

**SALISBURY NHS FOUNDATION TRUST  
CONSTITUTION**

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- Standing Financial Instructions
- Scheme of Delegation

#### **Amendment history – 2013 to 2019**

- The addition of paragraph 21 of the Council's Standing Orders was approved by the Council on 21 July 2014
- Amendment of paragraph 37 of the Constitution was approved by the Board of Directors on 29 February 2016 and by the Council of Governors on 11 April 2016.
- The new Model Election Rules were issued by the former Foundation Trust Network (NHS Providers) in August 2014 and formally adopted by the trust on 29 February/11 April 2016
- Amendment of paragraph 16 of the Council's standing orders was approved by the Council on 16 May 2016.
- April 2018 minor amendments to Board Standing Orders
- Addition of Standing Financial Instructions – approved February 2018
- Amendment of Annex 1 to a) insert the area covered by the West Wiltshire constituency into the South Wiltshire Rural constituency; (b) delete West Wiltshire as a constituency; (c) increase the number of governors for the South Wiltshire Rural Constituency from 5 to 6. – approved November 2019.

## **1. INTERPRETATION AND DEFINITIONS**

- 1.1. Unless otherwise stated, words or expressions used in this constitution have the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2. Words importing the masculine gender only shall include the feminine gender. Words importing the singular shall import the plural and vice versa where it is appropriate that they do so.
- 1.3. The 2006 Act is the National Health Service act 2006 as amended at any time, and the 2012 Act is the Health and Social Care Act 2012 as amended at any time.
- 1.4. Monitor is the corporate body known as NHS Improvement, as provided by section 61 of the 2012 Act.
- 1.5. Constitution means this constitution and its annexes (save that the standing orders set out for convenience in annexes 7 and 8 are not part of the constitution). It comes into effect when it has been approved both by more than half of the members of the Council of Governors voting, and by more than half of the Board of Directors voting.
- 1.6. The Accounting Officer is the person who discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- 1.7. The Code of Conduct is the Code of Conduct as set out in the Standing Orders of the Council of Governors.

## **2. NAME**

- 2.1. The name of the foundation trust is the Salisbury NHS Foundation Trust, and the Trust means that 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.
- 3.2. The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3. The Trust may provide goods and services for any purposes related to—
  - 3.3.1. the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.3.2. the promotion and protection of public health.
- 3.4. The Trust may also carry on activities other than those mentioned in this paragraph for the purpose of making additional income available in order better to carry out its principal purpose.
- 3.5. The Trust may carry out research in connection with the provision of health care, and may make facilities and staff available for the purposes of education, training or research carried on by others.

## **4. POWERS**

- 4.1. The powers of the Trust are set out in the 2006 Act.
- 4.2. The powers of the Trust shall be exercised by the Board of Directors on its behalf.

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

## **5. MEMBERSHIP AND CONSTITUENCIES**

- 5.1. The Trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 5.1.1. A public constituency
  - 5.1.2. A staff constituency

## **6. APPLICATION FOR MEMBERSHIP**

- 6.1. An individual who is eligible to become a member of the Trust shall become a member on his application to the Trust to become a member.

## **7. PUBLIC CONSTITUENCIES**

- 7.1. The public constituencies are the areas specified in Annex 1 and individuals living within them may become members of the Trust.
- 7.2. The individuals who live in the areas so specified are referred to collectively as a Public Constituency.
- 7.3. An individual who ceases to live in the areas specified in Annex 1 shall cease to be a member of the Trust. A member who moves from one such area to another shall continue to be a member but shall have a right to vote in any election of governors in accordance with the new area.
- 7.4. The minimum number of members in each Public Constituency is specified in Annex 1, and if the number of members does not equal or exceed the minimum the area shall not be treated as a Public Constituency for the purpose of electing governors.

## **8. STAFF CONSTITUENCY**

- 8.1. An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
  - 8.1.1. he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2. he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2. Individuals who exercise functions for the purposes of the Trust other than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided that they have exercised these functions continuously for a period of at least 12 months.
- 8.3. Individuals eligible for membership of the Trust under this paragraph are referred to collectively as the Staff Constituency.
- 8.4. The Staff Constituency shall be divided into 6 classes of individuals as set out in Annex 2
- 8.5. The minimum number of members in each class of the Staff Constituency is specified in Annex 2, and if the number of members in a class does not equal or exceed the minimum number that class shall not be treated as a class for the purpose of electing governors.

## **9. AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF**

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

## **10. PATIENTS' CONSTITUENCY**

There is no Patients' Constituency.

## **11. PARAGRAPH 11 IS NOT USED**

## **12. RESTRICTIONS ON MEMBERSHIP**

- 12.1. An individual who is a member of a constituency, or of a class within a constituency, may not while such membership 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 other constituency.
- 12.3. An individual must be at least 16 years old to become a member of the Trust.
- 12.4. An individual may not become or remain a member of the Trust if they have been convicted of any offence involving violent, threatening or abusive behaviour on Trust property or in connection with receiving services from the Trust.
- 12.5. A member of the Trust shall inform the Secretary of the Trust of any circumstances which may affect their entitlement to be a member.
- 12.6. Where the Trust has reason to believe that a person may be disqualified from becoming a member or no longer entitled to be a member, the Secretary may give the member 14 days written notice to show why he should not become or remain a member. On receipt of such response as may be made by the member, or failing any response, the Secretary may, if he considers it appropriate, refuse the application to become a member or remove the member from the register of members. If the person wishes to dispute a decision of the Secretary not to admit him to membership or to remove him, he may refer the issue to the Council of Governors, whose decision by a majority of the governors voting shall be final.
- 12.7. A member may resign by written notice to the Secretary of the Trust.

## **13. ANNUAL MEMBERS' MEETING**

- 13.1. The Trust shall hold an annual meeting of its members, 'the Annual Members Meeting'. It shall be open to the public.

## **14. COUNCIL OF GOVERNORS – COMPOSITION**

- 14.1. The Trust is to have a Council of Governors comprising both elected and appointed 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 class is specified in Annex 4.

- 14.4. No person may stand for election as a governor or be appointed as a governor unless he will be at least 18 years old when he becomes a governor.

#### **15. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS**

- 15.1. Elections for the elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules current at the time of the election.
- 15.2. The Model Election Rules are those as published from time to time by the Department of Health, and form part of this Constitution. The Rules current at the time of the coming into effect of this constitution are set out in Annex 5.
- 15.3. A subsequent variation of the Model Election Rules by the Department of Health does not constitute an amendment of the constitution for the purpose of paragraph 48 hereof (amendment of the constitution).
- 15.4. An election, if contested, shall be by secret ballot.
- 15.5. In the event of an elected governor ceasing to hold office, if there are then more than 15 months of his term of office left after his resignation, ceasing to hold office or death, then an election shall be held for his replacement. The person elected shall hold office for the remainder of the period for which the governor he is replacing was last elected.

#### **16. COUNCIL OF GOVERNORS – TENURE**

- 16.1. Subject to 15.5 and 16.2, an elected governor may hold office for a period of up to 3 years.
- 16.2. An elected governor may stand for re-election but may not stand for re-election when, if re-elected, he might serve for more than 9 years in all.
- 16.3. An appointed governor may hold office for a period of up to 3 years and may then be re-appointed but shall not hold office for more than 9 years in all. He shall cease to hold office if his appointing organisation withdraws its appointment of him by notice in writing to the Trust or if the appointing organisation ceases to exist.
- 16.4. A governor may resign by giving notice in writing to the Chairman of the Trust.
- 16.5. In the event of an appointed governor ceasing to hold office, the body appointing him may make a further appointment.
- 16.6. The limits of 9 years in sub-paragraphs 16.2 and 16.3 shall in the case of an elected governor include any time served as an appointed governor, and in the case of an appointed governor include any time served as an elected governor.

#### **17. COUNCIL OF GOVERNORS – DISQUALIFICATION AND TERMINATION OF OFFICE**

- 17.1. The following may not stand for election 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, his creditors and has not been discharged in respect of it;
  - 17.1.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
  - 17.1.4. The further persons set out in Annex 6.

- 17.2. An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 17.3. If a governor fails to attend 3 consecutive scheduled meetings of the Council of Governors, he shall cease to be a governor unless a voting majority of the other governors are satisfied that:
  - 17.3.1. the failure was in their opinion due to a reasonable cause or causes, and
  - 17.3.2. he will be able to, and will, start attending meetings of the Council within such period as they consider reasonable.
- 17.4. A governor shall cease to be a governor if he is adjudged by not less than 75% of the remaining Council of Governors to have:
  - 17.4.1. acted in a manner inconsistent with the core principles set out in the Trust's authorisation, or with the Constitution, or with the Code of Conduct, in such a way that he should cease to be a governor, or
  - 17.4.2. failed to declare a material interest pursuant to paragraph 22 below and participated in a meeting where that interest was relevant, in such a way that he should cease to be a governor.
- 17.5. Where circumstances arise which give rise to an issue as to a governor's ability to remain a governor (other than those referred to in paragraphs 17.3 and 17.4 above), the governor shall give written notice of the circumstances to the Secretary of the Trust and shall state whether he is resigning.
- 17.6. In the event of a notice being given under sub-paragraph 17.3 which states that the governor is not resigning, or where no such notice is received but circumstances as to a governor's ability to remain a governor (other than those set out in paragraphs 17.3 and 17.4 above) come to the notice of the Trust, the issue shall be considered by the other governors at a meeting and if 75% of the remaining Council of Governors consider that the governor is disqualified from continuing as a governor, he shall cease to be a governor.
- 17.7. A governor shall not exercise any function as a governor (including attending any meeting of the Council as a governor) if he has not signed and delivered to the Secretary a statement in the form required by the Council confirming that he accepts the Code of Conduct.
- 17.8. If a governor who is an employee of the Trust is suspended as an employee as a part of a disciplinary process, the Chairman of the Trust may suspend the governor from acting as a governor while the governor remains suspended as an employee.

**18. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS, EQUIPPING GOVERNORS, LEAD GOVERNOR & DEPUTY LEAD GOVERNOR**

- 18.1. The general duties of the Council of Governors are–
  - 18.1.1. to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
  - 18.1.2. to 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 with the knowledge that they require in their capacity as governors.
- 18.3. The governors shall choose a Lead Governor and a Deputy Lead Governor as set out in the Council's standing orders. The Lead Governor and the Deputy Lead Governor shall have the functions set out in the standing orders.



## **19. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

- 19.1. The Chairman of the Trust, that is the Chairman of the Board of Directors, or in his absence, the Deputy Chairman or, in his absence, the Lead Governor (or Deputy Lead Governor), shall preside at meetings of the Council of Governors.
- 19.2. Where it is inappropriate by reason of the subject matter of a meeting that it should be chaired by the Chairman, the Deputy Chairman may preside unless it is also inappropriate that the Deputy Chairman preside, in which case the Lead Governor or in his absence the Deputy Lead Governor may preside.
- 19.3. Meetings of the Council of Governors shall be open to members of the public, but the public may be excluded from all or any part of the meeting by resolution of the Council for special reasons, namely that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or proceedings.
- 19.4. The Council of Governors shall meet at least 4 times a year, including an annual meeting no later than 31 October when the Council shall receive and consider the annual accounts, any report of the Auditor on them, and the Trust's annual report. The meetings shall be called by the Secretary after consultation with the Lead Governor.
- 19.5. The Lead Governor (or in the case of the Lead Governor's unavailability the Deputy Lead Governor) or at least 10 governors may, by written notice to the Secretary stating the business to be considered, requisition a meeting of the Council, and the Secretary shall arrange for a meeting to be held as soon as practicable after notice has been given to the governors.
- 19.6. For the purpose 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.
- 19.7. The Council of Governors will establish statutory committees to carry out such functions as are required by law and to carry out such functions as the Council specifies.
- 19.8. The Council of Governors will establish working groups to carry out such functions as the Council specifies.

## **20. COUNCIL OF GOVERNORS – STANDING ORDERS**

- 20.1. The Council of Governors shall adopt standing orders for the practice and procedure of the Council. Those in force as at the date of the adoption of this constitution are set out in Annex 7. They may be amended as provided in them.

## **21. COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL**

- 21.1. In this paragraph the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing –
  - 21.1.1. to act in accordance with its constitution, or
  - 21.1.2. to act in accordance with 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 half of the members of the Council of Governors voting approve the referral.

## **22. COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS**

- 22.1. If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as 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.
- 22.2. For the avoidance of doubt a governor has a personal interest where the governor or a person close to the governor has had a personal experience which might be considered to affect the governor's view of the matter in question.

## **23. COUNCIL OF GOVERNORS – TRAVEL EXPENSES**

- 23.1. The members of the Council of Governors are not entitled to remuneration, but the Trust shall on application pay travelling and other expenses incurred by a member for the purpose of his duties at rates to be decided by the Trust.

## **24. PARAGRAPH 24 IS NOT USED**

## **25. BOARD OF DIRECTORS – COMPOSITION**

- 25.1. The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 25.2. The Board of Directors is to comprise:
- 25.2.1. a non-executive Chairman
  - 25.2.2. a maximum of 7 other non-executive directors
  - 25.2.3. a maximum of 6 executive directors (subject to 25.4 below), to include:
    - 25.2.3.1. a Chief Executive who shall be the Accounting officer,
    - 25.2.3.2. a Finance Director.
- 25.3. One of the executive directors must be a qualified medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and one must be a registered nurse or midwife.
- 25.4. The number of non-executive directors including the Chairman must always exceed the number of executive directors. At any meeting where there is parity of non-executive and executive directors the Chairman, or in his absence the Deputy Chairman, shall have a casting vote.
- 25.5. Only a member of a public constituency or the patients' constituency is eligible for appointment as a non-executive Director.

## **26. BOARD OF DIRECTORS – GENERAL DUTY**

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

## **27. PARAGRAPH 27 IS NOT USED**

## **28. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND NON-EXECUTIVE DIRECTORS**

- 28.1. The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other non-executive directors.

28.2. Removal of the Chairman or any other non-executive director shall require the approval of 75% of the members of the Council of Governors.

28.3. The Standing Orders of the Council shall provide for nomination committees to identify appropriate candidates for appointment as Chairman and as non-executive directors.

**29. PARAGRAPH 29 IS NOT USED**

**30. BOARD OF DIRECTORS – DEPUTY CHAIRMAN**

30.1. After consultation with the Council of Governors the Board of Directors shall appoint one of the non-executive directors to be the Deputy Chairman. The Deputy Chairman shall also have the functions previously exercised by the Senior Independent Director, namely in particular to act as a means of communication between the non-executive directors and the governors.

**31. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND EXECUTIVE DIRECTORS**

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

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

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

**32. PARAGRAPH 32 IS NOT USED**

**33. BOARD OF DIRECTORS – DISQUALIFICATION**

33.1. The following may not be appointed or continue as a member of the Board of Directors:

33.1.1. a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;

33.1.2. 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;

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

33.1.4. The persons referred in Annex 9.

**34. BOARD OF DIRECTORS – MEETINGS**

34.1. Before holding a meeting the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.

34.2. As soon as practical after holding a meeting the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

34.3. Meetings of the Board of Directors shall be open to members of the public.

34.4. Members of the public may be excluded from all or any part of a meeting by a resolution of the Board for special reasons, namely that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or proceedings.

### **35. BOARD OF DIRECTORS – STANDING ORDERS**

- 35.1. The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8. They may be amended as provided in them.

### **36. BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS**

- 36.1. The duties that a director of the Trust has by virtue of being a director include in particular–
- 36.1.1. a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or may possibly conflict) with the interests of the Trust;
  - 36.1.2. a duty not to accept a benefit from a third party by reason of being a director or by reason of doing or not doing anything in that capacity.
- 36.2. The duty referred to in sub-paragraph 36.1.1 is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 36.3. The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 36.4. In sub-paragraph 36.1.2 ‘third party’ means a person other than the Trust or a person acting on its behalf.
- 36.5. 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 before the Trust enters into the transaction or arrangement.
- 36.6. If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 36.7. Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 36.8. This paragraph does not require a declaration of an interest of which the director is not aware, or where the director is not aware of the transaction or arrangement in question.
- 36.9. A director need not declare an interest –
- 36.9.1. if it cannot be reasonably regarded as likely to give rise to a conflict of interest;
  - 36.9.2. if, or to the extent that, the directors are already aware of it;
  - 36.9.3. if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered by a meeting of the Board of Directors, or by a committee of the directors appointed for the purpose under the constitution.

### **37. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

- 37.1. The Council of Governors shall decide at a general meeting of the Council the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.
- 37.2. The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms of office, of the Chief Executive and the other executive directors.

- 37.3. The Chairman and other non-executive directors may be appointed for initial terms of up to 4 years, which may be renewed by the Council for a further term of up to 4 years, and may be renewed thereafter for such term, if any, as will bring the total length of service to 8 years. Where a director has served 8 years, his appointment may be renewed for a further year provided that exceptional circumstances exist in relation to the renewal.

### **38. REGISTERS**

- 38.1. a register of members, showing in respect of each member, the constituency to which the member belongs and, where there are classes within it, the class to which he belongs.
- 38.2. a register of members of the Council of Governors;
- 38.3. a register of interests of Governors;
- 38.3.1. a register of directors; and
- 38.3.2. a register of interests of directors.

### **39. PARAGRAPH 39 IS NOT USED**

### **40. REGISTERS – INSPECTION AND COPIES**

- 40.1. The Trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set out in the next sub-paragraph or as otherwise prescribed by regulations.
- 40.2. The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
- 40.2.1. any member of the Patients' Constituency; or
- 40.2.2. any other member of the Trust, if the member so requests.
- 40.3. So far as the registers are required to be made available:
- 40.3.1. They are to be available for inspection free of charge at all reasonable times; and
- 40.3.2. A person who requests a copy or extract from the registers is to be provided with a copy or extract.
- 40.4. 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.

### **41. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

- 41.1. The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 41.1.1. A copy of the current constitution;
- 41.1.2. A copy of the latest annual accounts and of any report of the auditor on them; and
- 41.1.3. A copy of the latest annual report.

- 41.2. The Trust shall also make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 41.2.1. A copy of any order made under section 65D (appointment of special trust 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;
  - 41.2.2. A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 41.2.3. A copy of any information published under section 65D (appointment of special trust administrator) of the 2006 Act;
  - 41.2.4. A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 41.2.5. A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 41.2.6. A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 41.2.7. A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 41.2.8. A copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
  - 41.2.9. 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;
  - 41.2.10. A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 41.3. Any person who requests a copy or extract from any of the above documents is to be provided with a copy.
- 41.4. If the person requesting an extract or copy is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## **42. AUDITOR**

- 42.1. The Trust shall have an auditor.
- 42.2. The Council of Governors shall appoint or remove the auditor at a general meeting of the Council.
- 42.3. The auditor must be qualified to act as auditor in accordance with paragraph 23 of schedule 7 to the 2006 Act.
- 42.4. The auditor shall comply with schedule 10 of the 2006 Act and shall have the rights and powers there set out.
- 42.5. The Trust shall provide the auditor with every facility and all information which he may reasonably require for the purpose of his functions.

## **43. AUDIT COMMITTEE**

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

#### **44. ACCOUNTS**

- 44.1. The Trust must keep proper accounts in such form as Monitor may with the approval of the Treasury direct and proper records in relation to those accounts.
- 44.2. Monitor may, with the approval of the Secretary of State for Health, give directions to the Trust as to the content and form of its accounts.
- 44.3. The accounts are to be audited by the Trust's auditor.
- 44.4. The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 44.4.1. the accounts;
  - 44.4.2. the records relating to them; and
  - 44.4.3. any report of the Auditor on them.
- 44.5. The Trust (through its Chief Executive and accounting officer) is to prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State for Health direct.
- 44.6. Monitor may with the approval of the Secretary of State for Health direct the Trust:
  - 44.6.1. to prepare accounts in respect of such period or periods as may be specified in the direction; and/or
  - 44.6.2. that any accounts prepared by it by virtue of sub-paragraph 44.6.1 above are to be audited in accordance with such requirements as may be specified in the direction.
- 44.7. In preparing its annual accounts or in preparing any accounts by virtue of sub-paragraph 44.6.1 above, the Trust is to comply with any directions given by Monitor with the approval of the Secretary of State for Health as to:
  - 44.7.1. the methods and principles according to which the annual accounts are to be prepared; and/or
  - 44.7.2. the content and form of the annual accounts
- 44.8. The Trust must –
  - 44.8.1. lay a copy of the annual accounts, and any report of the Auditor on them, before Parliament; and
  - 44.8.2. send copies of the annual accounts, and any report of the Auditor on them to Monitor within such a period as Monitor may direct
- 44.9. The Trust must send a copy of any accounts prepared by virtue of paragraph 44.6 above and a copy of any report of the Auditor to Monitor within such a period as Monitor may direct.
- 44.10. The functions of the Trust referred to in this paragraph 44 shall be delegated to the accounting officer.

#### **45. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

- 45.1. The Trust shall prepare an annual report and send it to Monitor.



- 45.2. The annual report must give:
- 45.2.1. information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency and of the patients' constituency is representative of those eligible for membership.
  - 45.2.2. information on any occasions in the period to which the report relates on which the council of governors exercised its power to require one or more of the directors to attend a meeting as provided by paragraph 19.5 hereof.
  - 45.2.3. information on the corporation's policy on pay and on the work of the committee established under paragraph 37(2) hereof and such other procedures as the corporation has on pay.
  - 45.2.4. information on the remuneration of the directors and on the expenses of the governors and the directors
  - 45.2.5. any other information that Monitor requires
- 45.3. The Trust shall give information as to its forward planning in respect of each financial year to Monitor
- 45.4. The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 45.5. In preparing the document, the directors shall have regard to the views of the governors, and the directors shall provide the governors with information appropriate for them to be able to form their views.
- 45.6. Each forward plan must include information about:
- 45.6.1. the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 45.6.2. the income it expects to receive from doing so.
- 45.7. Where a forward plan contains a proposal that the trust carry on an activity of the kind mentioned in sub-paragraph 45.6.1, the Council of Governors must:
- 45.7.1. 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, and
  - 45.7.2. notify the directors of the Trust of its determination.
- 45.8. If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England, the Trust may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

#### **46. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

- 46.1. The following documents are to be presented to the Council of Governors at a general meeting of the Council:
- 46.1.1. the annual accounts
  - 46.1.2. any report of the auditor on them
  - 46.1.3. the annual report.
- 46.2. 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.
- 46.3. The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 with the Annual Members' Meeting.



#### **47. INSTRUMENTS**

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

#### **48. AMENDMENT OF THE CONSTITUTION**

- 48.1. The Trust may make amendments of its constitution only if –
  - 48.1.1. more than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 48.1.2. more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 48.2. Amendments made under paragraph 48.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result, not accord with Schedule 7 of the 2006 Act.
- 48.3. Where amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
  - 48.3.1. at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 48.3.2. the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 48.4. If more than half of the members voting approve the amendment, the amendment continues to have effect. Otherwise it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 48.5. Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

#### **49. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

- 49.1. The Trust may only apply for a merger, acquisition, separation or dissolution, as referred to in sections 56,56A, 56B, and 57A of the 2006 Act with the approval of more than half of the members of the Council of Governors.
- 49.2. The Trust may only enter a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

- 49.3. A 'significant transaction' is a transaction which, if entered into by the Trust:
- 49.3.1. would increase or reduce the turn-over of the Trust (in a financial year relative to the previous financial year) by £20 million or by 10%, whichever is the greatest;
  - 49.3.2. would involve a receipt of or capital expenditure of £10 million or more; in the case of expenditure, this is after the deduction of any grant or gift which specifically relates to the expenditure in question;
  - 49.3.3. would involve a service contract, asset rental or lease running for period of 3 years or more with a planned income or cost over its duration of £10 million or more.
  - 49.3.4. would be likely to put at risk the Trust's ability to provide its services as a whole, or a significant part of its services, to the appropriate regulatory standard;
  - 49.3.5. would be likely to put at risk the Trust's ability to maintain the minimum required financial risk rating/ continuity of service risk rating
- 49.4. Not used
- 49.4.1. Where it might reasonably be considered that a transaction falls within paragraph 49.3 the Board shall inform the Council of the transaction at the earliest opportunity.
  - 49.4.2. The Board shall in any event inform the Council of a transaction which it is considering and which may involve a sum which is greater than 2% of the Trust's income in the previous year, but the Board need not so inform the Council of any such transaction if the transaction has been clearly identified in the Annual Estimate, the Capital Programme or the Annual Plan.
- 49.5. In deciding whether to approve a proposed significant transaction the Council will:
- 49.5.1. act in accordance with its judgment of the best interests of the Trust; and
  - 49.5.2. have regard to the risks the transaction might entail and the adequacy of steps proposed to mitigate those risks, and to the risks which not entering into the transaction might entail.
- 49.6. If the Council votes not to approve a significant transaction, the reasons advanced in the course of the Council's discussion of the transaction for and against approval shall be recorded in the minutes.
- 49.7. The Board shall inform the Council of transactions not featuring in the annual estimates, capital programme or annual plan for the year which the Board is considering which involve a sum which is greater than 2% of the Trust's income or capital in the previous year.

## **50. INDEMNITY**

- 50.1. Members of the Council of Governors and of the Board of Directors who act honestly and in good faith will be indemnified by the Trust against any civil liability which is incurred in the execution or purported execution of their functions relating to the Trust, save where they have acted recklessly. The Trust shall take out insurance against liability under this indemnity.

## **51. DISPUTE RESOLUTION**

- 51.1. In the event of a dispute arising between the Board of Directors and the Council, the Chairman shall take the advice of the Secretary and such other advice as he sees fit, and he shall confer with the Vice-Chairman and the Lead Governor and shall seek to resolve the dispute.
- 51.2. If the Chairman is unable to do so, he shall appoint a committee consisting of an equal number of directors and governors to consider the matter and to make recommendations to the Board and Council with a view to resolving the dispute.

51.3. If the dispute is not resolved, the Chairman may refer the dispute to an external mediator appointed by the Centre for Dispute Resolution, or by such other organisation as he considers appropriate.

## ANNEX 1 - THE PUBLIC CONSTITUENCIES

### Public Constituency (paragraph 7)

Class/Constituency	Number of Governors	Minimum numbers of members
North Dorset	2	50
Kennet	1	50
New Forest	1	50
Salisbury City	3	50
South Wiltshire Rural	6	50
East Dorset	1	50
Rest of England	1	50
<b>Total</b>	<b>15</b>	

Class/Constituency	Area
North Dorset	<p>Part of the area covered by North Dorset District Council, comprising the following electoral wards:</p> <ul style="list-style-type: none"> <li>▪ Blandford Damory Down</li> <li>▪ Blandford Hilltop</li> <li>▪ Blandford Old Town</li> <li>▪ Blandford St Leonards</li> <li>▪ Blandford Station</li> <li>▪ Bourton &amp; District</li> <li>▪ Cranborne Chase</li> <li>▪ Gillingham Lodbourne</li> <li>▪ Gillingham Town</li> <li>▪ Hillforts</li> <li>▪ Milton</li> <li>▪ Motcombe</li> <li>▪ Marnhull</li> <li>▪ Portman</li> <li>▪ Riversdale</li> <li>▪ The Beacon</li> <li>▪ Shaftesbury Underhill</li> <li>▪ Shaftesbury Central</li> <li>▪ Shaftesbury Grosvenor</li> <li>▪ Shaftesbury Christy's</li> <li>▪ Stour Valley</li> <li>▪ The Stours</li> <li>▪ The Lower Tarrants</li> <li>▪ Wyke</li> </ul>
Kennet	<p>The area formerly covered by Kennet District Council comprising the following electoral divisions:</p> <ul style="list-style-type: none"> <li>• Bromham, Rowde &amp; Potterne</li> <li>• Devizes East</li> <li>• Devizes North</li> <li>• Devizes &amp; Roundway South</li> <li>• Ludgershall &amp; Perham Down</li> </ul>

	<ul style="list-style-type: none"> <li>• Pewsey</li> <li>• Pewsey Vale</li> <li>• Roundway</li> <li>• Summerham &amp; Seend</li> <li>• The Lavingtons &amp; Erlestoke</li> <li>• The Collingbournes &amp; Netheravon</li> <li>• Tidworth</li> <li>• Urchfont &amp; The Cannings</li> </ul>
New Forest	<p>The following wards within New Forest District Council:</p> <ul style="list-style-type: none"> <li>▪ Downlands &amp; Forest</li> <li>▪ Fordingbridge</li> <li>▪ Forest North West</li> <li>▪ Ringwood North</li> <li>▪ Ringwood South</li> <li>▪ Ringwood East &amp; Sopley</li> </ul>
Salisbury City	<p>The following electoral divisions formerly covered by Salisbury District Council:</p> <ul style="list-style-type: none"> <li>• Bemerton</li> <li>• Fisherton &amp; Bemerton Village</li> <li>• Harnham</li> <li>• St. Paul's</li> <li>• St. Francis &amp; Stratford</li> <li>• St. Marks &amp; Bishopdown</li> <li>• St. Edmund's &amp; Milford</li> <li>• St. Martin's &amp; Cathedral</li> </ul>
South Wiltshire Rural	<p>The following electoral divisions</p> <ul style="list-style-type: none"> <li>• Alderbury &amp; Whiteparish</li> <li>• Amesbury West</li> <li>• Amesbury East</li> <li>• Bourne &amp; Woodford Valley</li> <li>• Bulford, Allington &amp; Figheldean</li> <li>• Durrington &amp; Larkhill</li> <li>• Downton &amp; Ebbel Valley</li> <li>• Ethandune</li> <li>• Fovant &amp; Chalke Valley</li> <li>• Laverstock, Ford &amp; Old Sarum</li> <li>• Mere</li> <li>• Nadder &amp; East Knoyle</li> <li>• Redlynch &amp; Landford</li> <li>• Till &amp; Wylke Valley</li> <li>• Tisbury</li> <li>• Warminster Copheap &amp; Wylke</li> <li>• Warminster East</li> <li>• Warminster West</li> <li>• Warminster Broadway</li> <li>• Warminster Without</li> <li>• Westbury West</li> <li>• Westbury North</li> </ul>

	<ul style="list-style-type: none"> <li>• Westbury East</li> <li>• Wilton &amp; Lower Wylve Valley</li> <li>• Winterslow</li> </ul>
East Dorset	<p>The following electoral wards within the area covered by East Dorset District Council:</p> <ul style="list-style-type: none"> <li>• Alderholt</li> <li>• Crane</li> <li>• Handley Vale</li> <li>• Holt</li> <li>• Newton</li> <li>• St. Leonards &amp; St. Ives East</li> <li>• St. Leonards &amp; St. Ives West</li> <li>• Three Legged [Cross] &amp; Potterne</li> <li>• Verwood Dewlands</li> <li>• Verwood Stephen's Castle</li> <li>• West Moors</li> </ul>
Rest of England	All other areas of England not covered above

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

(See paragraph 8).

The Staff Constituency is divided into 6 classes as set out below and the classes shall contain the groups set out by each.

### **STAFF CLASSES**

### **SUB GROUPS WITHIN EACH CLASS**

#### **Registered Medical and Dental Practitioners**

#### **Nurses and Midwives**

All Nurses and Nursing Auxiliaries  
Health Care Support Workers (Nursing)

#### **Scientific, Therapeutic and Technical Staff**

Occupational Therapists and Helpers  
Orthoptists  
Physiotherapists and Helpers  
Art/Music/Drama Therapists  
Speech and Language Therapists and Helpers  
Psychologists and Psychology Technicians  
Psychotherapists  
Medical Physicists and Technicians  
Pharmacists and Pharmacy Technicians  
Dental Technicians  
Operating Department Practitioners  
Social Workers  
Chaplains  
Clinical Scientists  
Biomedical Scientists and Technical Staff  
Geneticists and Technicians  
Audiology Staff  
Cardiographers and Support Staff

#### **Hotel and Property Staff**

Ancillary Staff  
Works and Maintenance Staff  
Ambulance Staff

#### **Clerical, Administrative and Managerial Staff**

#### **Voluntary Staff**

1. The minimum number of members of each class shall be 10.
2. The Secretary to the Trust shall assign persons to the classes set out above in accordance with the groups set out by each. In case of any difficulty the Secretary shall have discretion to allocate the person to the class which is in his opinion the most appropriate.
3. The Secretary shall maintain a register of volunteer schemes designated for the purposes of membership of the Trust.
4. A volunteer is a person who carries out functions on behalf of the Trust on a voluntary basis under a scheme on the register referred to in paragraph 4 above.
5. Where a person is eligible to be included both in the volunteers class and another class, the Secretary shall assign the person to that other class.

### **ANNEX 3 – THE PATIENTS’ CONSTITUENCY**

The Trust has no Patients’ Constituency

### **ANNEX 4 - COMPOSITION OF COUNCIL OF GOVERNORS**

See paragraph 14.

1. There shall be 15 public governors as set out in Annex 1.
2. There shall be 6 staff governors, one to be elected by the members of each class set out in Annex 2 from the members of the class in question.
3. Wiltshire Council may appoint one governor by notice in writing signed by the senior executive of the Council.
4. There shall be one governor appointed by Wessex Community Action.
5. The following Clinical Commissioning Groups may each appoint one governor.
  - a. Wiltshire
  - b. Dorset
  - c. West Hampshire
6. There shall be one governor appointed by the Commander of 1 Artillery Brigade or the Officer holding a position nearest to that position to represent local army interests

### **ANNEX 5 - THE MODEL ELECTION RULES**

[See paragraph 15]

#### **PART 1: INTERPRETATION**

1. Interpretation

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

2. Timetable
3. Computation of time

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



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

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

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

#### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

##### *Action to be taken before the poll*

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

##### *The poll*

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

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

36. Receipt of voting documents

- 37. Validity of votes
- 38. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

#### **PART 6: COUNTING THE VOTES**

- 41- [NOT USED]
- 42. Arrangements for counting of the votes
- 43. The count
- FPP44. Rejected ballot papers and rejected text voting records  
[45-50 NOT USED]
- FPP51. Equality of votes

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

- FPP52. 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**

- FPP59. 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

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**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

**4. Returning Officer**

4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

**5. Staff**

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

**6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

**7. Duty of co-operation**

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

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

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

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

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

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

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

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

### **11. Declaration of interests**

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



## **12. Declaration of eligibility**

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

## **13. Signature of candidate**

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

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

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

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

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

**15. Publication of statement of candidates**

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

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

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

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

**17. Withdrawal of candidates**

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

**18. Method of election**

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

18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be

elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

## PART 5: CONTESTED ELECTIONS

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

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

### **20. The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - 3.
  - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

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

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

### *Action to be taken before the poll*

## **22. List of eligible voters**

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

- 22.2 The list is to include, for each member:
- (a) a postal address; and,
  - (b) the member's e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

### **23. Notice of poll**

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

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

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

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

("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

## **26. E-voting systems**

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

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the

purpose of voting by the use of a touch-tone telephone (in these rules referred to as “the telephone voting facility”).

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the text message voting facility”).

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

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

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

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected



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

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

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

*The poll*

**27. Eligibility to vote**

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

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

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

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

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

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter’s identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

**30. Lost voting information**

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

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter's identity,
- (b) has no reason to doubt that the voter did not receive the original voting information,
- (c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

- (a) the name of the voter
- (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
- (c) the voter ID number of the voter.

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

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

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

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

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

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

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

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

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

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

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

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

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

**36. Receipt of voting documents**

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

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

**37. Validity of votes**

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

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

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

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

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

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

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

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

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

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

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**Notes**

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

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

**39. De-duplication of votes**

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

- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

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

**40. Sealing of packets**

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,

- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

**41-[NOT USED]**

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

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

**43. The count**

- 43.1 The returning officer is to:
- (a) count and record the number of:
    - (iii) ballot papers that have been returned; and
    - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

**PP44. Rejected ballot papers and rejected text voting records**

- FPP44.1 Any ballot paper:
- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
  - (b) on which votes are given for more candidates than the voter is entitled to vote,
  - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (d) which is unmarked or rejected because of uncertainty,



shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

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

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

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

is not to be rejected for such reason (either wholly or in respect of that vote) if

an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

FPP44.9 The returning officer is to:

- (a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

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

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

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

**[PARAGRAPHS 45-50 NOT USED]**

**FPP51. Equality of votes**

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

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

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

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

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

FPP52.2 The returning officer is to make:

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

available on request.

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

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

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

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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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

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

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

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

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

58.4 On an application to inspect any of the documents listed in rule 58.1 the

board of directors of the corporation must:

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

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

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

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

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

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
  - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
  - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
- FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

### *Publicity*

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

63.1 The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates



- standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

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

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

64.2 The information must consist of:

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

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

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

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

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

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**66. Application to question an election**

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor 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 Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as 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. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

## **ANNEX 6 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS - DISQUALIFICATION**

(See paragraph 17)

In addition to the cases set out in paragraph 17, the following may not stand for election or continue as a governor:

1. A person who is the subject of a sexual offences order under the Sexual Offences Act 2003 or any subsequent legislation;
2. A person who is disqualified from being a company director under the laws of England and/or Wales;
3. A person who is a director of the Trust, or a governor, director, Chairman or chief executive of another NHS Foundation Trust or NHS Trust;
4. A person who is incapable by reason of mental disorder or illness or injury of managing his property and affairs;
5. A person who occupies the same household as an existing governor or a director of the Trust;
6. In the case of a public or patient governor, a person who has been employed by the Trust within 12 months prior to election, or becomes employed by the Trust
7. A person who has been removed from any list prepared under Part II of the National Health Service Act 1977, or has been removed from a list maintained pursuant to regulations made under section 28X of that Act, and has not been reinstated.

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

(See paragraph 20)

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## **1. INTRODUCTION**

- 1.1. Paragraph 14 of Schedule 7 to the National Health Service Act 2006 provides that the constitution of an NHS foundation trust must make provision for the practice and procedure of the Council of Governors. The Council made such provision in its standing orders adopted in 2006. Paragraph 3.13 of those orders provided that they might be amended as there set out. At a meeting of the Council on 25 February 2013 in accordance with paragraph 3.13, these standing orders as set out herein were adopted in substitution of those orders.

## **2. INTERPRETATION**

- 2.1. The expressions and terms used herein shall have the same meaning as in the Trust's Constitution.
- 2.2. 'The Constitution' means the constitution of the Trust.
- 2.3. 'The Council' means the Council of Governors.
- 2.4. A 'motion' means a formal proposition to be considered and voted on at a meeting of the Council.
- 2.5. An 'item for the agenda' means a matter to be considered at a meeting of the Council.
- 2.6. 'The Secretary' means the person appointed as the Secretary to the Trust.

## **3. MEETINGS OF THE COUNCIL**

- 3.1. Paragraph 19.3 of the Constitution provides that meetings of the Council shall be open to members of the public but that the public may be excluded as there set out.
- 3.2. The dates, times and venues of meetings of the Council shall be arranged by the Secretary in consultation with the Chairman and the Lead Governor. There shall be at least 4 meetings in any year, in respect of which the dates and times shall be arranged, and notice given to the governors, before December of the previous year. At least 4 days clear notice of other meetings must be given.
- 3.3. If the Lead Governor (or in case of the Lead Governor's unavailability the Deputy Lead Governor), or at least 10 governors, give notice to the Secretary requiring a meeting stating the proposed agenda, the Secretary shall arrange a meeting as soon as practicable.
- 3.4. Notice of meetings of the Council shall be given to the governors by email (or post where a governor so requests).
- 3.5. Notice of meetings of the Council will be posted on the Trust's website, as soon as practical after notice has been given to the governors.

## **4. AGENDA ITEMS AND MOTIONS**

- 4.1. Save as provided in 3.3 above and 4.2 below, the agenda for meetings shall be arranged by the Secretary in consultation with the Chairman and the Lead Governor.
- 4.2. A governor wishing to have an item included in the agenda for a meeting of the Council or to propose a motion at a meeting shall give notice of the item or motion to the Secretary 10 clear days before the meeting unless the circumstances relating to the item make necessary a shorter period. In the case of a motion the notice shall name a governor who is prepared to second

the motion, and shall otherwise be treated as invalid. The Secretary shall include in the agenda for the meeting all items and motions which have been duly notified. The Chairman of the meeting may, at his discretion, permit an item to be raised or a motion proposed where due notice has not been given.

- 4.3. A motion may be withdrawn at any time by the proposer with the agreement of the seconder and the consent of the chairman of the meeting.
- 4.4. No motion shall be proposed to amend or rescind any resolution, or the substance of any resolution, passed by the Council within the preceding 6 months unless it is signed by the proposer and seconder and by 4 other governors. Once such motion has been disposed of no motion to a similar effect may be proposed for 6 months without the consent of the Chairman of the Trust.
- 4.5. The proposer of a motion shall propose it and shall have a right to speak before a vote is taken.
- 4.6. During the consideration of a motion a governor may move:
  - 4.6.1. an amendment to the motion;
  - 4.6.2. that the consideration of motion be adjourned to a subsequent meeting;
  - 4.6.3. that the motion be summarily dismissed and the meeting to proceed to the next business;
  - 4.6.4. that the motion be voted on immediately.
- 4.7. No amendment to a motion may be submitted if its effect would be to negate the substance of the motion as determined by the chairman of the meeting.
- 4.8 Save where the chairman of a meeting permits otherwise, the agenda and any papers for the meeting shall be provided to the governors not less than 5 working days before the meeting.

## **5. QUORUM**

- 5.1. No business may be transacted at a meeting of the Council of Governors unless more than half of the governors are present.

## **6. RELEVANCE AND CONCISION**

- 6.1. Statements made by governors at a meeting of the Council must be concise and relevant to the matter under discussion at the time.
- 6.2. The chairman of the meeting shall have power to rule on the relevance and regularity any statement, and to determine any issue arising as to the conduct of the meeting.
- 6.3. In any matter relating to the interpretation of the Constitution and Standing Orders the chairman of the meeting shall consider the advice of the Secretary.

## **7. VOTING**

- 7.1. Save where it is otherwise provided by the constitution or these orders any matter on which a vote is taken shall be determined by a majority vote of the governors present and voting.
- 7.2. In the case of an equality of votes the person presiding shall have a vote to decide the matter (if that person is a governor, a second vote).
- 7.3. At the discretion of the chairman of the meeting, the vote may be taken orally, or by show of hands. If a majority of governors present so request, it shall be by secret paper ballot.



- 7.4. Save in the case of a secret paper ballot, if at least one third of the governors present request, the voting for and against of each governor shall be minuted.
- 7.5. If a governor requests, his vote shall be minuted.
- 7.6. No one may vote unless physically present: there shall be no votes by proxy.

## **8. MINUTES**

- 8.1. Minutes of meetings shall be drawn up and circulated in draft as soon as practical after the meeting. They shall be submitted for approval at the next meeting and signed by the chairman of that meeting.
- 8.2. The minutes shall record the names of those attending.

## **9. SUSPENSION OF STANDING ORDERS**

- 9.1. Except where to do so would contravene any statutory provision, the terms of the Trust's authorisation or the Constitution, the chairman of any meeting of the Council may suspend any one or more of the Standing Orders.
- 9.2. A decision to suspend standing orders shall be recorded in the minutes.
- 9.3. A separate record of matters while the orders were suspended shall be made, and shall be provided to the governors with the minutes.

## **10. COMMITTEES**

- 10.1. The Council may set up committees (with sub-committees) or working groups to consider aspects of the Council's business. They shall report to the Council.
- 10.2. The powers of the Council may be delegated to a committee for a specific purpose if the law and the Constitution permit, but otherwise the power of any committee is limited to making recommendations to the Council.
- 10.3. The powers of the Council shall be exercised in general meeting.
- 10.4. The Council shall approve the membership of committees, sub-committees and working groups, and may appoint persons with specialised knowledge or expertise useful to the committee on such terms as the Council may determine.
- 10.5. Meetings of the Council's committees, sub-committees and working groups shall be private. Their proceedings shall remain confidential until reported in public to a meeting of the Council.

## **11. NOMINATION COMMITTEES**

- 11.1. Paragraph 28 of the Constitution provides for the appointment and removal of the Chairman of the Trust and the other non-executive directors by the Council. Paragraph 28.3 provides that the Council's standing orders shall provide for there to be a Nominations Committee or Committees to put forward persons for the Council to consider for appointment.
- 11.2. For the appointment of the Chairman, the Nominations Committee shall consist of:
  - 2 public governors, one of whom will chair the Committee
  - 1 staff governor
  - 1 appointed governor
  - 1 non-executive director

- 11.3. For the appointment of non-executive directors, the Nominations Committee shall consist of:
- the Chairman (or, at the Chairman's request the Deputy Chairman)
  - 2 public governors
  - 1 staff governor
  - 1 appointed governor
  - the Chief Executive.
- 11.4. When the formation of a Nomination committee is required the Secretary shall:
- 11.4.1. ask governors to put themselves forward as members within 10 days of his request, and if more governors put themselves forward than are places for particular categories of governor shall conduct an election or elections for each category with each governor having one vote in respect of each governor place on the committee;
- 11.4.2. In the case of a nomination for Chairman invite the non-executive directors to appoint a non-executive director to serve on the committee.
- 11.5. If a majority of the governors present at a meeting of the Council of Governors decide that the circumstances of a particular situation require the membership of a Nominations Committee to differ from that set out in paragraph 2 or 3 above, the membership of that Committee shall be as determined by that majority.

## **12. DECLARATIONS AND REGISTER OF INTERESTS**

- 12.1. Paragraph 22 of the Constitution provides for declarations of interest. It states:
- 22.1 *If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as 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.*
- 22.2 *For the avoidance of doubt a governor has a personal interest where the governor or a person close to the governor has had a personal experience which might be considered to affect the governor's view of the matter in question.*
- 12.2. Interests should be declared to the Secretary within 28 days of appointment, or, if arising later, within 7 days of the governor becoming aware of the interest.
- 12.3. If a governor only becomes aware of an interest at a meeting of the Council (or at a meeting of any committee, sub-committee or working group) he must declare it immediately.
- 12.4. Subject to the exceptions below, material interests include:
- 12.4.1. any directorship of a company;
- 12.4.2. any interest held in any firm, company or business, which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
- 12.4.3. any interest in an organisation providing health and social care services to the National Health Service;
- 12.4.4. a position of authority in a charity or voluntary organisation in the field of health and social care;
- 12.4.5. any other interest which, in the opinion of a reasonable bystander would be liable to prejudice the ability of the governor to consider the matter

before the Council fairly.

- 12.5. The exceptions are:
- 12.5.1. shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 12.5.2. an employment contract with the Trust held by a staff governor;
  - 12.5.3. an employment contract held with the appointing body by an appointed governor;
- 12.6. If a governor has any uncertainty as to an interest, he should discuss it in advance of any meeting with the Secretary. In case of doubt the interest should be declared.
- 12.7. The Secretary shall keep a record in a Register of Interests of all interests declared by governors. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
- 12.8. The Register shall be open to inspection by members of the public free of charge. A copy of any part will be provided on request and a reasonable charge for it may be made to persons who are not members of the Trust.
- 12.9. If a question arises at a meeting of the Council whether or not an interest of a governor is such that he should not be present when a matter is considered and should not vote on it, the chairman of the meeting shall rule on the question having taken the advice of the Secretary.
- 12.10. A governor who has an interest in a matter under consideration by the Council shall not be present during such consideration and shall not take part in any vote in connection with it.
- 12.11. A failure to comply with any of the provisions of this paragraph may be considered by the Council as grounds for removal under paragraph 17.4 of the Constitution.

### **13. CODE OF CONDUCT**

- 13.1. Governors shall agree to, and shall upon appointment sign a copy of, the Code of Conduct set out in the Appendix to these orders, and shall at all times comply with the Code.

### **14. CONFIDENTIALITY**

- 14.1. It is the duty of a governor not to divulge any information which he receives in confidence, whether that confidence is expressed or arises from circumstances relating to the information.
- 14.2. Governors must keep secure all confidential matter recorded on paper or electronically, and must ensure that their NHS mail and forum details are not disclosed.
- 14.3. Agendas and minutes and information relating to those parts of meetings of the Board of Directors, or of meetings of the Council, which are not open to the public, are confidential.
- 14.4. The proceedings of committees and working groups which take place in private are confidential until reported to the Council at a meeting open to the public.
- 14.5. A governor should keep confidential any information which may come into his possession concerning a patient, a person associated with a patient, or a member of staff or a person associated with a member of staff, unless the

information has entered the public domain.

- 14.6. Any matter which the Council has resolved shall be treated as confidential shall be so treated.

## **15. EXPENSES**

- 15.1. Paragraph 23 of the Constitution provides that the Trust shall on application pay travelling and other expenses of governors incurred for the purpose of his duties at rates to be decided by the Trust.
- 15.2. Payment shall be made by the Secretary following receipt of a signed expenses form backed by receipts.
- 15.3. The total of the expenses paid to governors will be published in the Annual Report.

## **16. LEAD AND DEPUTY LEAD GOVERNOR'S APPOINTMENT**

- 16.1. The Lead Governor and the Deputy Lead Governor must be elected governors. A staff governor may only be appointed as Lead or Deputy in a situation where he will serve with a publicly appointed governor. Thus a staff governor may stand for election as Deputy only if the Lead is a publicly elected governor.
- 16.2 A person shall be elected as Lead Governor Elect.
- a) He will serve for one year as Deputy Lead Governor.
  - b) Subject to a vote of approval by a majority of the governors present at a meeting of the Council towards the end of the year he will then become the Lead Governor for one year and if similarly approved may serve a second year.
  - c) At the end of the second year as Lead, if similarly approved, he may serve as Deputy Lead Governor for one year.
- 16.3 Thus a person may serve two years as Lead Governor supported in their first year by the former Lead Governor acting as Deputy and supported in their second year by the new Deputy.
- 16.4 3 months before a Lead Governor Elect is needed the Secretary shall ask for nominations within 21 days.
- 16.5 If more than one governor is nominated, a secret ballot will be arranged by the Secretary with each governor having one vote. If only one candidate is nominated, that person is chosen.
- 16.6 Where there is a ballot the candidate securing the most votes will be elected. The Secretary will announce the winner but not the votes cast - which shall remain confidential to him.
- 16.7 In the event that the Deputy Lead Governor stands down or is unable to continue, a new Deputy shall be chosen by the process set out above, and shall serve as Deputy until the Lead Governor reaches the end of his term. He will then become lead governor if approved as set out in 16.3(b) above.
- 16.8 In the event that the Lead Governor stands down or is unable to continue, if the Deputy has not served as Lead Governor, subject to a vote of approval as above he shall become Lead Governor and shall serve an initial term consisting of the unexpired term of the departing Lead Governor plus one year and then subject to such a vote of approval may serve a second year.

- 16.9 If the Deputy has served as Lead Governor, then subject to such a vote of approval he may act as Lead Governor for the remainder of the departing Lead Governor's term, and the Secretary shall initiate the process for choosing a new Deputy Lead Governor.
- 16.10 In the event that a Deputy Lead Governor does not secure the approval of the Governors to become Lead Governor, the Secretary shall immediately initiate the process of choosing a new Lead Governor by the process set out in paragraphs 16.4 to 16.7.
- 16.11 In the event that the Lead Governor does not secure approval for a second year, the person chosen as Deputy shall become Lead Governor.
- 16.12 Where a need arises to choose a Lead Governor or a Deputy Lead Governor In any circumstances not covered above, the Secretary shall take such steps as may be necessary following the principles set out in so far as applicable to the situation.
- 16.13 Where the Lead Governor is a staff governor, in any situation where the Lead Governor's position as an employee of the Trust gives rise to a position of potential conflict or embarrassment, the Deputy Lead shall act as Lead until the next meeting of the Council, when the situation shall be considered and a decision made as to how it shall be handled.

## **17. LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR - ROLES**

- 17.1. The role of the Lead Governor is:
  - 17.1.1. to chair meetings of the Council which cannot for any reason be chaired by the Chairman or the Deputy Chairman;
  - 17.1.2. to consult routinely with the governors regarding the planning and preparation of the agendas for Council meetings and work programme, and to agree them with the Chairman;
  - 17.1.3. to communicate regularly with the Chairman, to receive reports, as appropriate, on matters considered by the Board at closed meetings, and to provide updates/information to all governors as may be appropriate in the circumstances and respecting the confidentiality of matters of which he has been informed on a confidential basis.
  - 17.1.4. to be a point of contact for Monitor when appropriate;
  - 17.1.5. to provide input into the appraisal of the Chairman;
  - 17.1.6. to take an active role in the activities of the Council;
  - 17.1.7. to be a point of contact for governors when they have concerns;
- 17.2. The role of the Deputy Lead Governor is to support and assist the Lead Governor, and to deputise for the Lead Governor when the Lead Governor is not available to act.

## **18. LEAD AND DEPUTY LEAD GOVERNORS - VOTE OF NO CONFIDENCE**

- 18.1. If 8 governors sign a motion of no confidence in the Lead Governor or Deputy lead Governor and present it to the Chairman, the Chairman shall call an emergency meeting of the Council to be held within no more than 4 weeks from his receipt of the motion.
- 18.2. The Chairman will inform the Lead Governor (or Deputy Lead Governor) of his receipt of the motion but not of the names of the signatories, and he shall be invited to attend the meeting.
- 18.3. The meeting shall not proceed unless at least two thirds of the governors are present, and if they are not the motion will lapse.
- 18.4. At the meeting the Chairman will present the reasons for the motion and it will

be debated. The Lead Governor (or Deputy Lead Governor) may address the meeting.

18.5. A secret ballot shall be taken (in which the Lead Governor - or Deputy Lead Governor - shall be entitled to vote). If more than half of the governors present support the motion, then the Lead Governor (or Deputy Lead Governor) shall stand down.

18.6. A Lead Governor or a Deputy Lead Governor against whom a motion of no confidence succeeds shall not be eligible to be Lead Governor or Deputy Lead Governor for 2 years.

## **19. DIRECTORS' ATTENDANCE**

19.1. Paragraph 19.6 of the Constitution provides that the Council may require the attendance of one or more of the directors to attend a meeting for the purposes set out in the paragraph, which include the purpose of obtaining information about the Trust's performance of its functions.

19.2. The attendance of a director pursuant to paragraph 19.6 of the Constitution shall be obtained by request of the Lead Governor made to the Chairman. The Lead Governor may make a request at his discretion but shall make one if 5 governors sign a notice requiring the attendance of a named director or directors stating the reason why the request is made.

## **20. FORWARD PLAN**

20.1. Paragraph 45.5 of the Constitution provides that in preparing the Trust's forward plan the directors must have regard to the views of the governors, and that the directors shall provide the governors with information appropriate for them to be able to form their views.

20.2. The Trust's Strategic Development Working Group shall consider aspects of the proposed plan as they become available.

20.3. The proposed plan shall be considered at a joint meeting of the directors and the governors. It shall be provided to the governors, with the information required to form their views, in good time, at least 7 days, for the governors to consider it in advance of the meeting.

## **21. AMENDMENT OF STANDING ORDERS**

21.1. Paragraph 20.1 of the Trust's Constitution provides that the standing orders of the Council may be amended as provided in the standing orders.

21.2. The Standing Orders of the Council of Governors may be amended at a meeting of the Council by a vote of the majority of governors (not a majority of governors present, but a majority of the governors).

21.3. No such vote shall be taken unless the proposed amendment has been included in an agenda for the meeting circulated to governors not less than 7 days before the meeting (for example, for a meeting on 27 January no later than 20 January). But the Council may vote to make an amendment the substance of which has been so included but which has been altered at the meeting.

## APPENDIX

### CODE OF CONDUCT

#### Governors will:

1. Actively support the purpose and aims of Salisbury NHS Foundation Trust;
2. Act in the best interests of the Trust at all times, with integrity and objectivity, recognising the need for corporate responsibility, without expectation of personal benefit;
3. Contribute to the work of the Council of Governors so it may fulfil its role, in particular attending meetings of the Council and training events, serving on the committees and working groups of the Council, and attending members meetings, on a regular basis;
4. Recognise that the Council exercises collective decision-making on behalf of patients, public and staff;
5. Acknowledge that, other than when carrying out their duties as governors, they have no rights or privileges different from other members of the Trust;
6. Recognise that the Council has no managerial role within the Trust other than as provided by statute;
7. Respect the confidentiality of all confidential information received by them as governors as more particularly set out in paragraph 15 of the Council's Standing orders;
8. Conduct themselves in a manner to reflect positively on the Trust and not to conduct themselves so as to reflect badly on the Trust;
9. Recognise that the Trust is a non-political organisation;
10. Recognise that they are not, save in the case of appointed governors and their appointing body, representing any trade union, political party or other organisation to which they may belong, or its views, but are representing the constituency which elected them;
11. Seek to ensure that no one is discriminated against because of their religion, race, colour, gender, marital status, sexual orientation, age, social or economic status, or national origin;
12. Comply with the Council's Standing Orders;
13. Not make, or permit to be made, any statement concerning the Trust which they know or suspect to be untrue or misleading;
14. Recognise the need for great care in making public pronouncements, in particular any statement to the media, and will recognise the harm that ill-judged statements can cause to the Trust and to the patients and public the Trust and its governors serve. To this end:
  - (a) before making any statement for publication in the media a governor should take the advice of the Trust's press officer and of the Lead Governor, and take their observations into account;
  - (b) any request by the media for comment should be forwarded to the Trust's press officer;
  - (c) if a governor considers that a media story requires a response, he will communicate his concern to the Lead Governor and the Trust's press officer

rather than responding himself;

- (d) it is not the role of a governor to speak in public on operational matters or matters concerning individual patients or staff;

15. Uphold the seven principles of public life as set out by the Nolan Committee, namely:

**Selflessness**

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

**Integrity**

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

**Objectivity**

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

**Accountability**

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

**Openness**

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

**Honesty**

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

**Leadership**

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



**Governor's undertaking**

I, \_\_\_\_\_, of \_\_\_\_\_,  
undertake as a governor of Salisbury NHS Foundation Trust to abide by the above Code  
of Conduct including the obligations as to confidentiality and as to dealing with the  
media there set out.

Signed

Date

## **ANNEX 9 – ADDITIONAL PROVISIONS - DIRECTORS – DISQUALIFICATION**

(See Paragraph 33)

The following may not be appointed or continue as a director:

1. A person who is the subject of a sexual offences order under the Sexual Offences Act 2003 or any subsequent legislation.
2. A person who is disqualified from being a company director under the law of England and/or Wales.
3. A person who is a governor of the Trust, or a governor, director, chairman or chief executive of another NHS Foundation trust or NHS trust. However, a non-executive director (other than the chairman) may be a non-executive director (other than the chairman) or a governor of another NHS Foundation trust or NHS trust, save where there is a real risk of conflict of interest arising as a result of the two directorships or directorship and governorship.
4. A person whose physical or mental wellbeing is such that their ability to act as a director of the Trust is materially affected.
5. A person who occupies the same household as an existing director of the Trust or a governor.