

# **University Hospitals Birmingham NHS Foundation Trust Constitution**

**July 2024**

## Contents

1	Interpretation and definitions	1
2	Name	3
3	Principal Purpose	3
4	Other Purposes	4
5	Powers	4
6	Joint working and delegation arrangements	5
7	Duties relating to Integrated Care System Financial Controls	5
8	Membership and Constituencies	5
9	Public Constituencies	6
10	Staff Constituency	6
11	Application for Membership	8
12	Restriction on Membership	8
13	Annual Members' Meeting	8
14	Council of Governors – Composition	8
15	Council of Governors – Election of Governors	8
16	Council of Governors – Tenure	9
17	Council of Governors – Disqualification and Removal	9
18	Council of Governors – Duties of Governors	9
19	Council of Governors – Meetings of Governors	10
20	Council of Governors – Standing Orders	11
21	Council of Governors – Referral to the Panel	11
22	Council of Governors – Conflicts of Interest of Governors	11
23	Board of Directors – Composition	11
24	Board of Directors – Qualification for Appointment as a Non-Executive Director	12
25	Board of Directors – Appointment and Removal of Chair and Other Non-Executive Directors	12
26	Board of Directors – Appointment of Deputy Chair	12
27	Board of Directors – Appointment and Removal of the Chief Executive and Other Executive Directors	12
28	Board of Directors – Disqualification	12
29	Board of Directors – General Duty, Roles and Responsibilities	13
30	Board of Directors – Meetings	14
31	Board of Directors – Standing Orders	14
32	Board of Directors – Conflicts of Interest of Directors	15
33	Voting	16
34	Board of Directors – Remuneration and Terms of Office	16
35	Registers	16
36	Admission to and Removal from the Registers	16
37	Registers – Inspection and Copies	17
38	Documents Available for Public Inspection	17
39	Auditor	18

40	Audit Committee	18
41	Accounts	18
42	Annual Report, Forward Plans and Non-NHS Work	19
43	Presentation of the Annual Accounts and Reports to the Governors and Members	20
44	Indemnity	20
45	Instruments	20
46	Dispute Resolution procedure	20
47	Amendment of the Constitution	21
48	Mergers etc. and Significant Transactions	21
<b>Annex 1</b>	The Public Constituencies of the Trust	22
<b>Annex 2</b>	Restriction on Membership	24
<b>Annex 3</b>	Annual Members' Meeting	26
<b>Annex 4</b>	Composition of Council of Governors	29
<b>Annex 5</b>	The Model Election Rules	32
<b>Annex 6</b>	Circumstances in which an Individual may not become/continue as a Member of the Board of Governors	68
<b>Annex 7</b>	Standing Orders for the Practice and Procedure of the Council of Governors	70
<b>Annex 8</b>	Dispute Resolution Procedure	71
<b>Annex 9</b>	Standing Orders UHB USE	72

## 1 Interpretation and definitions

- 1.1 Unless otherwise stated, all references are to paragraph numbers in Schedule 7 of the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022.
- 1.2 Unless otherwise stated, the Model Core Constitution reflects the relevant provisions of the 2006 Act as amended by the 2012 Act and the 2022 Act.
- 1.3 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act and the 2022 Act.
- 1.4 Words importing the singular shall import the plural and vice-versa.
- 1.5 Definitions

<b>the 2006 Act</b>	is the National Health Service Act 2006.
<b>the 2012 Act</b>	is the Health and Social Care Act 2012.
<b>the 2022 Act</b>	is the Health and Care Act 2022.
<b>Accounting Officer</b>	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 of the 2006 Act.
<b>Annual Members' Meeting</b>	is defined in clause 13 of the Constitution.
<b>Area of the Trust</b>	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency.
<b>Board of Directors</b>	means the Board of Directors of the Trust as constituted pursuant to this Constitution and the 2006 Act.
<b>Chair</b>	means the Chair of the Trust.
<b>Chief Executive</b>	means the Chief Executive (and Accountable Officer) of the Trust.
<b>Class</b>	means the division of a Membership Constituency by reference to the description of individuals eligible to be Members of it.
<b>Code of Conduct</b>	means any code of conduct published by the Trust and amended from time to time to govern or guide the conduct of Governors, Directors or Officers of the Trust.
<b>Constitution</b>	means this Constitution and all annexes to it.
<b>Council of Governors</b>	means the Council of Governors as constituted in accordance with this Constitution. This is the body referred to as the Council of Governors in the 2012 Act.
<b>Deputy Chair</b>	means the Deputy Chair of the Trust appointed in accordance with clause 27 of this Constitution.

<b>Director</b>	means a Director on the Board of Directors.
<b>Elected Governor</b>	means those Governors elected by the Public Constituency, Staff Constituencies.
<b>Financial Year</b>	means any period of 12 months beginning on 1 April.
<b>Governor</b>	means a person who is a member of the Council of Governors.
<b>Integrated Care Board (ICB)</b>	is a statutory organisation that brings NHS and care organisations local to each other together, to improve population health and establish shared strategic priorities, within the NHS, and is responsible for developing a plan for meeting the health needs of the population, managing the NHS budget, and arranging for the provision of health services in a geographical area.
<b>Integrated Care Partnership (ICP)</b>	is a formal partnership of organisations which brings together NHS organisations (providers and commissioners), local authorities, and key voluntary sector and independent partners, working together to improve the health and care of the whole population they serve.
<b>Integrated Care System (ICS)</b>	in England, is a statutory partnership of organisations who plan, buy and provide health and care services in their geographical area incorporating the ICB and ICP.
<b>Lead Governor</b>	means the Lead Governor elected from amongst the Governors.
<b>Licence</b>	means the Trust's Provider Licence granted by Monitor under the 2012 Act, reissued by NHS England in April 2023 to align with modified licence standard conditions.
<b>Local Authority Stakeholder Governor</b>	means a Governor appointed by a local authority whose area includes the whole or part of the area of the Trust.
<b>Member</b>	means a member of the Trust.
<b>Model Election Rules</b>	means the model form rules for the conduct of elections published from time to time by NHS Providers and as currently set out in Annex 2.
<b>Monitor</b>	means the former body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
<b>NHS England</b>	means the organisational body for oversight of NHS Foundation Trusts, NHS Trusts, as well as independent providers that provide NHS-funded care. The Health and Care Act 2022 merged the former body corporate known as Monitor and the Trust Development Authority into NHS England.

<b>Public Constituency</b>	means that part of the Trust's Membership consisting of Members living in an Area of the Trust.
<b>Public Governor</b>	means a Governor elected by Members of the Public Constituencies, in accordance with clause 14.3 of the Constitution.
<b>Senior Independent Director</b>	means the Senior Independent Director of the Trust appointed by the Board of Directors, in accordance with the Standing Orders for the Practice and Procedure of the Board of Directors.
<b>Staff Constituency</b>	means (collectively) those Members of the staff classes comprising the staff constituency as specified in clause 8.2.
<b>Stakeholder Governor(s)</b>	means a Governor appointed in accordance with clause 14.1 and as set out in Annex 4.
<b>Significant Transaction</b>	is defined in clause 48.3.
<b>the Trust</b>	means the University Hospitals Birmingham NHS Foundation Trust.
<b>Trust Hospital</b>	means all or any hospital or other patient care facilities administered by the Trust from time to time and designated by the Trust as falling within this definition.
<b>Trust Secretary</b>	the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Trust Secretary, including a joint, assistant or deputy Trust Secretary, hereinafter referred to as the Trust Secretary, who will act as independent adviser to the Board and monitor the Trust's compliance with its terms of authorisation and constitution.

## 2 Name

The name of the foundation trust is University Hospitals Birmingham NHS Foundation Trust ("**the Trust**").

## 3 Principal Purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England, subject to the terms of its Licence, and to promote its long-term sustainability as part of the Integrated Care System (ICS) and wider healthcare system in England, generating value for members, patients, and the public.
- 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.
  - 3.3.2 The promotion and protection of public health.

## 4 Other Purposes

- 4.1 The Trust may also carry on activities other than those mentioned in clause 3 of the Constitution for the purpose of making additional income available in order to better carry on its principal purpose, in accordance with its statutory duties and its Licence.
- 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 clause 3.3 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, 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. The Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.
- 5.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 5.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 5.4 In particular and without limitation to the generality of clause 5.1, the Trust may:
  - 5.4.1 Acquire and dispose of property.
  - 5.4.2 Enter into contracts.
  - 5.4.3 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).
  - 5.4.4 Employ staff.
- 5.5 The Trust shall exercise its functions effectively, efficiently and economically.
- 5.6 Subject to clause 5.7 below and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions, the Trust shall have regard to all likely effects of the decision in relation to:
  - 5.6.1 The health and wellbeing of the people of England.
  - 5.6.2 The quality of services provided to individuals by relevant bodies or in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England.
  - 5.6.3 Efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 5.7 The requirement to have regard to the wider effect of its decisions, set out at clause 5.6, shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- 5.8 In clause 5.6, “**relevant bodies**” has the meaning set out in s63A(4) of the 2006 Act.
- 5.9 In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out at section 1 of the Climate Change Act 2008 and the

environmental targets set out at section 5 of the Environment Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Trust shall also have regard to guidance published by NHS England.

## **6 Joint working and delegation arrangements**

- 6.1 Subject to clause 6.2, the Trust may arrange, in accordance with section 65Z5 of the 2006 Act, for the joint exercise of functions with any one or more of the following bodies:
- 6.1.1 a Relevant Body;
  - 6.1.2 a Local Authority; and/or
  - 6.1.3 a Combined Authority.
- 6.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with clause 6.1, it may make arrangements for:
- 6.2.1 the function to be exercised by a joint committee of theirs, and/or
  - 6.2.2 for one or more of them or a joint committee of them to establish and maintain a Pooled Fund.
- 6.3 The Trust must have regard to any guidance published by NHS England under s65Z7 of the 2006 Act.
- 6.4 In this clause 6.4, the following terms have the following meanings:
- Relevant Body** has the meaning set out in s65Z5(2) of the 2006 Act.
  - Local Authority** means a local authority within the meaning of s2B of the 2006 Act.
  - Combined Authority** has the meaning set out in s275 of the 2006 Act.
  - Pooled Fund** has the meaning set out in s65Z6(3) of the 2006 Act.

## **7 Duties relating to Integrated Care System Financial Controls**

- 7.1 The Trust must seek to achieve financial objectives that apply to it under s223L of the 2006 Act.
- 7.2 The Trust must exercise its functions with a view to ensuring that it complies with its duties:
- 7.2.1 Under s223LA of the 2006 Act to limit expenditure.
  - 7.2.2 Under s223M and s223N of the 2006 Act to limit local capital resource use and local revenue resource use.

## **8 Membership and Constituencies**

The Trust shall have Members, each of whom shall be a Member of one of the following Constituencies:

- 8.1 Sixteen Public Constituencies.
- 8.2 The Staff Constituency.

## 9 Public Constituencies

- 9.1 The Public Constituencies shall be the areas identified in [column 1](#) of Annex 1.
- 9.2 Members of the Trust who are Members of a Public Constituency shall be individuals who are aged 16 or over and who:
- 9.2.1 Live in one of the constituency areas of the Trust.
  - 9.2.2 Are not eligible to become Members of the Staff Constituency or otherwise disqualified for membership under the specifications in Annex 2.
  - 9.2.3 Have made or have been deemed to have made an application for membership to the Trust.
- 9.3 The minimum number of Members required for each 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.
- 9.4 Voting at Governor Elections
- 9.4.1 A person may not vote at an election for a Public Governor unless, prior to the close of the poll, that person has made a declaration in the specified form as set out at clause 9.4.2 below, stating the particulars of their 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.
  - 9.4.2 The form referred to in clause 9.4.1 above is:
    - I am the person to whom the ballot paper was addressed
    - I am qualified to vote as a member of the above named constituency
    - I have not voted before in this election.

## 10 Staff Constituency

- 10.1 The Staff Constituency is to be divided into four classes as follows:
- 10.1.1 Medical and dental staff.
  - 10.1.2 Nursing and midwifery staff.
  - 10.1.3 Clinical professions allied to healthcare staff.
  - 10.1.4 Corporate and support services staff.
- 10.2 The Members of the medical and dental staff class are individuals who are fully registered medical practitioners, within the meaning of the Medical Act 1983, or dentists, within the meaning of the Dentists Act 1984, and who hold a licence to practise and who are employed by or exercise functions for the Trust as doctors or dentists.
- 10.3 The Members of the nursing and midwifery staff class are individuals who hold a professional registration with the Nursing & Midwifery Council or the British Association of Dental Nurses, or are non-registered nursing/midwifery staff, and who are employed by or exercise functions for the Trust as nurses or midwives.
- 10.4 The Members of the clinical professions allied to healthcare staff class are individuals who are registered clinical professionals, who are employed by or exercise functions for the Trust as clinical staff other than those who are eligible for membership of the classes specified in clauses 10.2 and 10.3. 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 Trust Secretary and may be amended from time to time with the approval of the Chair of the Trust.

10.5 The Members of the corporate and support services staff class are any individuals who are employed by or exercise functions for the Trust, and who do not come within clauses 10.2 to 10.4 above.

10.6 Members of the Trust who are Members of the Staff Constituency are to be individuals who:

10.6.1 are employed under a contract of employment by the Trust, or

10.6.2 are not so employed, but who exercise functions for the purposes of the Trust, and satisfy the minimum duration requirements set out in section 3(3) of Schedule 7 to the 2006 Act, that is to say:

(a) 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

(b) in the case of individuals falling within clause 10.1, who have exercised functions for the purposes of the Trust continuously for at least 12 months;

and in any such case who:

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

(b) 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.

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

(a) For the medical and dental staff class, 10.

(b) For the nursing and midwifery staff class, 10.

(c) For the clinical professions allied to healthcare staff class, 10.

(d) For the corporate and support services staff class, 10.

10.6.4 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.

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

An individual who is:

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

10.7.2 invited by the Trust to become a member of the Staff Constituency

shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

## **11 Application for Membership**

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

## **12 Restriction on Membership**

- 12.1 An individual who is a member of a constituency or of a class within a constituency may not, while membership of that constituency or class continues, be a member of any other constituency or class.
- 12.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 12.3 An individual must be at least 16 years old to become a member of the Trust.
- 12.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 2 – Restriction on Membership.

## **13 Annual Members' Meeting**

- 13.1 The Trust shall hold an annual meeting of its members ("**Annual Members' Meeting**"). The Annual Members' Meeting shall be open to members of the public.
- 13.2 Further provisions about the Annual Members' Meeting are set out in Annex 3 – Annual Members' Meeting.

## **14 Council of Governors – Composition**

- 14.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Stakeholder Governors.
- 14.2 The composition of the Council of Governors is specified in Annex 4.
- 14.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency is specified in Annex 4.

## **15 Council of Governors – Election of Governors**

- 15.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 15.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution. The current Model Election Rules are set out at Annex 5.
- 15.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of clause 47 of the Constitution (amendment of the Constitution).
- 15.4 Members of a Public Constituency or a staff class of the Staff Constituency may elect any of their number to be a Governor.
- 15.5 An election, if contested, shall be by secret ballot.
- 15.6 Rules for 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 5 and shall be conducted in accordance with the Election

Rules on the basis of single transferable vote (STV) polling, and the Model Election Rules shall be construed accordingly. The Election Rules shall not be altered except in accordance with the procedure set out at clause 47 of the Constitution.

## **16 Council of Governors – Tenure**

- 16.1 An Elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 16.2 An Elected Governor shall be eligible for re-election at the end of their term.
- 16.3 An Appointed Governor shall be eligible for re-appointment at the end of their term.

## **17 Council of Governors – Disqualification and Removal**

- 17.1 The following may not become or continue as a Member of the Council of Governors:
  - 17.1.1 A person who has been adjudged bankrupt or whose estate has been sequestrated, and (in either case) has not been discharged.
  - 17.1.2 A person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it.
  - 17.1.3 A person who, within the preceding 5 years, has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on them.
- 17.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 17.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Governors are set out in Annex 6.
- 17.4 The provision for the removal of Governors is set out at Annex 6.
- 17.5 In the event of an elected Governorship seat falling vacant for any reason for up to 18 months after their election (“the Permitted Period”), it shall unless an election is due within 9 months, 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”).
- 17.6 In the event that a Reserve Governor is not available, or the Permitted Period has expired 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.
- 17.7 Stakeholder Governors shall be replaced in accordance with Annex 4.

## **18 Council of Governors – Duties of Governors**

- 18.1 The general duties of the Council of Governors are to:
  - 18.1.1 Hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors.
  - 18.1.2 Represent the interests of the Members of the Trust as a whole and the interests of the public.
- 18.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

- 18.3 Specific roles and responsibilities of the Governors are:
- 18.3.1 At a quorate meeting of the Council of Governors, to appoint or remove the Chair and the other Non-Executive Directors (as provided in clause 25 of the Constitution); the removal of a Non-Executive Director requires the approval of 75% of the Council of Governors.
  - 18.3.2 At a general meeting of the Council of Governors, to appoint one of the Non-Executive Directors as the Deputy Chair.
  - 18.3.3 Decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors (as provided in clause 34 of the Constitution).
  - 18.3.4 Appoint or remove the Trust's auditor.
  - 18.3.5 Be presented with the annual accounts, any report of the auditor on them, and the annual report.
  - 18.3.6 Approve the appointment of the Chief Executive.
  - 18.3.7 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 NHS England.
  - 18.3.8 Consider the annual accounts, any report of the auditor on them, and the annual report.
  - 18.3.9 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.
- 18.4 The Trust may pay travelling and other expenses to Governors at such rates it decides. These shall be published in the annual report.
- 18.5 The remuneration and allowances for Non-Executive Directors set by the Governors are also to be published in the annual report.
- 18.6 Governors shall not receive remuneration.

## **19 Council of Governors – Meetings of Governors**

- 19.1 The Trust Secretary and the Chair shall have the power to call a meeting and shall be required to call one if 66% of the Council of Governors require it.
- 19.2 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 principal items to be discussed has been sent to at least 66% of the Governors entitled to attend such a meeting.
- 19.3 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of clause 25.1 below) or, in their absence, a Non-Executive Director nominated by the Chair, 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.
- 19.4 The Council of Governors shall appoint a Lead Governor, who shall be a Governor, for the purpose of acting as the main point of contact between the Council of Governors and NHS England, and any other such responsibilities determined by the Council of Governors.

- 19.5 During a meeting of the Council of Governors, matters which affect the interests of the Chair and/or Non-Executive Directors shall be chaired by the Lead Governor.
- 19.6 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, such as matters being confidential due to commercial, staff or patient considerations to be discussed.
- 19.7 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

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

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

## **21 Council of Governors – Referral to the Panel**

- 21.1 In this clause, the Panel means a panel of persons appointed by NHS England to which a Governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing to act in accordance with:
- 21.1.1 Its constitution.
- 21.1.2 Provision made by or under Chapter 5 of the 2006 Act.
- 21.2 A Governor may refer a question to the Panel only if more than 50% of the members of the Council of Governors voting approve the referral.

## **22 Council of Governors – Conflicts of Interest of Governors**

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

## **23 Board of Directors – Composition**

- 23.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 23.2 The Board of Directors is to comprise:
- 23.1.1 A non-executive Chair.
- 23.1.2 No fewer than five nor more than nine other Non-Executive Directors (voting).
- 23.1.3 No fewer than five Executive Directors (voting).
- 23.3 One of the Executive Directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the Executive Directors shall be the Chief Financial Officer.

- 23.6 One of the Executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 23.8 The Board of Directors may also appoint Associate Directors, at the discretion of the Chair.

## **24 Board of Directors – Qualification for Appointment as a Non-Executive Director**

A person may be appointed as a Non-Executive Director only if they are:

- 24.1 a Member of a Public Constituency, or
- 24.2 an individual exercising functions for the University of Birmingham

and they are not disqualified by virtue of clause 28 of the Constitution below.

## **25 Board of Directors – Appointment and Removal of Chair and Other Non-Executive Directors**

- 25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.
- 25.2 Removal of the Chair or another Non-Executive Director shall require the approval of 75% of the members of the Council of Governors.
- 25.3 Non-Executive Directors shall be appointed in accordance with a process to be established from time to time by the Nomination & Remuneration Committee for Non-Executive Directors. In carrying out the appointment process, the Nomination & Remuneration 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.
- 25.4 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of a Director.

## **26 Board of Directors – Appointment of Deputy Chair**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chair.

## **27 Board of Directors – Appointment and Removal of the Chief Executive and Other Executive Directors**

- 27.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

## **28 Board of Directors – Disqualification**

- 28.1 The following persons may not become or continue as a member of the Board of Directors:
- 28.1.1 A person who has been adjudged bankrupt or whose estate has been sequestrated, and (in either case) has not been discharged.
- 28.1.2 A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

- 28.1.3 A person who, within the preceding 5 years has been convicted in the British islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on them.
  - 28.1.4 A person who is not considered to be a fit and proper person, that is they do not satisfy all the requirements set out in paragraph 3 of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
  - 28.1.5 In the case of a Non-Executive Director, a person who no longer satisfies clause 24 of the Constitution.
  - 28.1.6 A person whose tenure of office as a chair, or as a member or director, of an NHS organisation has been terminated on the grounds that their appointment is not in the interests of public service for non-attendance at meetings or for non-disclosure of a pecuniary interest.
- 28.2 Where a person has been appointed to be a Director and that person becomes disqualified for appointment under this clause, or circumstances arise whereby that person may no longer be considered to meet all the requirements set out in paragraph 3 of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, they shall notify the Trust Secretary in writing of such disqualification or circumstances.
- 28.3 If it comes to the notice of the Trust Secretary, at the time of appointment of a Director or later, that a Director is so disqualified, on the instructions of the Chair (or if the Director in question is the Chair, the Senior Independent Director), the Trust Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect.
- 28.4 If it comes to the notice of the Trust Secretary, at the time of appointment of a Director or later, that circumstances have arisen whereby that person may no longer be considered to meet all the requirements set out in paragraph 3 of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, the Trust Secretary shall inform the Chair (or if the Director in question is the Chair, the Senior Independent Director) who shall, acting reasonably, determine whether the Director in question continues to meet the said requirements. If the Chair (or if applicable, the Senior Independent Director) determines that the Director in question does not or no longer meets the said requirements, on the instructions of the Chair (or if applicable, the Senior Independent Director), the Trust Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect.
- 28.5 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 Director.
- 28.6 If a Director is disqualified for ineligibility to be a Director under this clause, all votes which that Director participated in before notification under clause 28.2 or 28.3, or determination under clause 28.4 that the said Director is no longer considered to meet all the requirements set out in paragraph 3 of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 occurred, shall be valid.

## **29 Board of Directors – General Duty, Roles and Responsibilities**

- 29.1 The general duty of the Board of Directors and of each Director individually is to, as per IC1 of the NHS Provider Licence, act in the interests of the people who use healthcare services by ensuring that its provision of healthcare services for the purposes of the NHS:
- 29.1.1 Is integrated with the provision of such services by others.
  - 29.1.2 Is integrated with the provision of health-related services or social care services by others.

- 29.1.3 Enables cooperation with other providers of healthcare services for the purposes of the NHS.
- 29.2 Where this would achieve one or more of the objectives referred to in clause 29.3.
- 29.3 The objectives are:
  - 29.3.1 Improving the quality of healthcare services provided for the purposes of the NHS (including the outcomes that are achieved from their provision) or the efficiency of their provision.
  - 29.3.2 Reducing inequalities between persons with respect to their ability to access those services.
  - 29.3.3 Reducing inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- 29.4 The powers of the Trust are to be exercised by the Board of Directors on its behalf.
- 29.5 Any of those powers may be delegated to a committee of Directors or to an Executive Director; a committee appointed under this clause may appoint a subcommittee.
- 29.6 Any committees or subcommittee established in accordance with clause 29.5 may appoint advisers who are not Directors to help them in their tasks.
- 29.7 A committee consisting of the Chair and at least two 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").
- 29.8 The Non-Executive Directors shall appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.
- 29.9 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the executive Directors.
- 29.10 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 NHS England.
- 29.11 The Directors shall present the annual accounts, any report of the auditor on them, and the annual report to the Council of Governors.
- 29.12 The functions of the Trust under clause 41 of the Constitution below are delegated to the Chief Executive as accounting officer.

### **30 Board of Directors – Meetings**

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

### **31 Board of Directors – Standing Orders**

- 31.1 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.

- 31.2 The Standing Orders for the Practice and Procedure of the Board of Directors are attached at Annex 9.

## **32 Board of Directors – Conflicts of Interest of Directors**

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

- 32.10 The Standing Orders for the Board of Directors shall make provision for the disclosure and registration of interests, and arrangements for the conduct of business or consideration of any matter in respect of which an interest has been disclosed.
- 32.11 A matter shall have been authorised, for the purposes of clause 32.2.2, if it has been disclosed and registered in accordance with the Standing Orders.

### **33 Voting**

- 33.1 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.
- 33.2 The Chair or, in their absence, the Deputy Chair shall hold the casting vote at meetings.

### **34 Board of Directors – Remuneration and Terms of Office**

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
- 34.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

### **35 Registers**

- 35.1 The Trust shall have a register of:
- 35.1.1 Members showing, in respect of each Member, the constituency to which that Member belongs and, where there are classes within it, the class to which that Member belongs.
- (a) Members of the Council of Governors.
  - (a) Interests of Governors.
  - (b) Directors.
  - (c) Interests of the Directors.
- 35.2 The Trust Secretary shall hold and administer or cause to be held and administered the registers set out in clauses (a) to 35.1.1(c) and shall be responsible for all additions and removals from the registers.

### **36 Admission to and Removal from the Registers**

- 36.1 The Trust Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution, and membership shall only formally commence once that name has been entered into the register.
- 36.2 The Trust Secretary shall remove from the register of Governors the name of any member who ceases to be a Governor under the provisions of this Constitution and the register must be kept up to date at all times.
- 36.3 The Trust Secretary shall remove from the register of Directors the name of any Director who ceases to be a Director under the provisions of this Constitution and the register must be kept up to date at all times.

## **37 Registers – Inspection and Copies**

- 37.1 The Trust shall make the registers specified in clause 35 of the Constitution above available for inspection by members of the public, except in the circumstances set out in clause 37.2 or as otherwise prescribed by regulations.
- 37.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any other Member of the Trust, if they request, as prescribed by the Public Benefit Corporation (Register of Members) Regulations 2004.
- 37.3 So far as the registers are to be made available:
- 37.3.1 The registers must be made available free of charge at all reasonable times.
- 37.3.2 A person who requests a register is to be provided with a copy of an extract from it.
- 37.3.3 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

## **38 Documents Available for Public Inspection**

- 38.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 38.1.1 A copy of the current Constitution.
- 38.1.2 A copy of the latest annual accounts and of any report of the auditor on them.
- 38.1.3 A copy of the latest annual report.
- 38.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public, free of charge, at all reasonable times:
- 38.2.1 A copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
- 38.2.2 A copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 38.2.3 A copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 38.2.4 A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 38.2.5 A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 38.2.6 A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 38.2.7 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

- 38.2.8 A copy of any final report published under section 65I (administrator's final report),
  - 38.2.9 A copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
  - 38.2.10 A copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## **39 Auditor**

- 39.1 The Trust shall have an auditor appointed by the Council of Governors, at a general meeting of the Council of Governors, and shall provide the auditor with every facility and all information which the auditor may reasonably require for the purposes of their functions under Part 2, Chapter 5 of the 2006 Act.
- 39.2 A person may only be appointed auditor if they are a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.
- 39.3 The auditor shall carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS England on standards, procedures and techniques to be adopted. The Audit Committee shall monitor the auditor's functions in accordance with clause 40 of the Constitution below.

## **40 Audit Committee**

The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as is appropriate. One of the Non-Executive Director members of the Audit Committee must satisfy the UK Corporate Governance Code requirement of having relevant and recent financial experience; this shall normally be the Chair of the Committee.

## **41 Accounts**

- 41.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 41.2 NHS England may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.
- 41.3 The accounts are to be audited by the Trust's auditor.
- 41.4 The following documents shall be made available to the Comptroller and Auditor General for examination at their request:
- 41.4.1 The accounts.
  - 41.4.2 Any records relating to them.
  - 41.4.3 Any report of the audit on them.
- 41.5 The Trust (through its Chief Executive and Accounting Officer) shall prepare, in respect of each financial year, annual accounts in such form as NHS England may, with the approval of the Secretary of State, direct.

- 41.6 The functions of the Trust, with respect to the preparation of the annual accounts, shall be delegated to the Accounting Officer in compliance with any directions given by NHS England with the approval of the Secretary of State.

## **42 Annual Report, Forward Plans and Non-NHS Work**

- 42.1 The Trust shall prepare an annual report and send it to NHS England.
- 42.2 Each annual report must, in particular, review the extent to which the Trust has exercised its functions:
- 42.2.1 In accordance with the plans published under:
- (a) Section 14Z52 of the 2006 Act.
  - (b) Section 14Z56 of the 2006 Act.
- 42.2.2 Consistently with NHS England's views set out in the latest statement published under section 13SA(1).
- 42.3 Each annual report shall provide:
- 42.3.1 Information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituencies and the classes of the Staff Constituency are representative of those eligible for such membership.
- 42.3.2 Information on the Foundation Trust's policy on pay and on the work of the committees established under clause 29.7 and such other procedures as the Trust has on pay.
- 42.3.3 Information on the remuneration of the Directors and on the expenses of the Governors and the Directors.
- 42.3.4 Any other information NHS England requires.
- 42.4 The Trust is to comply with any decision NHS England makes as to:
- 42.4.1 The form of the report.
- 42.4.2 When the report is to be sent.
- 42.4.3 The periods to which the report relates.
- 42.5 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 42.6 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 42.7 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 42.8 Each forward plan must include information about:
- 42.8.1 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.
- 42.8.2 The income it expects to receive from doing so.

- 42.9 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in clause 42.8, the Council of Governors must:
- 42.9.1 Determine whether it is satisfied that the carrying on of the activity will not, to any significant extent, interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions.
  - 42.9.2 Notify the Directors of the Trust of its determination.
- 42.10 A trust which proposes to increase by 5% or more the proportion of its total income, in any financial year, attributable to activities other than the provision of goods and services for the purposes of the health service in England, may implement the proposal only if more than 50% of the members of the Council of Governors of the Trust voting approve its implementation.
- 42.11 The annual report shall also be held at the Trust Headquarters, for public inspection, and shall be made available via the Trust's website.

#### **43 Presentation of the Annual Accounts and Reports to the Governors and Members**

- 43.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 43.1.1 The annual accounts.
  - 43.1.2 Any report of the auditor on them.
  - 43.1.3 The annual report.
- 43.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one Member of the Board of Directors in attendance.
- 43.3 The Trust may combine a meeting of the Council of Governors with the Annual Members' Meeting.

#### **44 Indemnity**

- 44.1 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.
- 44.2 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.

#### **45 Instruments**

- 45.1 The Trust shall have a seal.
- 45.2 The seal shall not be affixed except under the authority of the Board of Directors.

#### **46 Dispute Resolution procedure**

Dispute resolution procedures relating to the Council of Governors and Board of Directors are set out at Annex 8.

## **47 Amendment of the Constitution**

- 47.1 The Trust may make amendments of its Constitution only if:
- 47.1.1 More than 50% of the members of the Council of Governors of the Trust voting approve the amendments.
  - 47.1.2 More than 50% of the members of the Board of Directors of the Trust voting approve the amendments.
- 47.2 Amendments made under clause 47.1 take effect as soon as the conditions in that clause are satisfied, but the amendment has no effect insofar as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 47.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 47.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment.
  - 47.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 47.4 If more than 50% of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 47.5 Amendments by the Trust of its constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.
- 47.6 The Chair, 50% of the Directors or 50% of the Governors may recommend an amendment.

## **48 Mergers etc. and Significant Transactions**

- 48.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than 50% of the members of the Council of Governors.
- 48.2 The Trust may enter into a significant transaction only if more than 50% of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 48.3 "Significant transaction" means a transaction defined as significant by current NHS England guidance.

## Annex 1 The Public Constituencies of the Trust

Name of Public Constituency	Specified Area	Minimum Number of Members	Number of Governors
Lichfield, Northwest and Northeast	The electoral wards of Little Aston and Stonnall, Shenstone, Bourne Vale, Fazeley, Whittington and Streethay, Mease Valley, Curborough, Stowe, Chadsmead, Boley Park, St John's, Leomansley, Hammerwich with Wall, Highfield, Boney Hay and Central, Chase Terrace, Chasetown, Summerfield and All Saints, Brownhills, Aldridge North and Walsall Wood, Aldridge Central and South, Streetly, Newton, Great Barr with Yew Tree, Paddock, Pheasey Park Farm, Curdworth, Kingsbury, Water Orton, Coleshill North, and Coleshill South.	20	1
Tamworth	The electoral wards of Castle, Mercian, Spital, Amington, Bolehall, Glascote, Belgrave, Wilncote, Trinity, and Stonydelph.	20	1
Sutton Coldfield North	The electoral wards of Sutton Vesey, Sutton Four Oaks, Sutton Mere Green, Sutton Roughley, Sutton Trinity, and Sutton Reddicap.	20	1
Sutton Coldfield South	The electoral wards of Sutton Wylde Green, Sutton Walmley and Minworth, Gravelly Hill, Pype Hayes, and Castle Vale.	20	1
Birmingham North	The electoral wards of Oscott, Kingstanding, Perry Common, Erdington, Perry Barr, and Stockland Green.	20	1
Birmingham West	The electoral wards of Edgbaston, North Edgbaston, Harborne, Ladywood, Soho and Jewellery Quarter, Newtown, Lozells, Aston, Birchfield, Handsworth, Holyhead, and Handsworth Wood.	20	1
Birmingham Central	The electoral wards of Nechells, Bordesley and Highgate, Bordesley Green, and Small Heath.	20	1
Birmingham Heartlands	The electoral wards of Heartlands, Alum Rock, Ward End, Bromford and Hodge Hill and Yardley West, and Stechford.	20	1
Birmingham East	The electoral wards of Garrets Green, Glebe Farm and Tile Cross, Shard End, Sheldon, Yardley East, and Yardley South.	20	1
Quinton, Halesowen and Southwest	The electoral wards of Quinton, Bartley Green, Old Warley, Abbey, Bristnall, Soho and Victoria, St Pauls, Smethwick, Hayley Green and Cradley South, Belle Vale, Halesowen South, Halesowen North, Blackheath, Rowley, Cradley Heath and Old Hill, Hagley East, Hagley West, Belbroughton and Romsley, Rubery North, Rubery South, Cofton, Catshill North, Catshill South, Marlbrook, Lickey Hill, Barnt Green and Norwood, Wythall East, Wythall West, Hollywood, and Drakes Cross.	20	1
Birmingham Southwest	The electoral wards of Weoley and Selly Oak, Bournbrook and Selly Park, Stirchley, Allens Cross, and Bournville and Cotteridge.	20	1

<b>Name of Public Constituency</b>	<b>Specified Area</b>	<b>Minimum Number of Members</b>	<b>Number of Governors</b>
Birmingham Southeast	The electoral wards of Moseley, Balsall Heath West, Sparkbrook and Balsall Heath East, Sparkhill, Tyseley and Hay Mills, and Acocks Green.	20	1
Solihull and Meriden	The electoral wards of Meriden, Knowle, Bickenhill, Dorridge and Hockley Heath, Blythe, Shirley West, Shirley South, Shirley East, St Alphege, Silhill, Elmdon, Olton, Lyndon, Chelmsley Wood, Kingshurst and Fordbridge, Smith's Wood, and Castle Bromwich.	60	3
Birmingham Reservoirs	The electoral wards of Frankley Great Park, Northfield, Kings Norton North, Kings Norton South, Rubery and Rednal, and Longbridge and West Heath.	20	1
Birmingham South	The electoral wards of Hall Green North, Hall Green South, Brandwood and Kings Heath, Billesley, Druids Heath and Monyhull, and Highter's Heath.	20	1
Rest of England and Wales	All electoral wards in England and Wales not included within the constituencies set out above.	60	3
			20

## Annex 2 Restriction on Membership

### 1. Disqualification for Membership

- 1.1 In addition to the provisions set out in clause 12 of the Constitution, a person may not become or continue as a Member if:
  - 1.1.1 Such person has:
    - 1.1.1.1 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 ill-health, redundancy or determined to have been unfair by a competent tribunal.
    - 1.1.1.2 Made a false application for membership.
    - 1.1.1.3 Made a false statement in the process of being nominated, elected or appointed as a Governor.
  - 1.1.2 It is reasonably considered that them so doing would or would be likely to:
    - 1.1.2.1 Prejudice or impede the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution, or otherwise to discharge its duties and functions.
    - 1.1.2.2 Adversely affect public confidence in the goods or services provided by the Trust.
    - 1.1.2.3 Harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services.
    - 1.1.2.4 Otherwise bring the Trust into disrepute.
- 1.2 Examples (without limitation) of behaviour by individuals which may lead to disqualification, under one or more of the grounds in clause 17 of this Constitution, will include making vexatious complaints; and verbally or physically assaulting any staff, patient or visitor of the Trust; in contravention of the Trust's policy of zero tolerance of such matters (or any replacement thereof).
- 1.3 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, the Trust Secretary shall carry out all reasonable enquiries to establish if this is the case.

2. Where the Trust Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified from membership, the Trust Secretary shall advise that individual of those reasons, in summary form, and invite representations from the Member or applicant for membership within 28 days, or such other reasonable period as the Trust Secretary may in their absolute discretion determine. Any representations received shall be considered by the Trust Secretary, and they shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice, in writing, of that decision to the Member or applicant within 14 day of the decision being made.
3. If no representations are received within the said period of 28 days or other reasonable period (if any) permitted under the preceding clause of this Constitution, the Trust Secretary shall be entitled, nonetheless, to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from them.

- 3.1 Upon a decision being made under Annex 2 of this Constitution that the Member is ineligible for or disqualified from membership, the Member's name shall be removed from the Register of Members forthwith and they shall thereupon cease to be a Member.
- 3.2 The dispute resolution procedure referred to in Annex 8 shall apply in relation to any dispute arising under or in respect of any decision made pursuant to this Annex 2.

#### 4. **Termination of Membership**

- 4.1 A Member shall cease to be a Member if they resign by notice in writing to the Trust Secretary.
- 4.2 A Member shall automatically cease to be a Member in the event of their becoming ineligible for membership of the constituency or 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 class of that constituency, provided that a Member may not become or continue as a Member of more than one constituency or class of a constituency.
- 4.3 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.

## **Annex 3 Annual Members' Meeting**

### **1. General**

- 1.1 The Trust shall hold an Annual Members' Meeting of all Members and Governors within 8 months of the end of each financial year.
- 1.2 An Annual Members' Meeting shall be called by at least 12 clear days' notice. The notice shall specify the time and place of the meeting and shall be given to all Members and to the Governors, Directors and auditors of the Trust.
- 1.3 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 1.4 Annual Members' Meetings are to be open to members of the public.

### **2. Proceedings at Annual Members' Meetings**

- 2.1 The Chair of the Trust shall preside as Chair at every Annual Members' Meeting but, if there be no such Chair or if, at any meeting, they are not present within 15 minutes after the time appointed for holding the same or are unwilling to take the chair, the Deputy Chair, if there is one and they are present, shall preside. If the Chair and Deputy Chair are absent, a Non-Executive Director nominated by the Chair shall preside.
- 2.2 The business to be transacted at each Annual Members' Meeting shall include the presentation by the Directors to the Members of the annual accounts, any report of the auditor on them, and the annual report.
- 2.3 The quorum for an Annual Members' Meeting shall be five Members personally present (not by proxy).
- 2.4 No business other than the appointment of the Chair of the meeting is to be transacted at an Annual Members' Meeting unless a quorum as set out in 2.3 above is present when the meeting proceeds to business.
- 2.5 If, within half an hour from the time appointed for the holding of an Annual Members' Meeting, a quorum is not present, the meeting shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week at the same time and place or at such other place as the Chair of the meeting may determine and, if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall be a quorum.
- 2.6 The Chair may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, Members shall not be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **3. Attendance and Speaking at Annual Members' Meetings**

- 3.1 A Member, when invited to do so by the Chair, is able to exercise the right to speak at an Annual Members' Meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

- 3.2 Only members of the Council of Governors are able to exercise the right to vote at an Annual Members' Meeting when:
- 3.2.1 That Governor is able to vote during the meeting on resolutions put to the vote at the meeting.
  - 3.2.2 That Governor's vote can be taken into account, in determining whether or not such resolutions are passed, at the same time as the votes of all the other persons attending the meeting.
- 3.3 The Chair may make whatever arrangements they consider appropriate to enable those attending an Annual Members' Meeting to exercise their rights to speak or vote at it.
- 3.4 In determining attendance at an Annual Members' Meeting, it is immaterial whether any two or more Members attending it are in the same place as each other.
- 3.5 Two or more Members, who are not in the same place as each other, attend an Annual Members' Meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

#### 4. **Voting**

- 4.1 A resolution put to the vote of an Annual Members' Meeting shall be decided on a show of hands by Governors present and able to vote, unless a poll is duly demanded in accordance with clause 4.5 below.
- 4.2 Proxy votes shall not be permitted.
- 4.3 No objection may be raised to the qualification of any person voting at an Annual Members' Meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.
- 4.4 Any such objection must be referred to the Chair of the meeting, whose decision is final.
- 4.5 A poll on a resolution may be demanded:
- 4.5.1 In advance of the Annual Members' Meeting where it is to be put to the vote.
  - 4.5.2 At an Annual Members' Meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.
- 4.6 A poll may be demanded by:
- 4.6.1 The Chair of the meeting.
  - 4.6.2 The Directors.
  - 4.6.3 The Governors.
  - 4.6.4 Two or more persons having the right to vote on the resolution.
- 4.7 A demand for a poll may be withdrawn if:
- 4.7.1 The poll has not yet been taken.
  - 4.7.2 The Chair of the meeting consents to the withdrawal.
- 4.8 Polls must be taken immediately and in such manner as the Chair of the meeting directs.

5. **Amendments to resolutions**

- 5.1 A resolution to be proposed at an Annual Members' Meeting may be amended if:
- 5.1.1 The Chair of the meeting proposes the amendment at the Annual Members' Meeting at which the resolution is to be proposed.
  - 5.1.2 The amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.
- 5.2 If the Chair of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the Chair's error does not invalidate the vote on that resolution.

6. **Attendance and speaking by Directors and Governors**

- 6.1 Directors and Governors may attend and speak at an Annual Members' Meeting, whether or not they are Members.
- 6.2 The Chair of the meeting may permit other persons who are not Members of the Trust to attend and speak at an Annual Members' Meeting.

## Annex 4 Composition of Council of Governors

1. The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors and Stakeholder Governors.
2. A Governor shall be aged 16 or over.
3. The Council of Governors of the Trust shall include:
  - 3.1 Twenty Public Governors, elected in accordance with paragraph 8 of Annex 4.
  - 3.2 Six Staff Governors, elected in accordance with paragraph 9 of Annex 4, one to be elected by the medical and dental staff class, one by the clinical professions allied to healthcare staff class, two by the nursing and midwifery staff class, and two by the corporate and support staff class.
  - 3.3 Seven Stakeholder Governors as follows:
    - 3.3.1 Three Local Authority Stakeholder Governors appointed in accordance with paragraph 13 of Annex 4.
    - 3.3.2 Two University Stakeholder Governors appointed in accordance with paragraph 14 of Annex 4.
    - 3.3.3 Two other Stakeholder Governors appointed in accordance with paragraph 15 of Annex 4 by each organisation specified in paragraph 15 of Annex 4.
4. The number of Public Governors shall be more than 50% the total membership of the Council of Governors.
5. If there is a vacancy within the Council of Governors, the validity of the proceedings of the Council of Governors shall not be affected.
6. The organisations specified as partnership organisations that may appoint a member of the Council of Governors are:
  - 6.1 Surgeon General's Department of the Ministry of Defence (one Governor)
  - 6.2 Birmingham Faith Leaders Group (one Governor)
7. From time to time an organisation may, in accordance with the procedures set out at paragraphs 17 and 18, resign or be removed from or added to the list of organisations specified in paragraph 6 of Annex 4 above. Upon the resignation or removal of such an organisation from the list specified in paragraph 6, that organisation shall cease to have the power to appoint the number of Governors as specified in paragraph 6, and upon the addition of an organisation to the list specified in paragraph 6, the number of Governors which the additional organisation shall have the power to appoint shall be specified in paragraph 6.
8. A total of 20 Public Governors shall be elected as follows:
  - 8.1 Three Governors from each of the Solihull and Meriden, Rest of England and Wales Public Constituencies.
  - 8.2 One Governor from each of the 14 other Public Constituencies.
9. The following Staff Governors shall be elected:
  - 9.1 One Governor from the medical and dental staff class.
  - 9.2 Two Governors from the nursing and midwifery staff class.

- 9.3 One Governor from the clinical professions allied to healthcare staff class.
- 9.4 Two Governors from the corporate and support services staff class.
10. A person may not stand for election to the Council of Governors as a Public Governor unless, preceding the close of nominations for the election, that person has made a declaration, in the specified form as set out at paragraph 11 of Annex 4 below, of their qualification to vote as a Member of the Public Constituency for which the election is being held, and that they are not prevented from being a Member of the Council of Governors by clause 17 (Disqualification) of the Constitution. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.
11. The form referred to in paragraph 10 of Annex 4 above is:
- "I declare that I am eligible as a Member of the University Hospitals Birmingham NHS Foundation Trust as at the date of the notice of election, and that I am a Member of the Public Constituency for which I am seeking election. I declare that I am not prevented from being a Member by clause 17 (Disqualification) of the Constitution."*
12. Clause 9.4 (Voting at Governor Elections) applies.
13. **Local Authority Stakeholder Governors**
- 13.1 Birmingham City Council (acting by its Leader) shall appoint one Local Authority Stakeholder Governor. Removal of this Local Authority Stakeholder Governor shall also be by Birmingham City Council (acting by its Leader).
- 13.2 Solihull Metropolitan Borough Council (acting by its Leader) shall appoint one Local Authority Stakeholder Governor. Removal of this Local Authority Stakeholder Governor shall also be by Solihull Metropolitan Borough Council (acting by its Leader).
- 13.3 Lichfield Borough Council and Tamworth Borough Council (each acting by its Leader) shall jointly appoint one Local Authority Stakeholder Governor. Removal of this Local Authority Stakeholder Governor shall also be by Lichfield Borough Council and Tamworth Borough Council (each acting by its Leader).
14. **University Stakeholder Governors**
- 14.1 The University of Birmingham (acting by the Vice Chancellor) shall appoint one University Stakeholder Governor. Removal of this University Stakeholder Governor shall also be by the University of Birmingham (acting by the Vice Chancellor).
- 14.2 Birmingham City University (acting by the Vice Chancellor) shall appoint one University Stakeholder Governor. Removal of this University Stakeholder Governor shall also be by Birmingham City University (acting by the Vice Chancellor).
15. **Other Stakeholder Governors**
- The two other Stakeholder Governors are to be appointed by the organisations listed in paragraph 6 (acting by the Chair or an individual of equivalent or similar status). Removal of Other Stakeholder Governors shall also be by the relevant organisation (acting by the Chair or an individual of equivalent status).
16. Any appointed Stakeholder Governor who is unable to attend a Council of Governors' meeting can nominate a representative to attend and, if necessary, vote on their behalf. Advance notice of the substitution and apologies should be sent to the Trust Secretary at least 24 hours ahead of the meeting.
17. A Stakeholder Governor organisation listed in paragraph 6 may resign their membership of that role at any time by giving notice in writing to the Trust Secretary.

18. The removal of a Stakeholder Governor shall be subject to the same conditions as are set out in Annex 6

# **Annex 5 The Model Election Rules**

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

**(Adopted November 2014)**

### **Contents**

#### **Part 1: Interpretation**

1. Interpretation

#### **Part 2: Timetable for Election**

2. Timetable
3. Computation of time

#### **Part 3: Returning Officer**

4. Returning officer
5. Staff
6. Expenditure
7. Duty of cooperation

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

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

#### **Part 5: Contested Elections**

19. Poll to be taken by ballot
20. The ballot paper

21. The declaration of identity (Public Constituencies)

*Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by Returning Officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

*The poll*

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

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

36. Receipt of voting documents
37. Validity of votes
38. Declaration of identity but no ballot (Public Constituencies)
39. Deduplication of votes
40. Sealing of packets

**Part 6: Counting the Votes**

41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
45. First stage

- 46. The quota
- 47. Transfer of votes
- 48. Supplementary provisions on transfer
- 49. Exclusion of candidates
- 50. Filling of last vacancies
- 51. Order of election of candidates

#### **Part 7: Final Proceedings in Contested and Uncontested Elections**

- 52. Declaration of result for contested elections
- 53. Declaration of result for uncontested elections

#### **Part 8: Disposal of Documents**

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
- 57. Retention and public inspection of documents
- 58. Application for inspection of certain documents relating to election

#### **Part 9: Death of a Candidate During a Contested Election**

- 59. Countermand or abandonment of poll on death of candidate

#### **Part 10: Election Expenses and Publicity**

##### *Expenses*

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

##### *Publicity*

- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
- 65. Meaning of “for the purposes of an election”

#### **Part 11: Questioning Elections and Irregularities**

- 66. Application to question an election

## **Part 12: Miscellaneous**

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

## Part 1. Interpretation

### 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

<b>2006 Act</b>	means the National Health Service Act 2006.
<b>Corporation</b>	means the public benefit Corporation subject to this Constitution.
<b>Council of Governors</b>	means the Council of Governors of the Corporation.
<b>Declaration of Identity</b>	has the meaning set out in rule 21.1.
<b>Election</b>	means an Election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors.
<b>E-voting</b>	means voting using either the internet, telephone or text message.
<b>E-voting Information</b>	has the meaning set out in rule 24.2.
<b>ID Declaration Form</b>	has the meaning set out in rule 21.1.
<b>Internet Voting Record</b>	has the meaning set out in rule 26.4.4.
<b>Internet Voting System</b>	means such computer hardware and software, data other equipment and services as may be provided by the Returning Officer for the purpose of enabling voters to cast their votes using the internet.
<b>Lead Governor</b>	means the Governor nominated by the Corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (NHS Improvement, December 2013) or any later version of such code.
<b>List of Eligible Voters</b>	means the list referred to in rule 22.1, containing the information in rule 22.2.
<b>Method of Polling</b>	means a method of casting a vote in a poll, which may be by post, internet, text message or telephone.
<b>Numerical Voting Code</b>	has the meaning set out in rule 64.2.2
<b>Polling Website</b>	has the meaning set out in rule 26.1.
<b>Postal Voting Information</b>	has the meaning set out in rule 24.1.
<b>Telephone Short Code</b>	means a short telephone number used for the purposes of submitting a vote by text message.

<b>Telephone Voting Facility</b>	has the meaning set out in rule 26.2.
<b>Telephone Voting Record</b>	has the meaning set out in rule 26.5.4.
<b>Telephone Voting System</b>	means such Telephone Voting Facility as may be provided by the Returning Officer for the purpose of enabling voters to cast their votes by telephone.
<b>Text Message Voting Facility</b>	has the meaning set out in rule 26.3.
<b>Text Message Voting System</b>	means such text messaging voting facility as maybe provided by the Returning Officer for the purpose of enabling voters to cast their votes by text message.
<b>Text Voting Record</b>	has the meaning set out in rule 26.8.3.
<b>Voter ID Number</b>	means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of E-voting,
<b>Voting Information</b>	means Postal Voting Information and/or E-voting Information

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

## Part 2. Timetable for Elections

### 2. Timetable

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

Proceeding	Time
Publication of notice of Election	Not later than the 40 <sup>th</sup> day before the day of the close of the poll.
Final day for delivery of nomination forms to Returning Officer	Not later than the 28 <sup>th</sup> day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the 27 <sup>th</sup> 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 25 <sup>th</sup> day before the day of the close of the poll
Notice of the poll	Not later than the 15 <sup>th</sup> day before the day of the close of the poll.
Close of the poll	By 5 pm 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.
- 3.1.3 A day appointed for public thanksgiving or mourning;

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

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

### **Part 3. Returning Officer**

#### **4. Returning Officer**

- 4.1 Subject to rule 69, the Returning Officer for an Election is to be appointed by the Corporation.
- 4.2 Where two or more Elections are to be held concurrently, the same Returning Officer may be appointed for all those Elections.

#### **5. Staff**

Subject to rule 69, the Returning Officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the Election.

#### **6. Expenditure**

The Corporation is to pay the Returning Officer:

- 6.1 Any expenses incurred by that officer in the exercise of his or her functions under these rules.
- 6.2 Such remuneration and other expenses as the Corporation may determine.

#### **7. Duty of cooperation**

The Corporation is to cooperate 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 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 class within that constituency.
- 8.3 The details of any nomination committee that has been established by the Corporation.
- 8.4 The address and times at which nomination forms may be obtained.
- 8.5 The address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return), and the date and time by which they must be received by the Returning Officer.

- 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.
- 8.8 The date and time of the close of the poll in the event of a contest.

9. **Nomination of candidates**

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The Returning Officer is to:

- 9.2.1 supply any member of the Corporation with a nomination form;
- 9.2.2 prepare a nomination form for signature at the request of any member of the Corporation;

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

10. **Candidate's particulars**

The nomination form must state the candidate's:

- 10.1 Full name.
- 10.2 Contact address in full (which should be a postal address, although an e-mail address may also be provided for the purposes of electronic communication).
- 10.3 Constituency or class within a constituency of which the candidate is a member.

11. **Declaration of interests**

- 11.1 The nomination form must state:
  - 11.1.1 Any financial interest that the candidate has in the Corporation.
  - 11.1.2 Whether the candidate is a member of a political party, and if so, which party.
- 11.2 If the candidate has no such interests, the paper must include a statement to that effect.

12. **Declaration of eligibility**

The nomination form 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.
- 12.2 For a Member of a Public Constituency, of the particulars of his or her qualification to vote as a member of that constituency or class within that constituency for which the Election is being held.

13. **Signature of candidate**

- 13.1 The nomination form must be signed and dated by the candidate in a manner prescribed by the Returning Officer, indicating:
  - 13.1.1 That they wish to stand as a candidate.

13.1.2 Their declaration of interests, as required under rule 11, is true and correct.

13.1.3 Their declaration of eligibility, as required under rule 12, is true and correct.

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

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

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

14.1.1 Decides that the candidate is not eligible to stand.

14.1.2 Decides that the nomination form is invalid.

14.1.3 Receives satisfactory proof that the candidate has died.

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 form 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 forms 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.

14.2.5 That the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

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

15.1 The Returning Officer is to prepare and publish a statement showing the candidates who are standing for Election.

15.2 The statement must show:

15.2.1 The name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing.

15.2.2 The declared interests of each candidate standing, as in their nomination form.

- 15.3 The statement must list the candidates standing for Election in alphabetical order by surname.
- 15.4 The Returning Officer must send a copy of the statement of candidates and copies of the nomination forms to the Corporation as soon as is practicable after publishing the statement.

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

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

**17. Withdrawal of candidates**

A candidate may withdraw from Election, on or before the date and time for withdrawal by candidates, by providing to the Returning Officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

**18. Method of Election**

- 18.1 If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared to be elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is fewer than the number of members to be elected to be Council of Governors, then:
  - 18.3.1 The candidates who remain validly nominated are to be declared to be elected in accordance with Part 7 of these rules.
  - 18.3.2 The Returning Officer is to order a new Election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the Corporation.

**Part 5. Contested Elections**

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

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with part 6 of these rules.
- 19.3 The Corporation may decide that voters within a constituency or class within a constituency may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the Corporation may determine.
- 19.4 The Corporation may decide that voters within a constituency or class within a constituency, for whom an e-mail address is included in the List of Eligible Voters, may only cast their votes at the poll using an E-voting Method of Polling.
- 19.5 Before the Corporation decides, in accordance with rule 19.3, that one or more E-voting methods of polling will be made available for the purposes of the poll, the Corporation must satisfy itself that:

- 19.5.1 If internet voting is to be a Method of Polling, the Internet Voting System to be used for the purpose of the Election is:
  - 19.5.1.1 Configured in accordance with these rules.
  - 19.5.1.2 Will create an accurate Internet Voting Record in respect of any voter who casts his or her vote using the Internet Voting System.
- 19.5.2 If telephone voting is to be a Method of Polling, the Telephone Voting System to be used for the purpose of the Election is:
  - 19.5.2.1 Configured in accordance with these rules.
  - 19.5.2.2 Will create an accurate Telephone Voting Record in respect of any voter who casts his or her vote using the Telephone Voting System.
- 19.5.3 If text message voting is to be a Method of Polling, the Text Message Voting System to be used for the purpose of the Election is:
  - 19.5.3.1 Configured in accordance with these rules.
  - 19.5.3.2 Will create an accurate Text Voting Record in respect of any voter who casts his or her vote using the Text Message Voting System.

## 20. **The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts their ballot by an alternative Method of Polling) is to consist of a ballot paper with the persons remaining validly nominated for an Election, after any withdrawals under these rules, and no others inserted in the paper.
- 20.2 Every ballot paper must specify:
  - 20.2.1 The name of the Corporation.
  - 20.2.2 The constituency or 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 class within that constituency.
  - 20.2.4 The names and other particulars of the candidates standing for Election, with the details and order being the same as in the statement of nominated candidates.
  - 20.2.5 Instructions on how to vote by all available methods of polling, including the relevant voter's Voter ID Number if one or more E-voting methods of polling are available.
  - 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.
  - 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 Constituencies)**

- 21.1 The Corporation shall require each voter who participates in an Election for a Public Constituency to make a declaration confirming:

- 21.1.1 That the voter is the person to whom:
  - 21.1.1.1 The ballot paper was addressed.
  - 21.1.1.2 The Voter ID Number contained within the E-voting Information was allocated.
- 21.1.2 That he or she has not marked or returned any other Voting Information in the Election.
- 21.1.3 The particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the Election is being held.

**(“Declaration of Identity”)**

and the Corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a Declaration of Identity by each voter, whether by the completion of a paper form (“**ID Declaration Form**”) or the use of an electronic method.

- 21.2 The voter must be required to return his or her Declaration of Identity with his or her ballot.
- 21.3 The Voting Information shall caution the voter that if the Declaration of Identity is not duly returned, or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

*Action to be taken before the poll*

**22. List of eligible voters**

- 22.1 The Corporation is to provide the Returning Officer with a list of the members of the constituency or class within a constituency for which the Election is being held who are eligible to vote, by virtue of rule 27, as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an Election.
- 22.2 The list is to include for each member:
  - 22.2.1 a postal address; and
  - 22.2.2 the member’s e-mail address, if this has been provided
 to which his or her Voting Information may, subject to rule 22.3, be sent.
- 22.3 The Corporation may decide that the E-voting Information is to be sent only by e-mail to those members in the List of Eligible Voters for whom an e-mail address is included in that list.

**23. Notice of poll**

The Returning Officer is to publish a notice of the poll stating:

- 23.1 The name of the Corporation.
- 23.2 The constituency or 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 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 methods of polling by which votes may be cast at the Election by voters in a constituency or class within a constituency, as determined by the Corporation in accordance with rule 19.3.
- 23.7 The address for return of the ballot papers.
- 23.8 The uniform resource locator (URL) where, if internet voting is a Method of Polling, the Polling Website is located.
- 23.9 The telephone number where, if telephone voting is a Method of Polling, the Telephone Voting Facility is located.
- 23.10 The telephone number or Telephone Short Code where, if text message voting is a Method of Polling, the Text Message Voting Facility is located.
- 23.11 The date and time of the close of the poll.
- 23.12 The address and final dates for applications for replacement Voting Information.
- 23.13 The contact details of the Returning Officer.

#### **24. Issue of Voting Information by Returning Officer**

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the Returning Officer is to send the following information by post to each member of the Corporation named in the List of Eligible Voters:
  - 24.1.1 A ballot paper and ballot paper envelope.
  - 24.1.2 The ID Declaration Form (if required).
  - 24.1.3 Information about each candidate standing for Election, pursuant to rule 61 of these rules.
  - 24.1.4 A covering envelope.

##### **("Postal Voting Information")**

- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the Returning Officer is to send the following information by e-mail and/or by post to each member of the Corporation named in the List of Eligible Voters who the Corporation determines, in accordance with rule 19.3 and/or rule 19.4, may cast his or her vote by an E-voting Method of Polling:
  - 24.2.1 Instructions on how to vote and how to make a Declaration of Identity (if required).
  - 24.2.2 The voter's Voter ID Number.
  - 24.2.3 Information about each candidate standing for Election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate.
  - 24.2.4 Contact details of the Returning Officer.

##### **("E-voting Information")**

- 24.3 The Corporation may determine that any member of the Corporation shall, for the purposes of the poll:
- 24.3.1 Only be sent Postal Voting Information.
  - 24.3.2 Only be sent E-voting Information.
  - 24.3.3 Be sent both Postal Voting Information and E-voting Information;
- 24.4 If the Corporation determines, in accordance with rule 22.3, that the E-voting Information is to be sent only by e-mail to those members in the List of Eligible Voters for whom an e-mail address is included in that list, then the Returning Officer shall only send that information by e-mail. The Voting Information is to be sent to the postal address and/or e-mail address for each member, as specified in the List of Eligible Voters.

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

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- 25.2.1 The address for return of the ballot paper printed on it.
  - 25.2.2 Prepaid 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 ID Declaration Form, if required.
  - 25.3.2 The ballot paper envelope with the ballot paper sealed inside it.

26. **E-voting systems**

- 26.1 If internet voting is a Method of Polling for the relevant Election, then the Returning Officer must provide a website for the purpose of voting over the internet (in these rules referred to as “the Polling Website”).
- 26.2 If telephone voting is a Method of Polling for the relevant Election, then the Returning Officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as “the Telephone Voting Facility”).
- 26.3 If text message voting is a Method of Polling for the relevant Election, then the Returning Officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the Text Message Voting Facility”).
- 26.4 The Returning Officer shall ensure that the Polling Website and Internet Voting System provided will:
- 26.4.1 Require a voter to:
    - 26.4.1.1 enter his or her Voter ID Number; and
    - 26.4.1.2 where the Election is for a Public Constituency, make a Declaration of Identity;
- in order to be able to cast his or her vote.

- 26.4.2 Specify:
  - 26.4.2.1 The name of the Corporation.
  - 26.4.2.2 The constituency or class within a constituency for which the Election is being held.
  - 26.4.2.3 The number of members of the Council of Governors to be elected from that constituency or class within that constituency.
  - 26.4.2.4 The names and other particulars of the candidates standing for Election, with the details and order being the same as in the statement of nominated candidates.
  - 26.4.2.5 Instructions on how to vote and how to make a Declaration of Identity.
  - 26.4.2.6 The date and time of the close of the poll.
  - 26.4.2.7 The contact details of the Returning Officer.
- 26.4.3 Prevent a voter from voting for more candidates than he or she is entitled to at the Election.
- 26.4.4 Create a record ("**Internet Voting Record**") that is stored in the Internet Voting System in respect of each vote cast by a voter using the internet that comprises:
  - 26.4.4.1 The voter's Voter ID Number.
  - 26.4.4.2 The voter's Declaration of Identity (where required).
  - 26.4.4.3 The candidate or candidates for whom the voter has voted.
  - 26.4.4.4 The date and time of the voter's vote.
- 26.4.5 If the voter's vote has been duly cast and recorded, provide the voter with confirmation of this.
- 26.4.6 Prevent any voter from voting after the close of the poll.
- 26.5 The Returning Officer shall ensure that the Telephone Voting Facility and Telephone Voting System provided will:
  - 26.5.1 Require a voter to
    - 26.5.1.1 Enter his or her Voter ID Number in order to be able to cast his or her vote.
    - 26.5.1.2 Where the Election is for a Public Constituency, make a Declaration of Identity.
  - 26.5.2 Specify:
    - 26.5.2.1 The name of the Corporation.
    - 26.5.2.2 The constituency or class within a constituency for which the Election is being held.
    - 26.5.2.3 The number of members of the Council of Governors to be elected from that constituency or class within that constituency.

- 26.5.2.4 Instructions on how to vote and how to make a Declaration of Identity.
- 26.5.2.5 The date and time of the close of the poll.
- 26.5.2.6 The contact details of the Returning Officer.
- 26.5.3 Prevent a voter from voting for more candidates than he or she is entitled to at the Election.
- 26.5.4 Create a record ("**Telephone Voting Record**") that is stored in the Telephone Voting System in respect of each vote cast by a voter using the telephone that comprises:
  - 26.5.4.1 The voter's Voter ID Number.
  - 26.5.4.2 The voter's Declaration of Identity (where required).
  - 26.5.4.3 The candidate or candidates for whom the voter has voted.
  - 26.5.4.4 The date and time of the voter's vote.
- 26.6 If the voter's vote has been duly cast and recorded, provide the voter with confirmation of this.
- 26.7 Prevent any voter from voting after the close of the poll.
- 26.8 The Returning Officer shall ensure that the Text Message Voting Facility and text messaging voting system provided will:
  - 26.8.1 require a voter to:
    - 26.8.1.1 provide his or her Voter ID Number; and
    - 26.8.1.2 where the Election is for a Public Constituency, make a Declaration of Identity;

in order to be able to cast his or her vote.
  - 26.8.2 Prevent a voter from voting for more candidates than he or she is entitled to at the Election.
  - 26.8.3 Create a record ("**Text Voting Record**") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises:
    - 26.8.3.1 The voter's Voter ID Number.
    - 26.8.3.2 The voter's Declaration of Identity (where required).
    - 26.8.3.3 The candidate or candidates for whom the voter has voted.
    - 26.8.3.4 The date and time of the voter's vote.
  - 26.8.4 If the voter's vote has been duly cast and recorded, provide the voter with confirmation of this.
  - 26.8.5 Prevent any voter from voting after the close of the poll.

27. **Eligibility to vote**

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

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

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

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

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the Returning Officer for a replacement ballot paper.
- 29.2 On receiving an application, the Returning Officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The Returning Officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
  - 29.3.1 Is satisfied as to the voter’s identity.
  - 29.3.2 Has ensured that the completed ID Declaration Form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the Returning Officer shall enter in a list (“**the list of spoilt ballot papers**”):
  - 29.4.1 The name of the voter.
  - 29.4.2 The details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it).
  - 29.4.3 The details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “**spoilt text message vote**”), that voter may apply to the Returning Officer for a replacement Voter ID Number.
- 29.6 On receiving an application, the Returning Officer is to obtain the details of the Voter ID Number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The Returning Officer may not issue a replacement Voter ID Number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement Voter ID Number in respect of a spoilt text message vote, the Returning Officer shall enter in a list (“**the list of spoilt text message votes**”):
  - 29.8.1 The name of the voter.

- 29.8.2 The details of the Voter ID Number on the spoilt text message vote (if that officer was able to obtain it).
- 29.8.3 The details of the replacement Voter ID Number issued to the voter.

### 30. **Lost Voting Information**

- 30.1 Where a voter has not received his or her Voting Information by the 10<sup>th</sup> day before the close of the poll, that voter may apply to the Returning Officer for replacement Voting Information.
- 30.2 The Returning Officer may not issue replacement Voting Information in respect of lost Voting Information unless he or she:
  - 30.2.1 Is satisfied as to the voter's identity.
  - 30.2.2 Has no reason to doubt that the voter did not receive the original Voting Information.
  - 30.2.3 Has ensured that no Declaration of Identity, if required, has been returned.
- 30.3 After issuing replacement Voting Information in respect of lost Voting Information, the Returning Officer shall enter in a list ("**the list of lost ballot documents**"):
  - 30.3.1 The name of the voter.
  - 30.3.2 The details of the unique identifier of the replacement ballot paper, if applicable.
  - 30.3.3 The Voter ID Number of the voter.

### 31. **Issue of replacement Voting Information**

- 31.1 If a person applies for replacement Voting Information under rule 29 or 30, and a Declaration of Identity has already been received by the Returning Officer in the name of that voter, the Returning Officer may not issue replacement Voting Information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the Election, notwithstanding the fact that a Declaration of Identity, if required, has already been received by the Returning Officer in the name of that voter.
- 31.2 After issuing replacement Voting Information under this rule, the Returning Officer shall enter in a list ("**the list of tendered Voting Information**"):
  - 31.2.1 The name of the voter.
  - 31.2.2 The unique identifier of any replacement ballot paper issued under this rule.
  - 31.2.3 The Voter ID Number of the voter.

### 32. **ID Declaration Form for replacement ballot papers (Public Constituencies)**

In respect of an Election for a Public Constituency, an ID Declaration Form must be issued with each replacement ballot paper, requiring the voter to make a Declaration of Identity.

*Polling by internet, telephone or text*

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

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the Polling Website by keying in the URL of the Polling Website provided in the Voting Information.

- 33.2 When prompted to do so, the voter will need to enter his or her Voter ID Number.
- 33.3 If the Internet Voting System authenticates the Voter ID Number, the system will give the voter access to the Polling Website for the Election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the Internet Voting System for an Election once his or her vote at that Election has been cast.

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

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

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

- 35.1 To cast his or her vote by text message, the voter will need to gain access to the Text Message Voting Facility by sending a text message to the designated telephone number or Telephone Short Code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her Voter ID Number, and the Numerical Voting Code for the candidate or candidates for whom he or she wishes to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information; otherwise, the vote will not be cast.

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

**36. Receipt of voting documents**

- 36.1 Where the Returning Officer receives:
  - 36.1.1 a covering envelope; or
  - 36.1.2 any other envelope containing an ID Declaration Form, if required; a ballot paper envelope; or a ballot paper;

before the close of the poll, that officer is to open it as soon as is practicable, and rules 37 and 38 are to apply.
- 36.2 The Returning Officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

- 36.2.1 The candidate for whom a voter has voted.
- 36.2.2 The unique identifier on a ballot paper.
- 36.3 The Returning Officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

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

- 37.1 A ballot paper shall not be taken to be duly returned unless the Returning Officer is satisfied that it has been received by the Returning Officer before the close of the poll with an ID Declaration Form, if required, that has been correctly completed, signed and dated.
- 37.2 Where the Returning Officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
  - 37.2.1 Put the ID Declaration Form, if required, in a separate packet.
  - 37.2.2 Put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the Returning Officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
  - 37.3.1 Mark the ballot paper “disqualified”.
  - 37.3.2 If there is an ID Declaration Form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper.
  - 37.3.3 Record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”).
  - 37.3.4 Place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the Returning Officer is satisfied that the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) has been received by the Returning Officer before the close of the poll, with a Declaration of Identity, if required, that has been correctly made.
- 37.5 Where the Returning Officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the Returning Officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
  - 37.6.1 Mark the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) “disqualified”.
  - 37.6.2 Record the Voter ID Number on the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) in the list of disqualified documents.
  - 37.6.3 Place the document or documents in a separate packet.

38. **Declaration of Identity but no ballot paper (Public Constituencies) <sup>1</sup>**

Where the Returning Officer receives an ID Declaration Form, if required, but no ballot paper, the Returning Officer is to:

- 38.1 Mark the ID Declaration Form “disqualified”;
- 38.2 Record the name of the voter in the list of disqualified documents, indicating that a Declaration of Identity was received from the voter without a ballot paper; and
- 38.3 Place the ID Declaration Form in a separate packet.

39. **Deduplication of votes**

- 39.1 Where different methods of polling are being used in an Election, the Returning Officer shall examine all votes cast to ascertain if a Voter ID Number has been used more than once to cast a vote in the Election.
- 39.2 If the Returning Officer ascertains that a Voter ID Number has been used more than once to cast a vote in the Election, he or she shall:
  - 39.2.1 Only accept as duly returned the first vote received that was cast using the relevant Voter ID Number.
  - 39.2.2 Mark as “disqualified” all other votes that were cast using the relevant Voter ID Number.
- 39.3 Where a Ballot paper is disqualified under this rule, the Returning Officer shall:
  - 39.3.1 mark the ballot paper “disqualified”.
  - 39.3.2 If there is an ID Declaration Form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper.
  - 39.3.3 Record the unique identifier and the Voter ID Number on the ballot paper in the list of disqualified documents.
  - 39.3.4 Place the document or documents in a separate packet.
- 39.4 Where an Internet Voting Record, Telephone Voting Record or Text Voting Record is disqualified under this rule, the Returning Officer shall:
  - 39.4.1 Mark the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) “disqualified”,
  - 39.4.2 Record the Voter ID Number on the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) in the list of disqualified documents.
  - 39.4.3 Place the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) in a separate packet.
  - 39.4.4 Disregard the Internet Voting Record, Telephone Voting Record or Text Voting Record (as applicable) when counting the votes in accordance with these rules.

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

#### 40. Sealing of packets

As soon as is possible, after the close of the poll and after the completion of the procedure under rules 37 and 38, the Returning Officer is to

##### 40.1 Seal the packets containing:

40.1.1 The disqualified documents together with the list of disqualified documents.

40.1.2 The ID Declaration Forms, if required.

40.1.3 The list of spoilt ballot papers and the list of spoilt text message votes.

40.1.4 The list of lost ballot documents.

40.1.5 The List of Eligible Voters.

40.1.6 The list of tendered Voting Information.

##### 40.2 Ensure that complete electronic copies of the Internet Voting Records, Telephone Voting Records and Text Voting Records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

### Part 6. Counting the Votes

#### 41. Interpretation of Part 6

##### 41.1 In Part 6 of these rules:

<b>Ballot Document</b>	means a ballot paper, internet voting record, telephone voting record or text voting record.
<b>Continuing Candidate</b>	means any candidate not deemed to be elected and not excluded.
<b>Count</b>	means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates.
<b>Deemed To Be Elected</b>	means deemed to be elected for the purposes of counting of votes, but without prejudice to the declaration of the result of the poll.
<b>Mark</b>	means a figure, an identifiable written word or a mark such as X.
<b>Non-transferable Vote</b>	means a ballot document:  (a) On which no second or subsequent preference is recorded for a continuing candidate.  (b) Which is excluded by the Returning Officer under rule 49.
<b>Preference</b>	as used in the following contexts, has the meaning assigned below:  (a) <b>"First Preference"</b> means the figure 1, or any mark or word which clearly indicates a first (or only) preference.

- (b) **“Next Available Preference”** means a preference which is the second or, as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored).
- (c) In this context, a **“Second Preference”** is shown by the figure 2, or any mark or word which clearly indicates a second preference, and a **“Third Preference”** by the figure 3, or any mark or word which clearly indicates a third preference, and so on.

**Quota** means the number calculated in accordance with rule 46.

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

**Stage of the Count** means:

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

**Transferable Vote** means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate.

**Transferred Vote** means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred.

**Transfer Value** means the value of a transferred vote calculated in accordance with rules 47.4 or 47.7.

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

- 42.1 The Returning Officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The Returning Officer may make arrangements for any votes to be counted using vote counting software where the Board of Directors and the Council of Governors of the Corporation have approved:
  - 42.2.1 The use of such software for the purpose of counting votes in the relevant Election;
  - 42.2.2 A policy governing the use of such software; and
  - 42.2.3 The Corporation and the Returning Officer are satisfied that the use of such software will produce an accurate result.

#### 43. **The Count**

##### 43.1 The Returning Officer is to:

###### 43.1.1 Count and record the number of:

43.1.1.1 Ballot papers that have been returned.

43.1.1.2 Internet Voting Records, Telephone Voting Records and/or Text Voting Records that have been created.

43.1.2 Count the votes according to the provisions in this part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The Returning Officer, while counting and recording the number of ballot papers, Internet Voting Records, Telephone Voting Records and/or Text Voting Records, and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the Voter ID Number on an Internet Voting Record, Telephone Voting Record or Text Voting Record.

43.3 The Returning Officer is to proceed continuously with counting the votes as far as is practicable.

#### 44. **Rejected ballot papers and rejected Text Voting Records**

##### 44.1 Any ballot paper:

44.1.1 which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced;

44.1.2 on which the figure 1 standing alone is not placed so as to indicate a First Preference for any candidate;

44.1.3 on which anything is written or marked by which the voter can be identified, except the unique identifier; or

44.1.4 which is unmarked or rejected because of uncertainty;

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words "one", "two", "three", and so on or any other Mark instead of a figure if, in the opinion of the Returning Officer, the word or Mark clearly indicates a Preference or Preferences.

44.2 The Returning Officer is to endorse the word "rejected" on any ballot paper which, under this rule, is not to be counted.

##### 44.3 Any Text Voting Record:

44.3.1 on which the figure 1 standing alone is not placed so as to indicate a First Preference for any candidate;

44.3.2 on which anything is written or marked by which the voter can be identified, except the unique identifier, or

44.3.3 which is unmarked or rejected because of uncertainty;

shall be rejected and not counted, but the Text Voting Record shall not be rejected by reason only of carrying the words "one", "two", "three", and so on or any other Mark instead of a figure if, in the opinion of the Returning Officer, the word or Mark clearly indicates a Preference or Preferences.

- 44.4 The Returning Officer is to endorse the word “rejected” on any Text Voting Record which, under this rule, is not to be counted.
- 44.5 The Returning Officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subclauses 44.1.1 to 44.1.4 and the number of Text Voting Records rejected by him or her under each of the subclauses 44.3.1 to 44.3.3.

45. **First stage**

- 45.1 The Returning Officer is to sort the Ballot Documents into parcels according to the candidates for whom the First Preference votes are given.
- 45.2 The Returning Officer is to then Count the number of First Preference votes given on Ballot Documents, for each candidate, and is to record those numbers.
- 45.3 The Returning Officer is to also ascertain and record the number of valid Ballot Documents.

46. **The Quota**

- 46.1 The Returning Officer is to divide the number of valid Ballot Documents by a number exceeding by one the number of members to be elected.
- 46.2 The result, increased by one, of the division under rule 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the Election of a candidate (in these rules referred to as “the Quota”).
- 46.3 At any Stage of the Count, a candidate whose total votes equals or exceeds the Quota shall be Deemed to be Elected, except that in any Election where there is only one vacancy, a candidate shall not be Deemed to be Elected until the procedure set out in rules 47.1 to 47.3 has been complied with.

47. **Transfer of votes**

- 47.1 Where the number of First Preference votes for any candidate exceeds the Quota, the Returning Officer is to sort all the Ballot Documents on which First Preference votes are given for that candidate into sub-parcels so that they are grouped:
- 47.1.1 According to Next Available Preference given on those Ballot Documents for any Continuing Candidate.
- 47.1.2 Where no such Preference is given, as the sub-parcel of Non-transferable Votes.
- 47.2 The Returning Officer is to Count the number of Ballot Documents in each parcel referred to in rule 47.1.
- 47.3 The Returning Officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of Ballot Documents referred to in rule 47.1.1 to the candidate for whom the Next Available Preference is given on those Ballot Documents.
- 47.4 The vote on each Ballot Document transferred under rule 47.3 shall be at a value (“**the Transfer Value**”) which:
- 47.4.1 Reduces the value of each vote transferred so that the total value of all such votes does not exceed the Surplus.
- 47.4.2 Is calculated by dividing the Surplus of the candidate from whom the votes are being transferred by the total number of the Ballot Documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder, if any).

- 47.5 Where, at the end of any Stage of the Count involving the transfer of Ballot Documents, the number of votes for any candidate exceeds the Quota, the Returning Officer is to sort the Ballot Documents in the sub-parcel of Transferred Votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- 47.5.1 According to the Next Available Preference given on those Ballot Documents for any Continuing Candidate.
  - 47.5.2 Where no such Preference is given, as the sub-parcel of Non-transferable Votes.
- 47.6 The Returning Officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of Ballot Documents referred to in rule 47.5.1 to the candidate for whom the Next Available Preference is given on those Ballot Documents.
- 47.7 The vote on each Ballot Document transferred under rule 47.6 shall be at which is the less of:
- 47.7.1 A Transfer Value calculated as set out in rule 47.4.2.
  - 47.7.2 The value at which that vote was received by the candidate from whom it is now being transferred.
- 47.8 Each transfer of a Surplus constitutes a stage in the Count.
- 47.9 Subject to rule 47.10, the Returning Officer shall proceed to transfer transferable Ballot Documents until no candidate who is Deemed to be Elected has a Surplus or all the vacancies have been filled.
- 47.10 Transferable Ballot Documents shall not be liable to be transferred where any Surplus or Surpluses which, at a particular Stage of the Count, have not already been transferred, are:
- 47.10.1 Fewer than the difference between the total votes then credited to the Continuing Candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote.
  - 47.10.2 Fewer than the difference between the total votes of the two or more Continuing Candidates credited, at that Stage of the Count, with the lowest recorded total numbers of votes and the candidate next above such candidates.
- 47.11 This rule does not apply at an Election where there is only one vacancy.

#### **48. Supplementary provisions on transfer**

- 48.1 If, at any Stage of the Count, two or more candidates have Surpluses, the transferable Ballot Documents of the candidate with the highest Surplus shall be transferred first, and if:
- 48.1.1 The Surpluses determined in respect of two or more candidates are equal, the transferable Ballot Documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first.
  - 48.1.2 The votes credited to two or more candidates were equal at all stages of the Count, the Returning Officer shall decide between those candidates by lot, and the transferable Ballot Documents of the candidate on whom the lot falls shall be transferred first.
- 48.2 The Returning Officer shall, on each transfer of transferable Ballot Documents under rule 47:
- 48.2.1 Record the total value of the votes transferred to each candidate.
  - 48.2.2 Add that value to the previous total of votes recorded for each candidate and record the new total.

- 48.2.3 Record as Non-transferable Votes the difference between the Surplus and the total Transfer Value of the Transferred Votes, and add that difference to the previously recorded total of Non-transferable Votes.
- 48.2.4 Compare:
  - 48.2.4.1 The total number of votes then recorded for all of the candidates, together with the total number of Non-transferable Votes.
  - 48.2.4.2 The recorded total of valid First Preference votes.
- 48.3 All Ballot Documents transferred under rule 47 or rule 49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the Transfer Value recorded at that time to each vote on that Ballot Document or, as the case may be, all the Ballot Documents in that sub-parcel.
- 48.4 Where a Ballot Document is so marked that it is unclear to the Returning Officer, at any Stage of the Count under rule 47 or rule 49, for which candidate the next Preference is recorded, the Returning Officer shall treat any vote on that Ballot Document as a Non-transferable Vote; and votes on a Ballot Document shall be so treated where, for example, the names of two or more candidates (whether Continuing Candidates or not) are so marked that, in the opinion of the Returning Officer, the same order of Preference is indicated or the numerical sequence is broken.

#### 49. **Exclusion of candidates**

- 49.1 If:
  - 49.1.1 All transferable Ballot Documents which, under the provisions of rule 49 (including that rule as applied by rule 49.11) and this rule, are required to be transferred have been transferred.
  - 49.1.2 Subject to rule 50, one or more vacancies remain to be filled.

the Returning Officer shall exclude from the Election, at that stage, the candidate with the then lowest vote (or, where rule 49.12 applies, the candidates with the then lowest votes).
- 49.2 The Returning Officer shall sort all the Ballot Documents on which First Preference votes are given for the candidate or candidates excluded under rule 49.1 into two sub-parcels, so that they are grouped as:
  - 49.2.1 Ballot Documents on which a Next Available Preference is given.
  - 49.2.2 Ballot Documents on which no such Preference is given (thereby including Ballot Documents on which Preferences are given only for candidates who are Deemed to be Elected or are excluded).
- 49.3 The Returning Officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of Ballot Documents referred to in rule 49.2 to the candidate for whom the Next Available Preference is given on those Ballot Documents.
- 49.4 The exclusion of a candidate or of two or more candidates together constitutes a further Stage of the Count.
- 49.5 If, subject to rule 50, one or more vacancies still remain to be filled, the Returning Officer shall then sort the transferable Ballot Documents, if any, which had been transferred to any candidate excluded under rule 49.1 into sub-parcels according to their Transfer Value.
- 49.6 The Returning Officer shall transfer those Ballot Documents in the sub-parcel of transferable Ballot Documents with the highest Transfer Value to the Continuing Candidates in accordance with the

Next Available Preferences given on those Ballot Documents (thereby passing over candidates who are Deemed to be Elected or are excluded).

- 49.7 The vote on each transferable Ballot Document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.
- 49.8 Any Ballot Documents on which no Next Available Preferences have been expressed shall be set aside as Non-transferable Votes.
- 49.9 After the Returning Officer has completed the transfer of the Ballot Documents in the sub-parcel of Ballot Documents with the highest Transfer Value, he or she shall proceed to transfer, in the same way, the sub-parcel of Ballot Documents with the next highest value and so on until he or she has dealt with each sub-parcel of a candidate excluded under rule 49.1.
- 49.10 The Returning Officer shall, after each Stage of the Count completed under this rule:
  - 49.10.1 Record:
    - 49.10.1.1 The total value of votes.
    - 49.10.1.2 The total Transfer Value of votes transferred to each candidate.
  - 49.10.2 Add that total to the previous total of votes recorded for each candidate and record the new total.
  - 49.10.3 Record the value of Non-transferable Votes and add that value to the previous Non-transferable Votes total.
  - 49.10.4 Compare:
    - 49.10.4.1 the total number of votes then recorded for each candidate togetherwith the total number of Non-transferable Votes.
    - 49.10.4.2 the recorded total of valid First Preference votes.
- 49.11 If, after a transfer of votes under any provision of this rule, a candidate has a Surplus, that Surplus shall be dealt with in accordance with rules 47.5 to 47.10 and rule 48.
- 49.12 Where the total of the votes of the two or more candidates with the fewest together with any Surpluses not transferred is fewer than the number of votes credited to the candidate with the next lowest number, the Returning Officer shall in one operation exclude such two or more candidates.
- 49.13 If, when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes, which is the fewest:
  - 49.13.1 Regard shall be had to the total number of votes credited to those candidates at the earliest Stage of the Count at which they had an unequal number of votes, and the candidate with the lowest number of votes at that stage shall be excluded.
  - 49.13.2 Where the number of votes credited to those candidates was equal at all stages, the Returning Officer shall decide between the candidates by lot, and the candidate on whom the lot falls shall be excluded.

## 50. **Filling of last vacancies**

- 50.1 Where the number of Continuing Candidates is equal to the number of vacancies remaining unfilled, the Continuing Candidates shall thereupon be Deemed to be Elected.

50.2 Where only one vacancy remains unfilled, and the votes of any one Continuing Candidate are equal to or greater than the total of votes credited to other Continuing Candidates together with any Surplus not transferred, the candidate shall thereupon be Deemed to be Elected.

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

## **51. Order of Election of candidates**

51.1 The order in which candidates whose votes equal or exceed the Quota are Deemed to be Elected shall be the order in which their respective Surpluses were transferred or would have been transferred but for rule 47.10.1.

51.2 A candidate credited with a number of votes equal to and not greater than the Quota shall, for the purposes of this rule, be regarded as having had the smallest Surplus at the Stage of the Count at which he obtained the Quota.

51.3 Where the Surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest Stage of the Count at which they had an unequal number of votes and the Surplus of the candidate who had the greatest number of votes, at that stage, shall be deemed to be the largest.

51.4 Where the number of votes credited to two or more candidates were equal at all stages of the Count, the Returning Officer shall decide between them by lot, and the candidate on whom the lot falls shall be deemed to have been elected first.

## **Part 7. Final Proceedings in Contested and Uncontested Elections**

### **52. Declaration of result for contested Elections**

52.1 In a contested Election when the result of the poll has been ascertained, the Returning Officer is to:

52.1.1 Declare the candidates who are deemed to be elected under Part 6 of these rules as elected.

52.1.2 Give notice of the name of each candidate whom he or she has declared to be elected:

52.1.2.1 Where the Election is held under a proposed constitution, pursuant to powers conferred on the University Hospitals Birmingham NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust.

52.1.2.2 In any other case, to the Chair of the Corporation.

52.1.3 Give public notice of the name of each candidate whom he or she has declared to be elected.

52.2 The Returning Officer is to make available on request:

52.2.1 The number of first preference votes for each candidate, whether elected or not.

52.2.2 Any transfer of votes.

52.2.3 The total number of votes for each candidate at each stage of the count at which such transfer took place.

52.2.4 The order in which the successful candidates were elected.

52.2.5 The number of rejected ballot papers under each of the headings in rule 44.1.

52.2.6 The number of rejected Text Voting Records under each of the headings in rule 44.3.

**53. 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:

53.1 Declare the candidate or candidates remaining validly nominated to be elected;

53.2 Give notice of the name of each candidate whom he or she has declared to be elected to the Chair of the Corporation, and

53.3 Give public notice of the name of each candidate whom he or she has declared to be elected.

**Part 8. Disposal of Documents**

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

54.1 On completion of the counting at a contested Election, the Returning Officer is to seal up the following documents in separate packets:

54.1.1 The counted ballot papers, Internet Voting Records, Telephone Voting Records and Text Voting Records.

54.1.2 The ballot papers and Text Voting Records endorsed with “rejected in part”.

54.1.3 The rejected ballot papers and Text Voting Records.

54.1.4 The statement of rejected ballot papers and the statement of rejected Text Voting Records.

54.2 The Returning Officer is to ensure that complete electronic copies of the Internet Voting Records, Telephone Voting Records and Text Voting Records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

54.3 The Returning Officer must not open the sealed packets of:

54.3.1 The disqualified documents with the list of disqualified documents inside it.

54.3.2 The list of spoilt ballot papers and the list of spoilt text message votes.

54.3.3 The list of lost ballot documents.

54.3.4 The List of Eligible Voters.

54.4 The Returning Officer must not access the complete electronic copies of the Internet Voting Records, Telephone Voting Records and Text Voting Records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

54.5 The Returning Officer must endorse on each packet a description of:

54.5.1 Its contents.

54.5.2 The date of the publication of notice of the Election.

54.5.3 The name of the Corporation to which the Election relates.

54.5.4 The constituency or class within a constituency to which the Election relates.

**55. Delivery of documents**

Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the Returning Officer is to forward them to the Chair of the Corporation.

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

Where:

- 56.1 any voting documents are received by the Returning Officer after the close of the poll; or
- 56.2 any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
- 56.3 any applications for replacement Voting Information are made too late to enable new Voting Information to be issued;

the Returning Officer is to put them in a separate packet, seal it up, and endorse and forward it to the Chair of the Corporation.

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

- 57.1 The Corporation is to retain the documents relating to an Election that are forwarded to the Chair by the Returning Officer under these rules for 1 year and then, unless otherwise directed by the Board of Directors of the Corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an Election that are held by the Corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an Election that are held by the Corporation, and the Corporation is to provide it and may impose a reasonable charge for doing so.

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

58.1 The Corporation may not allow:

58.1.1 the inspection of or the opening of any sealed packet containing:

- 58.1.1.1 any rejected ballot papers, including ballot papers rejected in part;
- 58.1.1.2 any rejected Text Voting Records, including Text Voting Records rejected in part;
- 58.1.1.3 any disqualified documents or the list of disqualified documents;
- 58.1.1.4 any counted ballot papers, Internet Voting Records, Telephone Voting Records or Text Voting Records; or
- 58.1.1.5 the List of Eligible Voters; or

58.1.2 access to or the inspection of the complete electronic copies of the Internet Voting Records, Telephone Voting Records and Text Voting Records created in accordance with rule 26 and held in a device suitable for the purpose of storage;

by any person without the consent of the Board of Directors of the Corporation.

- 58.2 A person may apply to the Board of Directors of the Corporation to inspect any of the documents listed in rule 58.1, and the Board of Directors of the Corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an Election pursuant to Part 11.
- 58.3 The Board of Directors of the Corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
- 58.3.1 persons;
  - 58.3.2 time;
  - 58.3.3 place and mode of inspection;
  - 58.3.4 production or opening;
- and the Corporation must only make the documents available for inspection in accordance with those terms and conditions.
- 58.4 On an application to inspect any of the documents listed in rule 58.1 the Board of Directors of the Corporation must:
- 58.4.1 in giving its consent;
  - 58.4.2 in making the documents available for inspection;
- ensure that the way in which the vote of any particular member has been given shall not be disclosed until it has been established:
- 58.4.3 That his or her vote was given.
  - 58.4.4 That NHS England has declared that the vote was invalid.

## **Part 9. Death of a Candidate During a Contested Election**

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

- 59.1 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:
- 59.1.1 Publish a notice stating that the candidate has died.
  - 59.1.2 Proceed with the counting of the votes as if that candidate had been excluded from the count so that:
    - 59.1.2.1 Ballot documents which only have a first preference recorded for the candidate that has died and no preferences for any other candidates are not to be counted.
    - 59.1.2.2 Ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- 59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1.1.

## **Part 10. Election Expenses and Publicity**

### *Election expenses*

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

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

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

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:

61.1 Personal expenses.

61.2 Travelling expenses and expenses incurred while living away from home.

61.3 Expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses to a limit of £100.

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

62.1 No person may:

62.1.1 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.

62.1.2 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.

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

### *Publicity*

#### **63. Publicity about Election by the Corporation**

63.1 The Corporation may, as it considers necessary:

63.1.1 Compile and distribute such information about the candidates.

63.1.2 Organise and hold such meetings to enable the candidates to speak and respond to questions.

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

63.2.1 Objective, balanced and fair.

63.2.2 Equivalent in size and content for all candidates.

63.2.3 Compiled and distributed in consultation with all of the candidates standing for Election.

63.2.4 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.

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

**64. Information about candidates for inclusion with Voting Information**

- 64.1 The Corporation must compile information about the candidates standing for Election to be distributed by the Returning Officer pursuant to rule 24 of these rules.
- 64.2 The information must consist of:
- 64.2.1 A statement submitted by the candidate of no more than 250 words.
  - 64.2.2 If voting by telephone or text message is a Method of Polling for the Election, the Numerical Voting Code allocated by the Returning Officer to each candidate for the purpose of recording votes using the Telephone Voting Facility or the Text Message Voting Facility ("**Numerical Voting Code**").
  - 64.2.3 A photograph of the candidate.

**65. Meaning of "for the purposes of an Election"**

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

**Part 11. Questioning Elections and the Consequence of Irregularities**

**66. Application to question an Election**

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS England for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the Election has been declared by the Returning Officer.
- 66.3 An application may only be made to NHS England by:
- 66.3.1 A person who voted at the Election or who claimed to have had the right to vote.
  - 66.3.2 A candidate or a person claiming to have had a right to be elected at the Election.
- 66.4 The application must:
- 66.4.1 Describe the alleged breach of the rules or electoral irregularity.
  - 66.4.2 Be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the Election. NHS England will refer the application to the independent Election arbitration panel appointed by NHS England.

- 66.6 If the independent Election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHS England shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the Corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the Election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

## **Part 12. Miscellaneous**

### **67. Secrecy**

- 67.1 The following persons:

67.1.1 the Returning Officer; and

67.1.2 the Returning Officer's staff;

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

67.1.3 The name of any member of the Corporation who has or has not been given Voting Information or who has or has not voted.

67.1.4 The unique identifier on any ballot paper.

67.1.5 The Voter ID Number allocated to any voter.

67.1.6 The candidate(s) for whom any member has voted.

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

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

### **68. Prohibition of disclosure of vote**

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

### **69. Disqualification**

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:

69.1 A member of the Corporation.

69.2 An employee of the Corporation.

69.3 A director of the Corporation.

69.4 Employed by or on behalf of a person who has been nominated for Election.

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

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

70.1 the delivery of the documents in rule 24;

70.2 the return of the ballot papers;

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

## **Annex 6 Circumstances in which an Individual may not become/continue as a Member of the Board of Governors**

### **1. Termination of tenure**

- 1.1 A Governor may resign from that office, at any time during the term of that office, by giving notice in writing to the Trust Secretary.
- 1.2 Public 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.
- 1.3 A Governor may be removed from the Council of Governors for:
  - 1.3.1 Failure to attend two consecutive duly called meetings of the Council of Governors without due reason and notification.
  - 1.3.2 Making a false nomination declaration.
  - 1.3.3 Acting in a manner prejudicial to the good conduct of the Council of Governors.
  - 1.3.4 Acting in a manner prejudicial to the best interests of the Foundation Trust, failing to abide by the Code of Conduct, or bringing the Trust into disrepute.
- 1.4 Removal under clause 1.3 shall be at the recommendation of the Chair 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 more than 50% of those Governors present, either in person or by proxy, at a properly constituted meeting of the Council of Governors.

### **2. Disqualification**

- 2.1 A person may not become or continue as a Governor of the Trust if:
  - 2.1.1 That person is or would be disqualified from membership under clause 17 of the Constitution.
  - 2.1.2 That person has been removed as a Governor under clause 17 of the Constitution.
  - 2.1.3 In the case of a Staff Governor or Public Governor, that person ceases to be a Member of the constituency or class of the constituency they represent.
  - 2.1.4 In the case of a Stakeholder Governor, the organisation that appointed them withdraws its appointment of them.
  - 2.1.5 That person fails to complete and comply with a Disclosure and Barring Service (DBS) disclosure and fails to meet the requirements of the fit and proper persons regulation.
  - 2.1.6 That person has been adjudged bankrupt or their estate has been sequestrated and, in either case, that person has not been discharged.
  - 2.1.7 That person has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it.
  - 2.1.8 That person has, within the preceding 5 years, been convicted in the British Isles of any criminal offence or convicted anywhere of an offence which would, if committed in England and Wales, constitute a criminal 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 them.

- 2.1.9 That person has, within the preceding 2 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, on the grounds of ill-health or is determined to have been unfair by a competent tribunal.
- 2.1.10 That person is a person whose tenure of office as the Chair, or as a member or Director, of an NHS organisation has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest.
- 2.1.11 That person is incapable, by reason of mental disorder, illness or injury, of managing and administering their property and affairs.
- 2.1.12 That person is a registered sex offender pursuant to the Sex Offenders Act 2003.
- 2.1.13 That person is or becomes a member of a scrutiny committee of any of the local authorities specified in Annex 4 of this Constitution concerned with health matters.
- 2.1.14 That person is or becomes a Director of the Trust or is or becomes a governor of another NHS Foundation Trust.
- 2.2 Where a person has been elected or appointed to be a Governor and that person becomes disqualified for appointment under clause 17 of the Constitution, they shall notify the Trust Secretary in writing of such disqualification.
- 2.3 If it comes to the notice of the Trust Secretary, at the time of appointment of a Governor or later, that there may be reasons for concluding that a Governor is so disqualified, the Trust Secretary shall advise that individual of those reasons in summary form and invite representations from the individual within 28 days or such other reasonable period as the Trust Secretary may, in their absolute discretion, determine. Any representations received shall be considered by the Trust Secretary and they shall make a decision on the individual's eligibility or disqualification, as soon as reasonably practicable, and shall give notice in writing of that decision to the individual within 14 days of the decision being made.
- 2.4 If no representations are received within the said period of 28 days or other reasonable period (if any) permitted under the preceding clause of this Constitution, the Trust Secretary shall be entitled, nonetheless, to proceed and make a decision on the individual's eligibility or disqualification, notwithstanding the absence of any such representations from them.
- 2.5 Upon a decision being made under clause 17 of this Constitution that an individual is ineligible for or disqualified from being a Governor, the Trust Secretary shall immediately declare that the person in question is disqualified and notify them, in writing, to that effect.
- 2.6 Upon the issue of any such notification, including failure to complete and comply with a Disclosure and Barring Service (DBS) disclosure and failure to meet the requirements of the fit and proper persons regulation, under clause 17.3 that person's tenure of office, if any, shall be terminated and that person shall cease to act as a Governor.
- 2.7 If a Member of the Council of Governors is disqualified for ineligibility to be a Governor under this Annex 6, all votes which that Governor participated in before notification occurred shall be valid.
- 2.8 The dispute resolution procedure referred to in Annex 8 shall apply in relation to any dispute arising under or in respect of any decisions made pursuant to this Annex 6.

## **Annex 7 Standing Orders for the Practice and Procedure of the Council of Governors**

### **1. Meetings**

- 1.1 The Council of Governors shall meet at least twice in each financial year and during these meetings shall:
  - 1.1.1 Receive and consider the annual accounts, any report of the auditor on them, and the annual report.
  - 1.1.2 Receive and consider the draft strategic, financial and capital plans prepared by the Board of Directors.
- 1.2 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 1.3 The Council of Governors shall adopt Council Standing Orders covering the proceedings and business of its meetings.

### **2. Conflicts of Interest of Governors**

If a Governor has a registrable interest, as set out in clause 22 of the Constitution, that Governor shall disclose the interest to the rest of the Council of Governors as soon as they are aware of it and follow the procedure outlined in clause 22.

### **3. Quorum**

- 3.1 The Council of Governors shall be deemed quorate if:
  - 3.1.1 At least one third of the total membership of the Council of Governors is present either in person or by proxy.
  - 3.1.2 At least three Public Governors, one Staff Governor and one Stakeholder Governor are present in person.
- 3.2 At a quorate meeting of the Council of Governors where the Public 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 Governors present either in person or by proxy.

### **4. Committees and subcommittees**

- 4.1 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 paragraph may appoint a subcommittee.
- 4.2 Any committees or subcommittees established in accordance with this clause may appoint advisers who are not Governors to help them in their tasks.
- 4.3 A committee chaired by the Chair 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 Chair, the Nomination and Remuneration Committee for Non-Executive Directors may be chaired by a Governor at the discretion of the Committee.

## Annex 8 Dispute Resolution Procedure

1. The Council of Governors and the Board of Directors are committed to develop and maintain a constructive and positive relationship. The aim, at all times, is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.
2. In the event of a dispute arising between the Council of Governors and the Board of Directors, the Chair (or the Deputy Chair if the dispute involves the Chair) will endeavour to resolve the dispute informally, through discussions with the Governors and Directors, to the reasonable satisfaction of both parties.
3. Failing resolution under paragraph 2 of this Annex, the Chair (or the Deputy Chair if the dispute involves the Chair) shall appoint and chair a panel comprising the Chief Executive and another Director and two Governors. The Council of Governors shall nominate the two Governors to the panel.
  - 3.1 The panel will review the dispute and make recommendations to the Council of Governors and the Board of Directors.
  - 3.2 The panel may recommend referring the dispute to external mediation, in which case a professional mediator shall be appointed as the panel shall agree.
    - 3.2.1 All negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence on a without prejudice basis.
    - 3.2.2 The costs and expenses of the mediation will be met by the Trust.
4. If the Council of Governors and the Board of Directors reach agreement on the resolution of the dispute, that agreement shall be made in writing and shall be binding upon both parties.
5. If the Council of Governors and the Board of Directors are unsuccessful in resolving the dispute to the reasonable satisfaction of both parties, the Chair (or the Deputy Chair if the dispute involves the Chair) shall refer the dispute to the Board of Directors, whose decision shall be final.
6. Nothing in this procedure shall preclude:
  - 6.1 The Lead Governor, on behalf of the Council of Governors, approaching NHS England if they believe a matter merits a referral.
  - 6.2 Any party from referring any dispute to a court of competent jurisdiction in England or Wales although such actions should be considered a last resort.

## **Annex 9 Standing Orders UHB USE**

# **STANDING ORDERS** (v13.1)

**APPROVED BY BOARD OF DIRECTORS ON  
31<sup>ST</sup> MARCH 2023**

**DUE TO ORGANISATIONAL CHANGE, DOCUMENT WAS  
REREVIEWED BY BOARD ON  
28<sup>TH</sup> SEPTEMBER 2023**

**FULL REVIEW DUE BY 31<sup>ST</sup> MARCH 2026**

## Foreword

University Hospitals Birmingham NHS Foundation Trust (the Trust) has Standing Orders (SOs) for the regulation of its proceedings and business.

Meetings and proceedings of the Trust<sup>1</sup> need to be conducted in accordance with the rules set out in the Trust's Constitution and these SOs. Codes of best practice in Corporate Governance require boards also to adopt Standing Financial Instructions (SFIs) and a 'Corporate Governance Policy' document.

These documents provide a comprehensive regulatory framework for the internal control of the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less than properly.

All executive and non-executive directors and all members of staff should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

## CONTENTS

1. Introduction.....	3
2. Interpretation .....	4
3. The Trust.....	5
4. Meetings of the Board of Directors .....	7
5. Annual General Meeting.....	13
6. Arrangements for the Exercise of Functions by Delegation.....	13
7. Committees and Sub-Committees.....	14
8. Declarations of Interests and Register of Interests.....	15
9. Disability of Directors in Proceedings on Account of Pecuniary Interest .....	16
10. Standards of Business Conduct .....	18
11. Procurement.....	19
12. Disposals.....	21
13. Joint Ventures .....	22
14. In - House Services .....	22
15. Custody of Seal and Sealing of Documents .....	23
16. Signature of Documents.....	24
17. Miscellaneous.....	24

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<sup>1</sup> The Council of Governors has its own Standing Orders, set out in Annex 6 of the Constitution  
Page 2 of 24

## 1. Introduction

### 1.1. Statutory Framework

- 1.1.1. NHS Foundation Trusts are governed by statute, mainly the National Health Service Act 2006<sup>2</sup> (the 2006 Act) and the National Health Service Act 1977 (the 1977 Act and, together with the 2006 Act, the NHS Acts).
- 1.1.2. University Hospitals Birmingham NHS Foundation Trust (the Trust) is a body corporate and its principal purpose is the provision of goods and services for the purposes of the health service in England.
- 1.1.3. Other purposes of the Trust (as required by the 2006 Act) shall be to provide goods and services for the purposes related to the provision of health care in accordance with its statutory duties and the terms of the Regulator's licence.
- 1.1.4. The Trust may also carry on activities other than those mentioned above subject to any restrictions in the Regulator's licence. These activities shall be for the purpose of making additional income or other resources available in order to carry on the Trust's principal purpose better.
- 1.1.5. In accordance with the Constitution of the Trust (8.9.3), the Board of Directors shall adopt Standing Orders for the regulation of its proceedings and business.

### 1.2. Foundation Trust Code of Governance

The NHS Foundation Trust Code of Governance requires that, among other things, boards draw up a schedule of decisions reserved to the Board of Directors, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives and officers of the Trust. The Code also requires the establishment of audit and remuneration committees with formally agreed terms of reference.

### 1.3. Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 6), the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by an executive Director, a committee or sub-committee appointed by virtue of SO 7 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as the Regulator may direct. Delegated Powers are covered in a separate document (Scheme of Delegation).

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<sup>2</sup> The original "Foundation Trust" Act, the Health and Social Care (Community Health and Standards) Act 2003, was incorporated into the 2006 Act. The 2006 Act was amended by, amongst others, the Health and Social Care Act 2012

## 2. Interpretation

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

**'Accounting Officer'** shall be the Officer responsible and accountable to Parliament for public funds entrusted to the Trust. He/she shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust, the Accounting Officer is the Chief Executive;

**'Board of Directors'** means the board of executive and non-executive directors as constituted in accordance with the Trust's Constitution;

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

**'Chair'** means the Chair of the Trust;

**'Chief Executive'** shall mean the Chief Executive of the Trust;

**'Chief Financial Officer'** shall mean the executive director with responsibility for the finances of the Trust;

**'Committee'** shall mean a committee of the Board of Directors;

**'Committee Members'** shall be persons formally appointed by the Trust to sit on or to chair specific committees;

**'Council of Governors'** means the council of governors as constituted in accordance with the Trust's Constitution;

**'Director'** means a member of the Board of Directors;

**'Deputy Chair'** means the non-executive director appointed to take on the Chair's duties if the Chair is absent;

**'Executive Director'** shall have the same meaning as in the Constitution;

**'Foundation Secretary'** means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;

**'Governor'** means a Public Governor, Staff Governor or Stakeholder Governor;

**'Lead Governor'** means a Governor appointed as Lead Governor in accordance with the Constitution;

**'Regulator'** means the body corporate known as NHS England as provided by Section 69(1) of the 2012 Act and Section 1(1) of the 2022 Act;

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

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

**Non-'Executive Director'** shall have the same meaning as in the Constitution;

**'Officer'** means an employee of the Trust;

**'Provider Licence'** means the licence issued by the Regulator containing conditions for providers of NHS services, including NHS Foundation Trusts and other providers;

**'Senior Independent Director' (SID)** means the non-executive director appointed as senior independent director by the Board of Directors;

**'SFIs'** means Standing Financial Instructions;

**'SOs'** means these Standing Orders; and

**'Trust'** means University Hospitals Birmingham NHS Foundation Trust.

### 3. The Trust

3.1. All business shall be conducted in the name of University Hospitals Birmingham NHS Foundation Trust.

3.2. The Trust has the functions conferred on it by the National Health Service Act 2006 (as amended) and by its Provider Licence.

3.3. The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the 'Corporate Governance Policy' and have effect as if incorporated into these Standing Orders.

#### 3.4. Composition of the Board of Directors

3.4.1. The composition of the Board of Directors of the Trust shall be as set out in the Constitution.

3.4.2. The Trust may confer on senior staff the title "Director" as an indication of their corporate responsibility within the Trust but such persons will not be Directors of the Trust for the purposes of the 2006 Act ("statutory directors") unless their title is that of "Executive Director" or "Non-Executive Director". Such additional directors may be invited to attend the meetings of the Board of Directors but will not have the voting rights of statutory directors or any power to bind the Trust.

3.4.3. Associate Non-Executive Directors: The Board may appoint Associate Non-Executive Directors on terms and conditions to be specified by the Board to provide additional advice and expertise to the Board and/or its committees. Associate Non-

Executive Directors will not be Directors of the Trust for the purposes of the 2006 Act and thus will be non-voting appointees without executive or delegated executive functions or any power to bind the Trust. Associate Non-Executive Directors will be accountable to the Board for the responsibilities specified in the terms and conditions relating to their appointment, the term of which shall not exceed three years, but may be renewed by the Board.

3.5. Terms of Office of the Chair and Directors

Regulations governing the period of tenure of office of the Chair and Directors and the termination or disqualification from office of the Chair and Directors are set out in paragraphs 8.6 and 8.7 of the Constitution.

3.6. Appointment of Deputy Chair

3.6.1. For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Non-Executive Directors of the Trust shall appoint a Non-Executive Director from amongst themselves to be Deputy Chair for such a period, not exceeding the remainder of his/her term as Non-Executive Director of the Trust, as they may specify on appointing him/her.

3.6.2. Any Non-Executive Director so elected may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair and the Non-Directors of the Trust may thereupon appoint another Non-Executive Director as Deputy Chair in accordance with the above paragraph of this SO.

3.6.3. The Council of Governors shall appoint a Lead Governor, who shall be a governor, for the purpose of enabling the proceedings of the Council of Governors to be conducted when the Council of Governors is discussing issues related to the Non-Executive Directors or Chair in circumstances when it would be improper for either the Chair or Deputy Chair to act.

3.7. Powers of Deputy Chair

Where the Chair of the Trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chair owing to illness, absence, impropriety or any other cause, references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair of the Board of Directors or with respect to matters pertaining to the Council of Governors in circumstances where it is improper for either the Chair or the Deputy Chair to act, then references to the Chair shall include the Lead Governor as the case may be.

3.8. Joint Directors

Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which a statutory Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of SO 3.1 as one person.

#### **4. Meetings of the Board of Directors**

##### **4.1. Calling Meetings**

- 4.1.1. Meetings of the Board of Directors shall be held at such times and places as the Board may determine.
- 4.1.2. The Chair may call a meeting of the Board at any time. If the Chair refuses to call a meeting of the Board of Directors after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more directors may forthwith call a meeting.
- 4.1.3. The Chair shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:  
  
'That in the interest of public order the meeting adjourn for up to 6 hours to enable the Board to complete business without the presence of the public'.
- 4.1.4. Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board.

##### **4.2. Notice of Meetings**

- 4.2.1. Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to him/her at least five days before the meeting. A copy of the agenda of the meeting shall also be sent to the Council of Governors in accordance with the Constitution.
- 4.2.2. Lack of service of the notice on any Director shall not affect the validity of a meeting.

Page 7 of 24

- 4.2.3. In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice. Failure to service such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.3. Setting the Agenda

- 4.3.1. The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. Such matters may be identified within these Standing Orders or, following subsequent resolution, shall be listed in an Appendix to the Standing Orders.
- 4.3.2. A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear days before the meeting, subject to Standing Order 4.8. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

4.4. Chair of Meeting

- 4.4.1. At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair, if there is one and he/she is present, shall preside. If the Chair and Deputy-Chair are absent, such Non-Executive Director as the Non-Executive Directors present shall choose shall preside.
- 4.4.2. If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such Non-Executive Director as the Non-Executive Directors present shall choose shall preside.

4.5. Notices of Motion

A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert into the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 4.11.

4.6. Withdrawal of Motion or Amendments

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

4.7. Motion to Rescind a Resolution

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director(s) who give(s) it and also the signatures of 3 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however the Chair may do so if he/she considers it appropriate.

4.8. Motions

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

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

4.8.2.1. An amendment to the motion;

4.8.2.2. The adjournment of the discussion or the meeting;

4.8.2.3. That the meeting proceed to the next business; (\*)

4.8.2.4. The appointment of an ad hoc committee to deal with a specific item of business; or

4.8.2.5. That the motion be now put. (\*)

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

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

4.9. Written Resolutions

4.9.1. In urgent situations and with the consent of the Chair, business may be effected by a Director's written resolution to deal with business otherwise required to be conducted at general meetings.

4.9.2. If all Directors entitled to attend and vote at a general meeting of the Board of Directors sign and return a copy of a written resolution then that resolution will be deemed to have been made notwithstanding that the Directors have not gathered in one place.

4.9.3. The effective date of the resolution shall be the date the last copy is signed and, until that date, a Director who has

previously indicated acceptance can withdraw and the resolution shall fail.

- 4.9.4. Once the resolution is passed, a copy certified by the Foundation Secretary shall be recorded in the Minute Book and signed by the Chair.

4.10. Chair's Ruling

Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

4.11. Attendance of meetings

Directors may participate in meetings by telephone, video or by other electronic means where they are available and with the prior agreement of the Chair. Participation by any of these means shall be deemed to constitute presence in person at the meeting.

4.12. Voting

- 4.12.1. It is expected that decisions will be reached by consensus. Save where the Chair is satisfied that a consensus of the meeting has been reached, and no member of the board has requested that the matter be put to a vote, a resolution at a meeting shall be determined by a simple majority of the votes of the directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.12.2. All directors who are present at the meeting will be eligible to cast one vote each. (For the sake of clarity, attendees and observers do not have voting rights.)
- 4.12.3. All resolutions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if the Chair so determines or a majority of the directors present so request.
- 4.12.4. If at least one-third of the directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.12.5. If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.12.6. An absent Director may not vote by proxy. Absence is defined as being absent at the time of the vote but this does not preclude anyone attending by teleconference or other

virtual mechanism from exercising their right to vote if eligible to do so.

- 4.12.7. An officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

#### 4.13. Minutes

- 4.13.1. The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting.
- 4.13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.13.3. The Chair shall sign a final and accurate set of the minutes.
- 4.13.4. Minutes shall be circulated in accordance with directors' wishes.
- 4.13.5. As soon as practicable after holding a meeting, the Board of Directors shall also send a copy of the minutes of the meeting to the Council of Governors in accordance with the Constitution.
- 4.13.6. Where providing a record of a meeting that was open to members of the public, the minutes shall also be made available to the public.

#### 4.14. Joint Directors

Where a post of Executive Director is shared by more than one person:

- 4.14.1. both persons shall be entitled to attend meetings of the Board of Directors;
- 4.14.2. either of those persons shall be eligible to vote in the case of agreement between them;
- 4.14.3. in the case of disagreement between them no vote shall be cast;
- 4.14.4. the presence of either or both of those persons shall count as one person for the purposes of SO 4.18 [Quorum].

#### 4.15. Suspension of Standing Orders

- 4.15.1. Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at

Page 11 of 24

any meeting of the Board of Directors, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

- 4.15.2. A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.15.3. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.15.4. No formal business may be transacted while Standing Orders are suspended.
- 4.15.5. The Audit Committee shall review every decision to suspend Standing Orders.

#### 4.16. Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

- 4.16.1. Relevant notice of a meeting has been served in accordance with SO 4.5; and
- 4.16.2. no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
- 4.16.3. at least two-thirds of the Directors are present; and
- 4.16.4. the variation proposed does not contravene a statutory provision or direction made by the Regulator.

#### 4.17. Record of Attendance

The names of the Directors present at the meeting shall be recorded in the minutes.

#### 4.18. Quorum

- 4.18.1. No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the total number of the Directors is present, including at least one Executive Director and one Non-Executive Director.
- 4.18.2. An officer in attendance for a statutory Director but without formal acting up status shall not count towards the quorum.
- 4.18.3. If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SOs 8 and 9) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The requirement in 4.18.1 for at least one Executive Director will

Page 12 of 24

not apply to part of a meeting where a conflict of interest exists (for example, when the Board considers the recommendations of the Executive Appointments and Remuneration Committee).

## **5. Annual General Meeting**

The Trust shall hold an annual general meeting of all members and Governors in accordance with the provisions of Annex 7 of the Trust's Constitution.

## **6. Arrangements for the Exercise of Functions by Delegation**

The Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 7.2 below or by a director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

### **6.1. Urgent Actions**

Any power which the Board of Directors has reserved to itself may, in circumstances where it is important, in order to promote or protect the Trust's best interests, that the power is exercised as a matter of urgency and without waiting for the next meeting of the Board of Directors, be exercised jointly by the Chair and the Chief Executive. Whenever this occurs, an information report must be presented to the next meeting of the Board of Directors providing full details of how the power has been exercised and explaining why it was considered necessary to proceed under this Standing Order.

### **6.2. Delegation to Committees**

The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted in accordance with SO 7.1. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

### **6.3. Delegation to Officers**

6.3.1. Those functions of the Trust which have not been retained or reserved by the Board of Directors or delegated to an executive director, a committee or sub-committee of the Board of Directors shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which of such functions s/he will perform personally and shall nominate officers to undertake the remaining functions for which s/he will still retain accountability to the Board of Directors.

- 6.3.2. A Scheme of Delegation shall be considered and approved by the Chief Executive, who may periodically approve amendments to the Scheme of Delegation.
- 6.3.3. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of any Executive Director to provide information and advise the Board in accordance with any statutory requirements.

## **7. Committees and Sub-Committees**

### **7.1. Appointment of Committees of the Board of Directors**

- 7.1.1. The Board of Directors may appoint and delegate its powers to committees consisting of its members to assist it in carrying out its function. A committee appointed under this section may appoint a sub-committee.
- 7.1.2. Any committees or sub-committees established in accordance with paragraph 7.1.1 may appoint outside advisers, where appropriate, to help them in their tasks.
- 7.1.3. Committees of the Board of Directors will include, but need not be limited to:
  - 7.1.3.1. an Audit Committee; and
  - 7.1.3.2. an Executive Appointments and Remuneration Committee.

### **7.2. Standing Orders Relating to all Committees/Sub-Committees**

- 7.2.1. These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board of Directors.
- 7.2.2. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such as the relevant Board/Committee shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 7.2.3. The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are not directors, shall be appointed as advisors to a committee, the terms of such appointment shall be determined by the Board of Directors subject to the payment of travelling and other allowances being in accordance with such sum as may be determined by the Board of Directors.

### **7.3. Confidentiality**

- 7.3.1. A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 7.3.2. A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that either matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

## **8. Declarations of Interests and Register of Interests**

### **8.1. Declaration of Interests**

- 8.1.1. Directors and governors must declare interests which are relevant and material to the Trust board. All existing directors and governors should declare such interests. Any board directors and governors appointed subsequently should do so on appointment. In addition, all staff who have delegated responsibility from the Board should also declare those interests that are relevant and material.
- 8.1.2. When making these declarations, all directors, officers, staff and agents of the Trust shall comply with the Trust's Staff Code of Conduct which shall be read and followed as Standing Orders.
- 8.1.3. The declarations of governors shall comply with Annex 4 of the Trust Constitution.
- 8.1.4. SO 8 shall also equally apply to these staff, together with SO 9 (Disability of Directors in proceedings on account of pecuniary interest) and paragraph 4 of Annex 6 of the Trust Constitution (Disability of governors in proceedings on account of pecuniary interest).
- 8.1.5. If directors have any doubt about the relevance of an interest, this should be discussed with the Chair, Foundation Secretary or the Corporate Affairs Team.
- 8.1.6. As soon as possible following the declaration of directors' and governors' interests they should be recorded in the relevant board minutes. Any changes in interests should be declared at the next board meeting following the change occurring.
- 8.1.7. Directors' and governors' directorships of companies likely or possibly seeking to do business with the Trust should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

8.1.8. During the course of a board meeting, if a potential conflict of interest is identified the Chair (or, in the case of the potential conflict of interest relating to the Chair, the Deputy Chair), acting on the advice of the Board, shall decide whether:

8.1.8.1. A conflict exists, and it is substantial enough to act upon;

8.1.8.2. Whether the member needs to step out from the meeting discussion and/or or refrain from voting; and

8.1.8.3. Any other appropriate action.

Actions must be documented in the Minutes for transparency.

8.1.9. There is no requirement for the interests of board director spouses or partners to be declared. However, in accordance with the Staff Code of Conduct, a declaration should be made if there is a close family connection with a named company with which the Trust does business. (Note however that SO 10 which is based on the Membership and Procedure regulations requires that the interest of directors' spouses, if living together, in contracts should be declared).

## 8.2. Register of Interests

8.2.1. In accordance with the Staff Code of Conduct, a Register of Interests will be maintained.

8.2.2. The Register will be available to the public and the Chief Executive 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.

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

9.1. Subject to the following provisions of this Standing Order, if a director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at the meeting of the Trust at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

9.2. The Chair may exclude a director from any meeting of the Trust while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under consideration.

9.3. Any remuneration, compensation or allowances payable to a director by virtue of paragraph 9 of Schedule 2 to the NHS & Civil Contingency Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.

Page 16 of 24

9.4. For the purpose of this Standing Order the director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

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

9.4.2. He/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

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

9.5. A director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

9.5.1. of her/his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body; or

9.5.2. of an interest in any company, body or person with which he/she is connected as mentioned in SO 9 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

9.6. Where a director:

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

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

9.6.3. if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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

- 9.7. This Standing Order applies to a committee or sub-committee of the Board as it applies to the Trust and applies to any member of any such committee or sub-committee (whether or not he/she is also a director of the Trust) as it applies to a director of the Trust.

## **10. Standards of Business Conduct**

### **10.1. Duty to comply with the Staff Code of Conduct**

All directors, officers, staff and agents of the Trust shall comply with the Trust's Staff Code of Conduct which shall be read and followed as Standing Orders.

### **10.2. Interests of Officers in Contracts**

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

10.2.2. An officer must also declare to the Chief Executive any other employment or business or other relationship of her/his, or of a cohabiting partner or other close relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

10.2.3. The Trust requires that interests, employment or relationships so declared by staff to be entered in a register of interests of staff in accordance with the Staff Code of Conduct.

### **10.3. Canvassing of, and Recommendations by, Directors or Governors in Relation to Appointments.**

10.3.1. Canvassing of directors or governors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Orders shall be included in application forms or otherwise be brought to the attention of candidates.

10.3.2. A director or governor of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a director or governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

**10.4. Relatives of Directors, Governors or Officers**

- 10.4.1. Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director, governor or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 10.4.2. The directors, governors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director, governor or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 10.4.3. On appointment, directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other director or governor or holder of any office under the Trust.
- 10.4.4. Where the relationship of an officer or another director or governor to a director or governor of the Trust is disclosed, the Standing Order headed 'Disability of directors and governors in proceedings on account of pecuniary interest' (SO 9) shall apply.

**11. Procurement**

**11.1. Duty to comply with Procurement Policy**

When making all contracts by or on behalf of the Trust, all directors, officers, staff and agents of the Trust shall comply with the Trust's Procurement Policy which shall be read and followed as if it were part of these Standing Orders.

**11.2. Competitive Tenders Procedure**

In accordance with the Procurement Policy, the Chief Financial Officer shall prescribe procedures for competitive tendering and quotations, which will cover the following:

- 11.2.1. Competitive Tenders
- 11.2.2. Competitive Quotations
- 11.2.3. Negotiations
- 11.2.4. Post Tender/Quotations Negotiations
- 11.2.5. Regulations Relating to Works Contracts
- 11.2.6. Regulations Relating to Service and Supplies Contracts

Page 19 of 24

- 11.2.7. Conditions of Contracts
- 11.2.8. Technical Specifications
- 11.2.9. Form of Contract
- 11.2.10. Dispute Resolution
- 11.2.11. Power to Act

All tendering and quotation procedures shall be administered by the Trust procurement department.

### 11.3. Private Finance

When the Board of Directors proposes, or is required, to use finance provided by the private sector the following should apply:

- 11.3.1. The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector;
- 11.3.2. The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to vires; and
- 11.3.3. The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

### 11.4. Contracts

- 11.4.1. The Trust may only enter into contracts within its statutory powers and shall comply with:
  - 11.4.1.1. The Standing Orders;
  - 11.4.1.2. The Trust's SFIs;
  - 11.4.1.3. The Trust Procurement Policy; and
  - 11.4.1.4. Public Contract Regulations (2015) and other statutory provisions.
- 11.4.2. Where appropriate, contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.
- 11.4.3. In all contracts made by the Trust, the Board shall endeavour to obtain best value.

### 11.5. Personnel and Agency or Temporary Staff Contracts

- 11.5.1. The Chief Executive shall nominate officers with delegated authority to enter into contracts for employment of other officers, to authorise regrading of staff, and enter into contracts for the employment of agency staff or temporary staff.

- 11.5.2. The Chief Executive shall delegate to the Chief Financial Officer the power to negotiate for the provision of healthcare services with purchasers of healthcare.

**11.6. Cancellation of Contracts**

Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service, there shall be inserted into every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by her/him or acting on her/his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Bribery Act 2010 and other appropriate legislation.

**11.7. Determination of Termination of Contracts for Failure to Deliver Goods or Materials**

There shall be inserted into every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determinate the contract either wholly or to the extent of such default and purchase other goods or material of similar description to make good a) such default, or b) in the event of the contract being wholly determinated the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

**12. Disposals**

- 12.1. Competitive Tendering or Quotation procedures shall not apply to the disposal of:

- 12.1.1. Any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Financial Officer;
- 12.1.2. Obsolete or condemned articles and stores, which may be disposed of in accordance with the Procurement policy of the Trust;

Page 21 of 24

- 12.1.3. Items to be disposed of with an estimated sale value of less than £10,000, this figure to be reviewed annually;
- 12.1.4. Items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- 12.1.5. Land or buildings concerning which Department of Health and Social Care guidance has been issued but subject to compliance as far as is practicable with such guidance.

### **13. Joint Ventures**

Foundation Trusts are permitted to enter into Joint Venture arrangements with other parties. The Board of Directors should approve all the processes before any commitment is entered into by the Trust. Tendering rules must be complied with to ensure that the Trust has achieved best value and legal advice should be obtained on the contractual issues of the Joint Venture. The Board of Directors shall approve any Joint Venture arrangements.

### **14. In-House Services**

- 14.1. In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
  - 14.1.1. Specification group, comprising nominated officer(s) and specialist(s) agreed by the relevant Executive Director;
  - 14.1.2. In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support; and
  - 14.1.3. Evaluation group, comprising normally a specialist officer, a Procurement officer and a Finance representative. For services having a likely annual expenditure exceeding £1,000,000, a non-executive director should be a member of the evaluation team.
- 14.2. All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house group may, however, participate in the evaluation of tenders.
- 14.3. The evaluation group shall make recommendations to the relevant authorising officer or the Board of Directors, in accordance with the Corporate Governance Policy or the Scheme of Delegation.
- 14.4. The Chief Executive shall nominate an officer to oversee and manage the contract.

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

### **15.1. Custody of Seal**

The Common Seal of the Trust shall be kept by the Foundation Secretary in a secure place.

### **15.2. Deeds**

15.2.1. Deeds (contracts under seal) are required for:

15.2.1.1. All freehold land property transactions;

15.2.1.2. For all leases that extend for three years or more;

15.2.1.3. For any 'gratuitous promise' i.e. a transaction in which there is no consideration for the value being given; or

15.2.2. Other contracts may be executed by seal under consultation with the Deputy Chief Executive.

15.2.3. For a deed the limitation period is 12 years rather than the usual six.

### **15.3. Sealing of Documents**

15.3.1. The Seal of the Trust shall not be fixed to any document unless the sealing has been authorised by a resolution of the Board of Directors, where the Chair and Chief Executive have authorised such sealing as an urgent action between meetings or by the authority of officers of the Trust designated by the Board of Directors. in accordance with SO 15.3.2 below. Unless otherwise determined by the Board of Directors, any instrument to which the seal is affixed shall be signed by a Director and the Foundation Secretary or by two Directors.

15.3.2. Every 12 months, the Board will approve or renew a resolution authorising the Chair, named Directors and the Foundation Secretary to authorise the use of the Seal and/or sign on behalf of the Trust documents that require the use of the Seal.

### **15.4. Register of Sealing**

An entry of every Sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have authorised use of the Seal and those who attested the Seal. A report of all sealing shall be made to the Board at least once each twelve months. (The report shall contain details of the seal number, the description of the document and date of sealing). The register will be kept securely. Entries will be made only when the seal is used.

## **16. Signature of Documents**

- 16.1. Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, the Deputy Chief Executive, the Director of Corporate Affairs, or such other officers as either of the Chief Executive or the Deputy Chief Executive shall nominate, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 16.2. The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors, committee, sub-committee or officer to which the Board of Directors has delegated appropriate authority.

## **17. Miscellaneous**

### **17.1. Standing Orders to be given to Directors and Officers**

It is the duty of the Chief Executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within the Standing Orders, SFIs and the Scheme of Delegation and Powers Reserved to the Board of Directors. Updated copies shall be made available to staff designated by the Chief Executive.

### **17.2. Documents having the standing of Standing Orders**

Standing Financial Instructions and the Scheme of Delegation together with the Trust Procurement Policy [Competitive Tendering and Quotation Procedures] shall have effect as if incorporated into the SOs.

### **17.3. Review of Standing Orders**

The Standing Orders shall be reviewed regularly by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.