public Governors and Patient Governors shall be more than half the total membership of the Council of Governors.
- 7.5 The organisations specified as partnership organisations that may appoint a member of the Council of Governors are:
- 7.5.1 Surgeon General's Department of the Ministry of Defence;
- 7.5.2 South West Area Network of the secondary education sector in Birmingham; and
- 7.5.3 Birmingham Faith Leaders Group
- 7.6 If there is a vacancy within the Council of Governors, the validity of the proceedings of the Council of Governors shall not be affected.
- 7.7 From time to time an organisation may, in accordance with the procedure set out at section 18, be removed from or added to the list of organisations specified in section 7.5. Upon removal of such an organisation from the list specified in section 7.5, that organisation shall cease to have the power to appoint the number of Governors as specified in section 7.8.7 and upon the addition of an organisation to the list specified in section 7.5 the number of Governors which the additional organisation shall have the power to appoint shall be specified in section 7.8.7.
- 7.8 Election of Governors
- 7.8.1 Members of an area of the Public Constituency, the Patients' Constituency or a staff class of the Staff Constituency may elect any of their number to be a Governor.
- 7.8.2 If contested, the election must be by secret ballot.
- 7.8.3 Rules for the all elections made in accordance with Regulations made under the 2006 Act and in force from time to time as to the conduct of elections for membership of the Council of Governors (the "Election Rules") are included at Annex 3. The Election Rules shall not be altered except in accordance with the procedure set out at section 18.
- 7.8.4 The following Public Governors shall be elected:
- a) 2 Governors from the Northfield area of the Public Constituency;
  - b) 2 Governors from the Selly Oak area of the Public Constituency;
  - c) 2 Governors from the Hall Green area of the Public Constituency;
  - d) 2 Governors from the Edgbaston area of the Public Constituency;

- e) 1 Governor from the Ladywood, Yardley, Perry Barr, Sutton Coldfield, Hodge Hill and Erdington area of the Public Constituency; and
  - f) 1 Governor from the Rest of England Area of the Public Constituency.
- 7.8.5 3 Patient Governors shall be elected from the Members of the Patients' Constituency.
- 7.8.6 The following Staff Governors shall be elected:
- a) 1 Governor from the medical staff class;
  - b) 2 Governors from the nursing staff class;
  - c) 1 Governor from the clinical professions allied to healthcare staff class; and
  - d) 1 Governor from the corporate and support services staff class.
- 7.8.7 Subject to section 7.7 the following Stakeholder Governors shall be appointed:
- a) 1 Governor appointed by South Birmingham PCT;
  - b) 1 Governor appointed by Birmingham City Council;
  - c) 1 Governor appointed by the University of Birmingham;
  - d) 1 Governor appointed by the Surgeon General's Department of the Ministry of Defence;
  - e) 1 Governor appointed by the South West Area Network of the secondary education sector in Birmingham; and
  - f) 1 Governor appointed by Birmingham Faith Leaders Group.
- 7.8.8 A person may not stand for election to the Council of Governors as a Public Governor or a Patient Governor unless, within 28 days preceding the close of nominations for the election that person has made a declaration in the specified form as set out at section 7.8.9 below of his qualification to vote as a Member of the area of the Public Constituency or Patients' Constituency for which the election is being held and that s/he is not prevented from being a member of the Council of Governors by section 7.15 (Disqualification). It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.
- 7.8.9 The form referred to in section 7.8.8 above is:
- "I declare that I am eligible as a Member of the University Hospitals Birmingham Foundation Trust as at the date of the notice of election and that I am a Member of the [Public Constituency ([ ] area)]/[Patient's Constituency] for which I am seeking election. I declare that I am not prevented from being a Member by section 7.15 (Disqualification) of the Constitution."

7.8.10 Section 6.9.1 (Voting at Governor Elections) applies.

## 7.9 PCT Governor

The South Birmingham Primary Care Trust (acting by its Chairman) shall appoint 1 PCT Governor. Removal of a PCT Governor shall also be by the South Birmingham Primary Care Trust (acting by its chairman).

## 7.10 Local Authority Governor

Birmingham City Council (acting by its leader) shall appoint 1 Local Authority Governor. Removal of the Local Authority Governor shall also be by Birmingham City Council (acting by its leader).

## 7.11 University Governor

The University of Birmingham (acting by the Vice Chancellor) shall appoint 1 person as the University of Birmingham Governor. Removal of the University Governor shall also be by the University of Birmingham (acting by the Vice Chancellor).

## 7.12 Other Partnership Governors

The Other Partnership Governors are to be appointed by the organisations listed in section 7.5 (acting by the chairman or an individual of equivalent or similar status). Removal of Other Partnership Governors shall also be by the relevant organisation (acting by the Chairman or an individual of equivalent status).

## 7.13 Terms of office

### 7.13.1 Public Governors:

- a) may hold office for a period of up to 3 years;
- b) are eligible for re-election at the end of that period; and
- c) cease to hold office if they cease to be a Member for the relevant area of the Public Constituency.

### 7.13.2 Patient Governors:

- a) may hold office for a period of up to 3 years;
- b) are eligible for re-election at the end of that period; and
- c) cease to hold office if they cease to be a Member of the Patient Constituency.

### 7.13.3 Staff Governors:

- a) may hold office for a period of 3 years;

- b) are eligible for re-election at the end of that period; and
- c) cease to hold office if they cease to be a Member of the staff constituency.

7.13.4 Stakeholder Governors may hold office until they are replaced by the organisation which appointed them.

#### 7.14 Termination of tenure

7.14.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Foundation Secretary;

7.14.2 Public, Patient and Staff Governors' tenure of office shall be automatically terminated in the event of their becoming ineligible for Membership of the constituency or area/class of the constituency for which they hold their position;

7.14.3 A Governor may be removed from the Council of Governors for:

- a) failure to attend 60% or more of the duly called meetings of the Council of Governors in any continuous 12 months' period;
- b) making a false nomination declaration;
- c) acting in a manner prejudicial to the good conduct of the Council of Governors;
- d) acting in a manner prejudicial to the best interests of the Foundation Trust or bringing the Trust into disrepute; or
- e) falling under section 7.15.1.

7.14.4 Removal under section 7.14.3 shall be at the recommendation of the Chairman or the recommendation of a Governor with the support of a further 30% of the Governors and in each case approved by a vote of at least 75% of those Governors present either in person or by proxy at a properly constituted meeting of the Council of Governors.

#### 7.15 Disqualification

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

- a) that person is or would be disqualified from membership under section 6.5.1;
- b) that person has been removed as a Governor under section 7.14.3;
- c) in the case of a Staff Governor, Patient Governor or Public Governor, that person ceases to be a Member of the constituency or area/class of the constituency s/he represents;



- d) in the case of a Stakeholder Governor, South Birmingham Primary Care Trust, Birmingham City Council, the University of Birmingham or one of the organisations set out in section 7.5 remove them as a Stakeholder Governor which they appointed;
- e) that person has been adjudged bankrupt or his/her estate has been sequestrated and in either case that person has not been discharged;
- f) that person has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- g) that person has within the preceding five years been convicted in the UK of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him/her;
- h) that person has within the preceding two years been dismissed, from any paid employment of the Trust, any of its Subcontractors or any other NHS Organisation , save where such dismissal is on the grounds of redundancy or is determined to have been unfair by a competent tribunal;
- i) that person is a person whose tenure of office as the chairman or as a member or director of an NHS Organisation has been terminated on the grounds that his appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- j) that person is an Executive or Non-Executive Director of the Trust, or a governor, director, chairman or chief executive of another NHS Foundation Trust;

7.15.2 Where a person has been elected or appointed to be a Governor and that person becomes disqualified for appointment under section 7.15.1, s/he shall notify the Foundation Secretary in writing of such disqualification.

7.15.3 If it comes to the notice of the Foundation Secretary at the time of appointment of a Governor or later that a Governor is so disqualified, on the instructions of the Chairman, the Foundation Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect.

7.15.4 Upon the issue of any such notification, that person's tenure of office, if any, shall be terminated and that person shall cease to act as a Governor.

7.15.5 If a member of the Council of Governors is disqualified for ineligibility to be a Governor under this section 7, all votes which that Governor participated in, before notification under section 7.15.2 or 7.15.3 occurred, shall be valid.

7.15.6 The dispute resolution procedure referred to in section 17.2 shall apply in relation to any dispute arising under or in respect of any decisions made pursuant to this section 7.15.

## 7.16 Vacancies

7.16.1 In the event of an elected governorship seat falling vacant for any reason before the end of the term of office it shall be filled by the second placed candidate in the last held election for that seat. If that individual declines it shall be filled by the third placed candidate and so on (the "Reserve Governor").

7.16.2 In the event that a Reserve Governor is not available a by-election shall be held unless an election is due within 9 months in which case the seat shall stand vacant until the following scheduled election.

7.16.3 Stakeholder Governors shall be replaced in accordance with sections 7.9 to 7.12.

## 7.17 Roles and responsibilities of Governors

7.17.1 The roles and responsibilities of the Governors are:

- a) at a quorate General Meeting, to appoint or remove the Chairman and the other Non-Executive Directors (as provided in section 7.23.3). The removal of a Non-Executive Director requires the approval of 75% of the Council of Governors;
- b) to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors (as provided in section 7.23.3);
- c) to appoint or remove the Trust's auditor; and
- d) to be presented with the annual accounts, any report of the auditor on them and the annual report;
- e) to approve (by a majority of the Council of Governors voting) an appointment (other than the initial Chief Executive) of the Chief Executive;
- f) to give views of the Council of Governors to Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor;
- g) to consider the annual accounts, any report of the auditor on them and the annual report;
- h) to respond as appropriate when consulted by the Board of Directors and undertake other activities prescribed by the Board of Directors in accordance with this Constitution.

## 7.18 Expenses

7.18.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides. These shall be published in the annual report.

7.18.2 The remuneration and allowances for Non-Executive Directors set by the Governors are also to be published in the annual report.

7.19 Remuneration

Governors shall not receive remuneration.

7.20 Meetings

7.20.1 The Foundation Secretary and the Chairman shall have the power to call a meeting and shall be required to call one if 66% of the Council of Governors require it.

7.20.2 Failure to provide an agenda to those entitled to attend a meeting of the Council of Governors shall not invalidate that meeting provided that an agenda covering the principle items to be discussed has been sent to at least 66% of the Governors entitled to attend such a meeting.

7.20.3 Subject to section 7.20.4 below, the Chairman of the Trust, or in his absence the Vice-Chairman, or in his absence a Non-Executive Director nominated by the Chairman, shall preside at meetings of the Council of Governors and shall hold the role of proxy for any Governors who are absent from a meeting, provided a proxy form has been completed. The proxy shall vote either as they choose or as the absent Governor specifies dependent upon the relevant proxy form.

7.20.4 During a meeting of the Council of Governors, matters which affect the interests of the Chairman and/or Non-Executive Directors shall be chaired by the Governor Vice Chairman.

7.20.5 Meetings of the Council of Governors are to be open to members of the public except for special reasons such as matters being confidential due to commercial, staff or patient considerations to be discussed.

7.20.6 The Council of Governors shall meet at least twice in each Financial Year and during these meetings shall:

- a) receive and consider the annual accounts, any report of the auditor on them, and the annual report; and
- b) receive and consider the draft strategic, financial and capital plans prepared by the Board of Director.

7.20.7 The Council of Governors shall adopt the Trust's standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings).

7.20.8 A Governor elected to the Council of Governors may not vote at a meeting of the Council of Governors unless, within the week preceding the meeting, that Governor has made a declaration in the form specified at section 7.20.9 of the particulars of his qualification to vote as a member of the Trust and by section 8 of Schedule 7 to the 2006 Act or under this Constitution.

7.20.9 The form referred to in section 7.20.8 is:

"I declare that I am a Member of the [Public Constituency ([insert area] area)/Patients' Constituency/Staff Constituency ([insert class] class)]. I confirm that I am not prevented from being a member of the Council of Governors by virtue of section 7.15 (disqualification) and am eligible to vote as a member of the Council of Governors in accordance with its Standing Orders and the Constitution."

## 7.21 Conflicts of Interest of Governors

If a Governor has a registrable interest as set out in section 2 Annex 4, that Governor shall disclose the interest to the rest of the Council of Governors as soon as s/he is aware of it and follow the procedure outlined in Annex 4.

## 7.22 Quorum

7.22.1 The Council of Governors shall be deemed quorate if:

- a) at least one third of the total membership of the Council of Governors is present either in person or by proxy; and
- b) at least 3 Public or Patient Governors, 1 Staff Governor and 1 Stakeholder Governor are present in person.

7.22.2 At a quorate meeting of the Council of Governors where in aggregate the Public and Patient Governors do not hold a numerical majority of all Governors present, a resolution of the Governors shall not pass if it is unanimously opposed by the Public and Patient Governors present either in person or by proxy.

## 7.23 Committees and sub-committees

7.23.1 The Council of Governors may appoint but not delegate its powers to committees consisting of its Members (and others) to assist it in carrying out its functions. A committee appointed under this section may appoint a sub-committee.

7.23.2 Any committees or sub-committees established in accordance with section 7.23.1 may appoint advisors who are not Governors to help them in their tasks.

7.23.3 A committee, chaired by the Chairman, shall be established to assist the Council of Governors with the nomination, appointment and remuneration of the Non-Executive Directors (the "Nomination and Remuneration Committee for Non-Executive Directors"). In the case of the nomination, appointment or remuneration of the Chairman the Nomination and Remuneration Committee for Non-Executive Directors shall be chaired by the Governor Vice Chairman.

## 8. BOARD OF DIRECTORS

8.1 The Trust shall have a Board of Directors. It shall consist of Executive and Non-Executive Directors.

- 8.2 The Board of Directors shall include:
- 8.2.1 the following Non-Executive Directors:
  - 8.2.2 the Chairman; and
  - 8.2.3 5 or (subject to the provisions of section 8.2.3) more other Non-Executive Directors;
  - 8.2.4 the following Executive Directors provided that one is a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and another is a registered nurse or a registered midwife:
    - a) a Chief Executive;
    - b) a Finance Director; and
    - c) a minimum of 3 or (subject to the provisions of section 8.2.3) more other Executive Directors.
  - 8.2.5 The total number of Non-Executive Directors shall exceed by at least 1 but no more than 2 the total number of Executive Directors.
- 8.3 Only a Member of the Public Constituency or the Patients' Constituency or an individual exercising functions for the University of Birmingham is eligible for appointment as a Non-Executive director.
- 8.4 Non-Executive Directors shall be appointed in accordance with a process of open competition in accordance with a process to be established from time to time by the Nomination Committee for Non-Executive Directors. In carrying out the appointment process, the Nomination Committee for Non-Executive Directors shall have regard to best practice in corporate governance and shall take into account the level or range of skill and experience required in the Board of Directors.
- 8.5 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of a Director.
- 8.6 Terms of office
- 8.6.1 The Chairman and the Non-Executive Directors shall be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting.
  - 8.6.2 The Chief Executive, Finance Director and other Executive Directors shall hold office for a period in accordance with the terms and conditions of office set out by the Executives Appointments and Remuneration Committee (as defined in section 8.8.4).

## 8.7 Disqualification

- 8.7.1 A person may not become a Director of the Trust or shall be disqualified as a Director of the Trust if that person:
- a) has been adjudged bankrupt or his/her estate has been sequestrated and in either case s/he has not been discharged;
  - b) has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - c) has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not for a period of 3 months or more (without the option of a fine) was imposed on him;
  - d) in the case of a Non-Executive Director, no longer satisfies section 8.3;
  - e) is a person whose tenure of office as a chairman or as a member or director of an NHS Organisation has been terminated on the grounds that his appointment is not in the interests of public service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
  - f) has been dismissed from the employment of the Trust, any of its Subcontractors or any other NHS Organisation, save where such dismissal is on the grounds of redundancy or is determined to have been unfair by a competent tribunal.

## 8.8 Roles and responsibilities

- 8.8.1 The powers of the Trust are to be exercised by the Board of Directors on its behalf.
- 8.8.2 Any of those powers may be delegated to a committee of Directors or to an Executive Director. A committee appointed under this section may appoint a sub-committee.
- 8.8.3 Any committees or sub-committee established in accordance with section 8.8.2 may appoint advisors who are not Directors to help them in their tasks.
- 8.8.4 A committee consisting of the Chairman and at least 2 Non-Executive Directors shall be established to decide the remuneration and allowances and other terms and conditions of office of the Executive Directors (the "Executive Appointments and Remuneration Committee").
- 8.8.5 A committee of the Non-Executive Directors shall be established as an audit committee (the "Audit Committee") to perform such monitoring, reviewing and other functions as appropriate.
- 8.8.6 The Non-Executive Directors shall appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.

- 8.8.7 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the Executive Directors.
- 8.8.8 The Directors, having regard to the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
- 8.8.9 The Directors shall present to the Council of Governors, at an annual general meeting of the Trust, the annual accounts, any report of the auditor on them, and the annual report.
- 8.8.10 The functions of the Trust under sections 13.5 to 13.7 below are delegated to the Chief Executive as accounting officer.

## 8.9 Meetings of Directors

The Board of Directors shall adopt Standing Orders covering the proceedings and business of its meetings. These shall include the setting of a quorum for meetings, both of Executive and Non-Executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

## 8.10 Conflicts of interest of Directors

If a Director has a registrable interest as set out in paragraph 2 Annex 4 that Director shall disclose the interest to the rest of the Board of Directors as soon as s/he is aware of it and follow the procedure outlined in Annex 4.

## 9. VOTING

- 9.1 All decisions of Governors, Directors and Committees shall be by a simple majority of those present either in person or by proxy at a quorate meeting unless stated otherwise in this Constitution.
- 9.2 Subject to section 7.20.4 the Chairman or in his absence the Vice-Chairman shall hold the casting vote at meetings.

## 10. REGISTERS

### 10.1 The Trust shall have:

- 10.1.1 a register of Members for Public, Staff and Patient Members, showing, in respect of each Member, the constituency and class to which that Member belongs;
- 10.1.2 a register of members of the Council of Governors;
- 10.1.3 a register of Directors;

10.1.4 a register of interests of the Directors; and

10.1.5 a register of interests of the Governors.

10.2 The Foundation Secretary shall hold and administer or cause to be held and administered the registers set out in section 10.1 and shall be responsible for all additions and removals from the registers.

10.3 The Trust shall send to Monitor a list of the persons who were first elected or appointed as:

10.3.1 the members of the Council of Governors;

10.3.2 the Directors

in relation to any time before the Trust is first required to send annual reports to Monitor.

## **11. PUBLIC DOCUMENTS**

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

11.1.1 a copy of the current Constitution;

11.1.2 a copy of the current authorisation;

11.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

11.1.4 a copy of the latest annual report;

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

11.1.6 a copy of any notice given under section 52 of the 2006 Act (regulator's notice to failing NHS foundation trust).

11.2 Any person who requests it shall be provided with a copy or extract from any of the above documents.

11.3 The registers mentioned in section 10.1 are also to be made available for inspection by members of the public, except the register of Patient Members or where a Member requests that his/her details should not be made available as prescribed by the Public Benefit Corporation (Register of Members) Regulations 2004.

11.4 So far as those registers mentioned in section 10.1 are required to be available:

11.4.1 they are to be available free of charge at all reasonable times;

11.4.2 a person who requests it is to be provided with a copy of or extract from it.



- 11.5 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose at their discretion a reasonable charge for providing the copy or extract.

## **12. AUDITOR**

- 12.1 The Trust shall have an auditor appointed by the Council of Governors in accordance with section 7.17.1 and shall provide the auditor with every facility and all information which the auditor may reasonably require for the purposes of his/her functions under Part 2, Chapter 5 of the 2006 Act.
- 12.2 A person may only be appointed auditor if s/he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.
- 12.3 An officer of the Audit Commission may be appointed with the agreement of the Audit Commission.
- 12.4 The auditor shall carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted. The Audit Committee shall monitor the auditor's functions in accordance with section 8.8.5.

## **13. ACCOUNTS**

- 13.1 The Trust shall keep proper accounts and proper records in relation to the accounts.
- 13.2 Monitor may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.
- 13.3 The accounts are to be audited by the Trust's auditor.
- 13.4 The following documents shall be made available to the Comptroller and Auditor General for examination at his request:
- 13.4.1 the accounts;
  - 13.4.2 any records relating to them; and
  - 13.4.3 any report of the auditor on them.
- 13.5 The Trust (through its Chief Executive and accounting officer) 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.
- 13.6 In preparing its annual accounts, the Trust shall comply with any directions given by Monitor, with the approval of the Secretary of State, as to:

13.6.1 the methods and principles according to which the accounts are to be prepared;

13.6.2 the information to be given in the accounts.

13.7 The Trust shall:

13.7.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

13.7.2 once it has done so, send copies of those documents to Monitor.

13.8 The Trust shall hold at its headquarters copies of the annual accounts and auditor's report for inspection by the public.

#### **14. ANNUAL REPORTS AND FORWARD PLANS AND NON-NHS WORK**

14.1 The Trust shall prepare annual reports and send them to Monitor.

14.2 The reports are to give:

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

14.2.2 any other information Monitor requires.

14.3 The Trust shall comply with any decision Monitor makes as to:

14.3.1 the form of the reports;

14.3.2 when the reports are to be sent to him;

14.3.3 the periods to which the reports are to relate.

14.4 The Trust shall give information as to its forward planning in respect of each financial year to Monitor. This information shall be prepared by the Directors, who must have regard to the views of the Council of Governors (section 8.8.8 above).

14.5 Each forward plan must include information about:

14.5.1 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

14.5.2 the income it expects to receive from doing so.

14.6 Where a forward plan contains a proposal that the Trust will carry on an activity of a kind mentioned in sub-section 14.5.1 the Council of Governors must:

14.6.1 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

14.6.2 notify the Board of Directors of its determination.

14.7 Any proposal to increase the proportion of the Trust's total income by 5% or more in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may only be implemented if more than half of the members of the Council of Governors voting approving its implementation.

14.8 The annual report shall also be held at the Trust headquarters for public inspection and shall be made available via the Trust's website.

## **15. INDEMNITY**

15.1 If proceedings for negligence, default, breach of duty or breach of trust are brought against a member of the Council of Governors or the Board of Directors, and that member has acted honestly, in good faith, reasonably and in execution or purported execution of their Board functions, or judgment is given in the Member's favour or the Member is acquitted, then that Member shall not have to meet out of their personal resources any personal, civil or criminal costs or liabilities which arise from such proceedings.

15.2 The Trust may purchase and maintain for a member of the Council of Governors or a Member of the Board of Directors insurance against any such costs or liabilities.

## **16. INSTRUMENTS ETC.**

16.1 Any document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

16.2 The Trust shall have a seal which shall only be used by the authority of the Board of Directors or a duly authorised committee of the Board of Directors.

16.3 The Board of Directors shall determine who shall sign any instrument to which the seal is affixed and unless otherwise determined, it shall be signed by a Director and the Foundation Secretary or by two Directors.

16.4 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 have approved and authorised the document and those who attested the seal.

16.5 A report of all sealings shall be made to the Board of Directors at least annually. This report is to contain details of the seal number, the description of the document and the date of the sealing.

## **17. DISPUTE RESOLUTION PROCEDURE**

- 17.1 Following a majority vote by either the Council of Governors or the Board of Directors that a dispute exists, disputes between the Board of Directors and the Council of Governors shall be resolved in accordance with the dispute resolution procedure as set out in Annex 2 Part 1 as amended from time to time in accordance with the procedure set out at section 18.
- 17.2 Disputes relating to claims by Governors or Members in relation to disqualification shall be resolved in accordance with the dispute resolution procedure as set out in Annex 2 Part 2 as amended from time to time in accordance with the procedure set out at section 18.

## **18. AMENDMENT OF THE CONSTITUTION**

- 18.1 The Trust may make amendments to this Constitution with the approval of Monitor.
- 18.2 The Chairman or 50% of the Governors may recommend an amendment.
- 18.3 No proposal for amendment of this Constitution shall be put to Monitor unless it has been approved by 75% of the Council of Governors present either in person or by proxy at a duly called and quorate meeting.

## **19. DISSOLUTION OF THE TRUST**

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

## AREAS OF THE PUBLIC CONSTITUENCY OF THE TRUST

1	2	3	4
Name of area	area	Minimum No. of Members	Number of Governors
<b>Birmingham Area:</b>			
Northfield	The electoral wards of Kings Norton, Northfield, Longbridge and Weoley	20	2
Selly Oak	The electoral wards of Billesley, Bournville, Brandwood and Selly Oak	20	2
Hall Green	The electoral wards of Hall Green, Moseley & Kings Heath, Springfield and Sparkbrook	20	2
Edgbaston	The electoral wards of Bartley Green, Edgbaston, Harborne and Quinton	20	2
Ladywood, Yardley, Perry Barr, Sutton Coldfield, Erdington & Hodge Hill	The electoral wards of Aston, Ladywood, Nechells, Soho, Acocks Green, Sheldon, South Yardley, Stechford & Yardley North, Lozells and East Handsworth, Handsworth Wood, Oscott, Perry Barr, Sutton Four Oaks, Sutton New Hall, Sutton Trinity, Sutton Vesey, Erdington, Tyburn, Kingstanding, Stockland, Hodge Hill, Shard End, Washwood Heath and Bordesley Green	10	1
<b>Rest of England Area</b>	all other electoral wards in England not included within the Birmingham Area, as set out above.	10	1
			10

## PART 1

### DISPUTE RESOLUTION PROCEDURE

#### DISPUTES BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

- 1.1 If a dispute between the Board of Directors and the Council of Governors (the "**Boards**") in relation to law, power or authority of one of the Boards arises, the matter is to be referred to the Chairman of the Trust and, following such referral, the parties shall attempt to negotiate a settlement in good faith.
- 1.2 If any such dispute cannot be resolved in accordance with Condition 1.1, the dispute may, by agreement between the relevant parties, be referred to mediation in accordance with Condition 1.3.
- 1.3 The procedure for any such mediation shall be as follows:
  - 1.3.1 A neutral person, being an accredited mediator, (the "**Mediator**") shall be chosen by agreement between the Boards. Alternatively, either Board may within seven days from the date of the proposal to appoint a mediator, or within seven days of notice to any party that the chosen mediator is unable and unwilling to act, apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a Mediator.
  - 1.3.2 The Boards shall within seven days of the appointment of the Mediator agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the Boards may at any stage seek from CEDR guidance on a suitable procedure.
  - 1.3.3 All negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Boards in any future proceedings.
  - 1.3.4 All information (whether oral or in the form of documents, tapes, computer disks etc) produced for, during, or as a result of, the mediation will be without prejudice, privileged and not admissible as evidence or discoverable in any litigation or arbitration relating to the dispute. This does not apply to any information which would in any event have been admissible or discoverable in any such litigation or arbitration.
  - 1.3.5 The Mediator's reasonable fees and other expenses of the mediation will be borne by the Foundation Trust. The Foundation Trust will bear the reasonable costs and expenses of the participation in the mediation.
  - 1.3.6 If the Boards reach agreement on the resolution of the dispute that agreement shall be reduced to writing and shall be binding upon the relevant parties.
  - 1.3.7 For a period of ninety days from the date of the appointment of the Mediator, or such other period as the Boards may agree, neither Board may commence any proceedings in relation to the matters referred to the Mediator.
  - 1.3.8 If the Boards are unable to reach a settlement at the mediation and only if both Boards so request and the Mediator agrees, the Mediator will produce for the parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but will set out what the Mediator

suggests are appropriate settlement terms in all of the circumstances. Such opinion shall be provided on a without prejudice basis.

- 1.3.9 Subject to Conditions 1.3.6 and 1.3.7, should either Board decide to pursue the dispute in a court, the Foundation Trust shall not be liable for any of the costs or expenses in relation to such proceedings.

## **ANNEX 2**

### **PART 2**

#### **DISPUTE RESOLUTION PROCEDURE**

##### **DISPUTES RELATING TO DISQUALIFICATION**

- 1.1 If a dispute arises in relation to a Member's right to membership of the Foundation Trust:
- 1.1.1 the matter shall be referred to the Foundation Secretary who shall review the case and make a recommendation on settlement to the Vice Chairman who shall take account of but not be bound by such recommendation and who shall deliver an outcome to the parties; but
  - 1.1.2 if such dispute cannot be resolved in accordance with Condition 1.1.1 above, there is a right of appeal of the Member to the Council of Governors chaired by the Chairman. The outcome reached by the Council of Governors shall be final.
- 1.2 If a dispute arises in relation to a Governor's right to governorship of the Foundation Trust:
- 1.2.1 the matter shall be referred to the Foundation Secretary who shall review the case and make a recommendation on settlement to the Vice Chairman who shall take account of but not be bound by such recommendation and who shall deliver an outcome to the parties; but
  - 1.2.2 if such dispute cannot be resolved in accordance with Condition 1.1.1 above, there is a right of appeal of the Governor to the Council of Governors chaired by the Chairman. The outcome reached by the Council of Governors shall be final.
- 1.3 Conditions 1.1.2 and 1.2.2 above do not affect the jurisdiction of any court which has or would otherwise have competent jurisdiction over such a matter.

## **ELECTION RULES**



**UNIVERSITY HOSPITALS BIRMINGHAM**  
**NHS FOUNDATION TRUST**

**RULES FOR THE CONDUCT OF ELECTIONS TO THE COUNCIL OF GOVERNORS**  
**(Adopted June 2007)**

**UNIVERSITY HOSPITALS BIRMINGHAM  
NHS FOUNDATION TRUST**

**Rules for the Conduct of Elections  
to the Council of Governors**

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**UNIVERSITY HOSPITALS BIRMINGHAM  
NHS FOUNDATION TRUST**

**Rules for the Conduct of Elections  
to the Council of Governors**

**Part 1 - Interpretation**

1. Interpretation
  - 1.1. In these rules, unless the context otherwise requires:
    - “Trust” means University Hospitals Birmingham MHS Foundation Trust;
    - “election” means an election by a constituency, or by an area/class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;
    - “Regulator” means the independent regulator for NHS foundation trusts; and
    - “2006 Act” means the National Health Service Act 2006.
  - 1.2. Other expressions used in these rules and in Schedule 7 to the 2006 Act have the same meaning in these rules as in that Schedule.

**Part 2 – Timetable for election**

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

<b>Proceeding</b>	<b>Time</b>
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than the 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:
    - 3.1.1.a Saturday or Sunday;

- 3.1.2. Christmas day, Good Friday, or a bank holiday; or
- 3.1.3. a day appointed for public thanksgiving or mourning,
- 3.2. 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.
- 3.3. 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 57, the returning officer for an election is to be appointed by the Trust.
  - 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 – Subject to rule 57, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.
- 6. Expenditure - The Trust is to pay the returning officer:
  - 6.1. any expenses reasonably incurred by that officer in the exercise of his or her functions under these rules; and
  - 6.2. such remuneration and other expenses as the Trust may determine.
- 7. Duty of co-operation – The Trust is to co-operate with the returning officer in the exercise of his or her functions under these rules.

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

- 8. Notice of election – The returning officer is to publish a notice of the election stating:
  - 8.1. the constituency, or area/class within a constituency, for which the election is being held;
  - 8.2. the number of members of the Council of Governors to be elected from that constituency, or area/class within that constituency;
  - 8.3. the details of any nomination committee that has been established by the Trust;
  - 8.4. the address and times at which nomination papers may be obtained;
  - 8.5. the address for return of nomination papers and the date and time by which they must be received by the returning officer;
  - 8.6. the date and time by which any notice of withdrawal must be received by the returning officer;
  - 8.7. the contact details of the returning officer; and
  - 8.8. the date and time of the close of the poll in the event of a contest.
- 9. Nomination of candidates
  - 9.1. Each candidate must nominate themselves on a single nomination paper.
  - 9.2. The returning officer:
    - 9.2.1. is to supply any member of the Trust with a nomination paper; and

9.2.2. is to prepare a nomination paper for signature at the request of any member of the Trust,

but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars

10.1. The nomination paper must state the candidate's:

10.1.1. full name;

10.1.2. contact address in full; and

10.1.3. the constituency, or class within a constituency, of which the candidate is a member.

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

11.1. any financial interest that the candidate has in the Trust; and

11.2. whether the candidate is a member of a political party, and if so, which party,

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

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

12.1. 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

12.2. 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 area of that constituency, for which the election is being held.

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

13.1. they wish to stand as a candidate;

13.2. their declaration of interests as required under rule 11, is true and correct; and

13.3. their declaration of eligibility, as required under rule 12, is true and correct.

14. Decisions as to the validity of nomination

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

14.1.1. decides that the candidate is not eligible to stand;

14.1.2. decides that the nomination paper is invalid;

14.1.3. receives satisfactory proof that the candidate has died; or

14.1.4. receives a written request by the candidate of their withdrawal from candidacy.

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

14.2.1. that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election;

14.2.2. that the paper does not contain the candidate's particulars, as required by rule 10;

- 14.2.3. that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
    - 14.2.4. that the paper does not include a declaration of eligibility as required by rule 12, or
    - 14.2.5. that the paper is not signed and dated by the candidate, as required by rule 13.
  - 14.3. The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
  - 14.4. Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
  - 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 paper.
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:
    - 15.2.1. the name, contact address, and constituency or area/class within a constituency of each candidate standing; and
    - 15.2.2. the declared interests of each candidate standing, as given in their nomination paper.
  - 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 papers to the Trust as soon as is practicable after publishing the statement.
16. Inspection of statement of nominated candidates and nomination papers
  - 16.1. The Trust is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15.4 available for inspection by members of the public free of charge at all reasonable times.
  - 16.2. If a person requests a copy or extract of the statements of candidates or their nomination papers, the Trust is to provide that person with the copy or extract free of charge.
17. Withdrawal of candidates - A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.
18. Method of election
  - 18.1. If the number of candidates remaining validly nominated for an election for a constituency or class/area of a constituency after any withdrawals under these rules is greater than the number of members to be elected to the relevant constituency or class/area of a constituency, 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 for an election for a constituency or class/area of a constituency after any withdrawals under these rules is equal to the number of members to be elected to the relevant



constituency or class/area of a constituency, those candidates are to be declared elected in accordance with Part 7 of these rules.

- 18.2.1. If the number of candidates remaining validly nominated for an election for a constituency or class/area of a constituency after any withdrawals under these rules is less than the number of members to be elected to the relevant constituency or class/area of a constituency, then:
- 18.2.2. the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules; and
- 18.2.3. 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 Trust.

### **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.

#### 20. The ballot paper

- 20.1. The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2. Every ballot paper must specify:
  - 20.2.1. the name of the Trust;
  - 20.2.2. the constituency, or area/class within a constituency, for which the election is being held;
  - 20.2.3. the number of members of the Council of Governors to be elected from that constituency, or area/class within that constituency;
  - 20.2.4. the names and other particulars of the candidates standing for election to that constituency, or area/class within that constituency, with the details and order being the same as in the statement of nominated candidates;
  - 20.2.5. instructions on how to vote;
  - 20.2.6. 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
  - 20.2.7. 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. In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- 21.2. The declaration of identity is to include a declaration:
  - 21.2.1. that the voter is the person to whom the ballot paper was addressed;
  - 21.2.2. that the voter has not marked or returned any other voting paper in the election; and

- 21.2.3. for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or area of a constituency for which the election is being held.
- 21.3. The declaration of identity is to include space for:
  - 21.3.1. the name of the voter;
  - 21.3.2. the address of the voter;
  - 21.3.3. the voter's signature; and
  - 21.3.4. the date that the declaration was made by the voter.
- 21.4. The voter must be required to return the declaration of identity together with the ballot paper.
- 21.5. The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

**Action to be taken before the poll**

- 22. List of eligible voters
  - 22.1. The Trust is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
  - 22.2. The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.
- 23. Notice of poll - The returning officer is to publish a notice of the poll stating:
  - 23.1. the name of the Trust;
  - 23.2. the constituency, or area/class within a constituency, for which the election is being held;
  - 23.3. the number of members of the Council of Governors to be elected from that constituency, or area/class with that constituency;
  - 23.4. 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;
  - 23.5. that the ballot papers for the election are to be issued and returned, if appropriate, by post;
  - 23.6. the address for return of the ballot papers, and the date and time of the close of the poll;
  - 23.7. the address and final dates for applications for replacement ballot papers; and
  - 23.8. the contact details of the returning officer.
- 24. Issue of voting documents by returning officer
  - 24.1. As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the Trust named in the list of eligible voters:
    - 24.1.1. a ballot paper and ballot paper envelope;
    - 24.1.2. a declaration of identity (if required);

- 24.1.3. information about each candidate standing for election, pursuant to rule 59 of these rules; and
    - 24.1.4. a covering envelope.
  - 24.2. The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.
- 25. Ballot paper envelope and covering envelope
  - 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:
    - 25.2.1. the address for return of the ballot paper printed on it; and
    - 25.2.2. 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:
    - 25.3.1. the completed declaration of identity if required; and
    - 25.3.2. the ballot paper envelope, with the ballot paper sealed inside it.

#### **The poll**

- 26. Eligibility to vote – An individual who becomes a member of the Trust on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.
- 27. Voting by persons who require assistance
  - 27.1. The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
  - 27.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.
- 28. Spoilt ballot papers
  - 28.1. If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
  - 28.2. 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.
  - 28.3. The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
    - 28.3.1. is satisfied as to the voter’s identity; and
    - 28.3.2. has ensured that the declaration of identity, if required, has not been returned.
  - 28.4. 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”):
    - 28.4.1. the name of the voter;
    - 28.4.2. the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and
    - 28.4.3. the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers
  - 29.1. Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
  - 29.2. The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:
    - 29.2.1. is satisfied as to the voter's identity;
    - 29.2.2. has no reason to doubt that the voter did not receive the original ballot paper, and
    - 29.2.3. has ensured that the declaration of identity if required has not been returned.
  - 29.3. After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers"):
    - 29.3.1. the name of the voter; and
    - 29.3.2. the details of the unique identifier of the replacement ballot paper.
30. Issue of replacement ballot paper
  - 30.1. If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed by rules 28.3 or 29.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
  - 30.2. After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers"):
    - 30.2.1. the name of the voter; and
    - 30.2.2. the details of the unique identifier of the replacement ballot paper issued under this rule.
31. Declaration of identity for replacement ballot papers (public and patient constituencies)
  - 31.1. In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.
  - 31.2. The declaration of identity is to include a declaration:
    - 31.2.1. that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
    - 31.2.2. of the particulars of that member's qualification to vote as a member of the public or patient constituency, or area of a constituency, for which the election is being held.
  - 31.3. The declaration of identity is to include space for:
    - 31.3.1. the name of the voter;
    - 31.3.2. the address of the voter;
    - 31.3.3. the voter's signature; and
    - 31.3.4. the date that the declaration was made by the voter.
  - 31.4. The voter must be required to return the declaration of identity together with the ballot paper.

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

**Procedure for receipt of envelopes**

32. Receipt of voting documents

- 32.1. Where the returning officer receives a:

32.1.1. covering envelope; or

32.1.2. any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable and rules 33 and 34 are to apply.

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

32.2.1. the candidate for whom a voter has voted; or

32.2.2. the unique identifier on a ballot paper.

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

33. Validity of ballot paper

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

- 33.2. Where the returning officer is satisfied that rule 33.1 has been fulfilled, he or she is to:

33.2.1. put the declaration of identity if required in a separate packet; and

33.2.2. put the ballot paper aside for counting after the close of the poll.

- 33.3. Where the returning officer is not satisfied that rule 33.1 has been fulfilled, he or she is to:

33.3.1. mark the ballot paper “disqualified”;

33.3.2. if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper;

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

33.3.4. place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency)

- 34.1. Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to:

34.1.1. mark the declaration of identity “disqualified”;

34.1.2. record the name of the voter in the list of disqualified documents:

34.1.3. indicating that a declaration of identity was received from the voter without a ballot paper; and

34.1.4. place the declaration of identity in a separate packet.

35. Sealing of packets – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing :
- 35.1. the disqualified documents, together with the list of disqualified documents inside it;
  - 35.2. the declarations of identity if required;
  - 35.3. the list of spoiled ballot papers;
  - 35.4. the list of lost ballot papers;
  - 35.5. the list of eligible voters; and
  - 35.6. the list of tendered ballot papers.

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

36. Arrangements for counting of the votes – The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
37. The count
- 37.1. The returning officer is to:
    - 37.1.1. count and record the number of ballot papers that have been returned; and
    - 37.1.2. count the votes according to the provisions in this Part of the rules.
  - 37.2. The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
  - 37.3. The returning officer is to proceed continuously with counting the votes as far as is practicable.
38. Rejected ballot papers
- 38.1. Any ballot paper:
    - 38.1.1. which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced;
    - 38.1.2. on which votes are given for more candidates than the voter is entitled to vote;
    - 38.1.3. on which anything is written or marked by which the voter can be identified except the unique identifier; or
    - 38.1.4. which is unmarked or rejected because of uncertainty,shall, subject to rules 38.2 and 38.3 below, be rejected and not counted.
  - 38.2. 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.
  - 38.3. A ballot paper on which a vote is marked:
    - 38.3.1. elsewhere than in the proper place;
    - 38.3.2. otherwise than by means of a clear mark; or
    - 38.3.3. 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.

- 38.4. The returning officer is to:
- 38.4.1. endorse the word “rejected” on any ballot paper which under this rule is not to be counted; and
  - 38.4.2. in the case of a ballot paper on which any vote is counted under rule 38.2 or 38.33 above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- 38.5. The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- 38.5.1. does not bear proper features that have been incorporated into the ballot paper;
  - 38.5.2. voting for more candidates than the voter is entitled to;
  - 38.5.3. writing or mark by which voter could be identified; and
  - 38.5.4. unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of ballot papers rejected in part.
39. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

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

40. Declaration of result for contested elections
- 40.1. In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- 40.1.1. 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 area/class within a constituency, for which the election is being held to be elected;
  - 40.1.2. give notice of the name of each candidate who he or she has declared elected to the chairman of the Trust; and
  - 40.1.3. give public notice of the name of each candidate whom he or she has declared elected.
- 40.2. The returning officer is to make:
- 40.2.1. the total number of votes given for each candidate (whether elected or not); and
  - 40.2.2. the number of rejected ballot papers under each of the headings in rule 38.5,
- available on request.
41. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

- 41.1. declare the candidate or candidates remaining validly nominated to be elected;
- 41.2. give notice of the name of each candidate who he or she has declared elected to the chairman of the Trust; and
- 41.3. give public notice of the name of each candidate who he or she has declared elected.

### **Part 8 – Disposal of documents**

42. Sealing up of documents relating to the poll
  - 42.1. On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
    - 42.1.1. the counted ballot papers;
    - 42.1.2. the ballot papers endorsed with “rejected in part”;
    - 42.1.3. the rejected ballot papers; and
    - 42.1.4. the statement of rejected ballot papers.
  - 42.2. The returning officer must not open the sealed packets of:
    - 42.2.1. the disqualified documents, with the list of disqualified documents inside it;
    - 42.2.2. the declarations of identity;
    - 42.2.3. the list of spoiled ballot papers;
    - 42.2.4. the list of lost ballot papers;
    - 42.2.5. the list of eligible voters; and
    - 42.2.6. the list of tendered ballot papers.
  - 42.3. The returning officer must endorse on each packet a description of:
    - 42.3.1. its contents;
    - 42.3.2. the date of the publication of notice of the election;
    - 42.3.3. the name of the Trust to which the election relates; and
    - 42.3.4. the constituency, or area/class within a constituency, to which the election relates.
43. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 42, the returning officer is to forward them to the chairman of the Trust.
44. Forwarding of documents received after close of the poll – Where:
  - 44.1. any voting documents are received by the returning officer after the close of the poll; or
  - 44.2. any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
  - 44.3. any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,
  - 44.4. the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the Trust.
45. Retention and public inspection of documents



- 45.1. The Trust is to retain the documents relating to an election that are forwarded to the chairman by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.
  - 45.2. With the exception of the documents listed in rule 46.1, the documents relating to an election that are held by the Trust shall be available for inspection by members of the public at all reasonable times.
  - 45.3. A person may request a copy or extract from the documents relating to an election that are held by the Trust, and the Trust is to provide it, and may impose a reasonable charge for doing so.
46. Application for inspection of certain documents relating to an election
- 46.1. The Trust may not allow the inspection of, or the opening of any sealed packet containing:
    - 46.1.1. any rejected ballot papers, including ballot papers rejected in part;
    - 46.1.2. any disqualified documents, or the list of disqualified documents;
    - 46.1.3. any counted ballot papers;
    - 46.1.4. any declarations of identity; or
    - 46.1.5. the list of eligible voters,by any person without the consent of the Regulator.
  - 46.2. A person may apply to the Regulator to inspect any of the documents listed in rule 46.1, and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
  - 46.3. The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
    - 46.3.1. persons;
    - 46.3.2. time;
    - 46.3.3. place and mode of inspection;
    - 46.3.4. production or opening,and the Trust must only make the documents available for inspection in accordance with those terms and conditions.
  - 46.4. On an application to inspect any of the documents listed in rule 46.1,;
    - 46.4.1. in giving its consent, the Regulator; and
    - 46.4.2. on making the documents available for inspection, the Trust,must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:
    - a) that his or her vote was given; and
    - b) that the Regulator has declared that the vote was invalid.

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

47. Countermand or abandonment of poll on death of candidate
- 47.1. 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:

- 47.1.1. countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class; and
  - 47.1.2. order a new election, on a date to be appointed by him or her in consultation with the Trust, 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.
- 47.2. Where a new election is ordered under rule 47.1, 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 area/class.
- 47.3. Where a poll is abandoned under rule 47.1.1, rules 47.4 to 47.7 are to apply.
- 47.4. The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- 47.5. The returning officer is to:
- 47.5.1. count and record the number of ballot papers that have been received; and
  - 47.5.2. seal up the ballot papers into packets, along with the records of the number of ballot papers.
- 47.6. The returning officer is to endorse on each packet a description of:
- 47.6.1. its contents;
  - 47.6.2. the date of the publication of notice of the election;
  - 47.6.3. the name of the Trust to which the election relates; and
  - 47.6.4. the constituency, or area/class within a constituency, to which the election relates.
- 47.7. Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 47.4 to 47.6, the returning officer is to deliver them to the chairman of the Trust, and rules 45 and 46 are to apply.

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

### Election expenses

48. Election expenses – Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the Regulator under Part 11 of these rules.
49. Expenses and payments by candidates - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- 49.1. personal expenses;
  - 49.2. travelling expenses, and expenses incurred while living away from home; and
  - 49.3. expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.
50. Election expenses incurred by other persons
- 50.1. No person may:

- 50.1.1. 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
- 50.1.2. 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.
- 50.2. Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 51 and 52.

#### Publicity

### 51. Publicity about election by the Trust

- 51.1. The Trust may:
  - 51.1.1. compile and distribute such information about the candidates; and
  - 51.1.2. organise and hold such meetings to enable the candidates to speak and respond to questions,as it considers necessary.
- 51.2. Any information provided by the Trust about the candidates, including information compiled by the Trust under rule 52, must be:
  - 51.2.1. objective, balanced and fair;
  - 51.2.2. equivalent in size and content for all candidates;
  - 51.2.3. compiled and distributed in consultation with all of the candidates standing for election; and
  - 51.2.4. 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.
- 51.3. Where the Trust proposes to hold a meeting to enable the candidates to speak, the Trust must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the Trust 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.

### 52. Information about candidates for inclusion with voting documents

- 52.1. The Trust must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 52.2. The information must consist of:
  - 52.2.1. a statement submitted by the candidate of no more than 250 words; and
  - 52.2.2. if submitted by a candidate, a photograph of the candidate.

### 53. Meaning of "for the purposes of an election"

- 53.1. 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.
- 53.2. 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**

54. Application to question an election
- 54.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.
  - 54.2. An application may only be made once the outcome of the election has been declared by the returning officer.
  - 54.3. An application may only be made to the Regulator by:
    - 54.3.1. a person who voted at the election or who claimed to have had the right to vote; or
    - 54.3.2. a candidate, or a person claiming to have had a right to be elected at the election.
  - 54.4. The application must:
    - 54.4.1. describe the alleged breach of the rules or electoral irregularity; and
    - 54.4.2. be in such a form as the Regulator may require.
  - 54.5. The application must be presented in writing within 21 days of the declaration of the result of the election.
  - 54.6. If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
  - 54.7. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  - 54.8. The determination by the person or persons nominated in accordance with Rule 54.7 shall be binding on and shall be given effect by the Trust, the applicant and the members of the constituency (or area/class within a constituency) including all the candidates for the election to which the application relates.
  - 54.9. The Regulator may prescribe rules of procedure for the determination of an application including costs.

### **Part 12 – Miscellaneous**

55. Secrecy
- 55.1. The following persons:
    - 55.1.1. the returning officer; and
    - 55.1.2. the returning officer's staff,
  - 55.2. 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:
    - a) the name of any member of the Trust who has or has not been given a ballot paper or who has or has not voted;
    - b) the unique identifier on any ballot paper; or
    - c) the candidate(s) for whom any member has voted.
  - 55.3. 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.

- 55.4. 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.
56. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.
57. Disqualification – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:
  - 57.1. a member of the Trust;
  - 57.2. an employee of the Trust;
  - 57.3. a director of the Trust; or
  - 57.4. employed by or on behalf of a person who has been nominated for election.
58. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in the delivery of the documents in rule 24, or the return of the ballot papers and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

## ANNEX 4

### REGISTER OF DIRECTORS AND GOVERNORS INTERESTS

Pursuant to Section 20 of Schedule 7 of the National Health Service Act 2006, a register of Director's and Governors' interests must be kept by each NHS Foundation Trust.

#### A. Declaration of Interests

1. All existing directors (including for the purposes of this document, non-executive directors) and governors should declare relevant and material interests. Any directors or governors appointed or elected subsequently should do so on appointment or election.
2. Interests which should be regarded as "relevant and material" and which, for the guidance of doubt, should be included in the register, are:
  - (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
  - (b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.
  - (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
  - (d) A position of Authority in a charity or voluntary organisation in the field of health and social care.
  - (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
  - (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
3. If Directors or governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman.
4. At the time the interests are declared, they should be recorded in the board minutes or governors meeting minutes as appropriate. Any changes in interests should be officially declared at the next board meeting or governors meeting as appropriate following the change occurring. It is the obligation of the Director or Governor to inform the Secretary of the NHS Foundation 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 3 working days.
5. Directors' *directorships* of companies in 2(a) above or in companies likely or possibly seeking to do business with the NHS (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. During the course of a board meeting or governors meeting, if a conflict of interest is established, the directors or governors concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, majority will resolve the issue with the Chairman having the casting vote.

7. There is no requirement for the interests of directors' or governors' spouses or partners to be declared.

**B. Register of Interests**

1. The details of directors and governors interests recorded in the Register will be kept up to date by means of a monthly review of the Register by the Secretary of the NHS Foundation Trust during which any changes of interests declared during the preceding month will be incorporated.
2. Subject to contrary regulations being passed, the Register will be available for inspection by the public free of charge. The Chairman will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register must be provided to members of the NHS Foundation Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register.