

Draft No: 13 (Hempsons)  
Date of draft: ~~20 March 2015~~ 12 July 2016

ANNEX A

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## Bradford District Care NHS Foundation Trust

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### Constitution

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## Bradford District Care NHS Foundation Trust Constitution

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## 1. Interpretation

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

<b>2006 Act</b> .....	means the National Health Service Act 2006;
<b>2012 Act</b> .....	means the Health and Social Care Act 2012;
<b>Accounting Officer</b> .....	is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
<b>Annual Members Meeting</b> .....	is defined in paragraph 10 of the constitution;
<b>Constitution</b> .....	means this Constitution and all annexes to it;
<b>FTN</b> .....	Foundation Trust Network
<b>FTN Model Rules for Elections</b> ....	means the election rules set out in Annex 4 of this Constitution;
<b>gross assets</b> .....	shall have the meaning set out in the Risk Assessment Framework;
<b>gross capital</b> .....	shall have the meaning set out in the Risk Assessment Framework;
<b>Monitor</b> .....	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
<b>provider licence</b> .....	means the licence that Monitor has granted to the Trust under Part 3 of the 2012 Act
<b>Public Constituency</b> .....	has the meaning given in paragraph 7.2;
<b>Registrar</b> .....	is the person who is nominated under paragraph 37.1 to perform the duties of the Registrar;
<b>Risk Assessment Framework</b>	means the guidance called the Risk Assessment Framework published by Monitor in August 2013 (Appendix C updated April 2014) or any later version of such guidance, or any replacement guidance, published by Monitor from time to time;
<b>Staff Constituency</b> .....	has the meaning given in paragraph 8.3;
<b>Secretary</b> .....	is the person who from time to time performs the duties of the Secretary, including a joint, assistant or deputy secretary;

**Secretary of State** ..... means the Secretary of State for Health;

**significant transaction**..... means:

- a transaction meeting one of the following criteria:
  - i) the gross assets subject to the transaction, when divided by the gross assets of the Trust, are greater than 25%;
  - ii) the income attributable to:
    - a) the assets; or
    - b) the contract;associated with the transaction, when divided by the income of the Trust, is greater than 25%;
  - iii) the gross capital or consideration associated with the transaction divided by the total capital of the Trust following completion, or the effects on the total capital of the Trust resulting from a transaction, is greater than 25%; or
- any (other) transaction that Monitor determines is a significant transaction in accordance with the Risk Assessment Framework;

**total capital of the Trust**..... shall have the meaning set out in the Risk Assessment Framework;

**Trust**..... has the meaning given in paragraph 2; and

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

**2. Name**

The name of the foundation trust is the Bradford District Care NHS Foundation Trust (**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 the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

#### **4. Powers**

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Subject to the provisions of the Mental Health Act 1983, as may be amended from time to time, 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; or
- 5.1.2 A staff constituency.
- 5.2 The decision of the Secretary as to which constituency or class that an individual is entitled to be a member of is final.

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

An individual who is eligible to become a member of the Trust may do so on application to the Trust. (See also paragraph 8.6.)

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

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of members in each Public Constituency is specified in Annex 1.

## **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, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into two descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.6 An individual who is:
- 8.6.1 eligible to become a member of the Staff Constituency; and
  - 8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency
- shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency, without an application being made, unless he informs the Trust that he does not wish to do so.

## **9. Restriction on membership**

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not, while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 An individual must be at least 14 years old to be a member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 8.

## 10. Annual Members' Meeting

- 10.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 10.2 The standing orders for the practice and procedure of Annual Members' Meetings, as may be varied from time to time, are attached at Annex 9.

## 11. Council of Governors – composition

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

## 12. Council of Governors – election of governors

- 12.1 Elections for elected members of the Council of Governors shall be conducted on a First Past the Post basis and in accordance with the FTN Model Rules for Elections, as may be varied from time to time.
- 12.2 The FTN Model Rules for Election as published from time to time by the FTN form part of this Constitution. The FTN Model Rules for Election current at the date of the Trust's authorisation are attached at Annex 4.
- 12.3 A subsequent variation of the FTN Model Rules for Election by the FTN shall not constitute a variation of the terms of the Constitution for the purposes of paragraph 46.
- 12.4 An election, if contested, shall be by secret ballot.

## 13. Council of Governors – tenure

- 13.1 A governor (whether elected or appointed) may serve a term of office of up to three years provided that, in the case of a governor who is appointed or elected after the date this amended Constitution comes into force, his term of office shall expire no later than 31 March in his final year of office.
- 13.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 13.3 An elected governor shall be eligible for re-election at the end of a term in office, subject to an overall maximum of two terms in office. In exceptional circumstances, the Board of Directors may agree to extend the overall maximum number of terms to three.
- 13.4 An appointed governor representative shall be eligible for re-appointment at the end of his term in office, subject to an overall maximum of two terms in office. In exceptional circumstances, the Board of Directors may agree to extend the overall maximum number of terms to three.



#### 14. Council of Governors – disqualification and removal

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

#### 15. Vacancies amongst Governors

- 15.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of terms of office, the following terms shall apply.
- 15.2 Where the vacancy arises amongst the appointed governors, the Secretary shall request the appointing organisation to appoint a replacement to hold office for the remainder of the term of office.
- 15.3 Where the vacancy arises amongst the elected governors, the Council of Governors shall:
- 15.3.1 Where the most recent election took place within the last six months, invite the next highest polling candidate for that seat at that election, who is willing to take office, to fill the seat until the next election, at which time the seat will fall vacant and subject to election for any unexpired term of office;
  - 15.3.2 Should the next highest polling candidate decline to take the vacant seat (in accordance with paragraph 15.3.1), the Council of Governors is at liberty to approach each of the remaining next highest polling candidates, in descending order, until the seat is filled.
  - 15.3.3 If there is no such next highest polling candidate for that seat willing to take office or if the most recent election did not take place within the last six months, ~~be at liberty to~~ the Council of Governors may leave the seat vacant until the next scheduled election, where an election is due to be held within the next twelve months, provided that the Council of Governors can continue to be quorate until the election is held-call an election within three months to fill the seat for the remainder of the term of office. If the Council of Governors cannot be quorate during the relevant period or if an election

is not due to be held within the next twelve months, the Council of Governors shall call an election as soon as reasonably practicable to fill the vacant seat.

**16. Council of Governors – duties of governors**

- 16.1 The general duties of the Council of Governors are –
- 16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
  - 16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 16.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

**17. Council of Governors – meetings of governors**

- 17.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or 27.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 28 below), shall preside at meetings of the Council of Governors.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting following appropriate resolution by the Council of Governors made in accordance with its Standing Orders. The Chairman may exclude any member of the public from a meeting of the Council of Governors if he is interfering with or preventing the proper conduct of the meeting.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

**18. Council of Governors – Standing Orders**

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

**19. Council of Governors – referral to the Panel**

- 19.1 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—
- 19.1.1 to act in accordance with its constitution, or
  - 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

**20. Council of Governors – conflicts of interest of governors**

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

**21. Council of Governors – travel expenses**

The Trust may pay travelling and other expenses (but not remuneration) to members of the Council of Governors at rates determined by the Trust.

**22. Council of Governors – further provisions**

Further provisions with respect to the Council of Governors are set out in Annex 5.

**23. Board of Directors – composition**

23.1 The Trust is to have a Board of Directors.

23.2 The Board of Directors shall be composed of not less than:

23.2.1 a non-executive Chairman;

23.2.2 five other non-executive directors; and

23.2.3 five executive directors.

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

23.4 The Chief Executive shall be the Accounting Officer.

23.5 One of the executive directors shall be the Finance Director.

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

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

23.8 The number of directors may be increased, with the approval of the Board, provided always that at least half of the Board, excluding the Chairman, comprises independent non-executive directors.

**24. Board of Directors – general duty**

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.

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

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

25.1.1 He is a member of the Public Constituency; and

25.1.2 He is not disqualified by virtue of paragraph 31 below.

**26. Board of Directors – appointment and removal of Chairman and other non-executive directors**

- 26.1 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.
- 26.2 Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 26.3 The initial Chairman and the initial non-executive directors are to be appointed in accordance with paragraph 27.1 below.

**27. Board of Directors – appointment of initial Chairman and initial other non-executive directors**

- 27.1 The Council of Governors shall appoint the chairman of the applicant NHS Trust as the initial Chairman of the Trust, if he wishes to be appointed.
- 27.2 The power of the Council of Governors to appoint the other non-executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Trust, any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.
- 27.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 25 above (other than disqualification by virtue of paragraph 31 below) do not apply to the appointment of the initial Chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 27.4 An individual appointed as the initial Chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

**28. Board of Directors – appointment of deputy chairman**

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

**29. Board of Directors – appointment and removal of the Chief Executive and other executive directors**

- 29.1 The non-executive directors shall appoint or remove the Chief Executive.
- 29.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 29.3 The initial Chief Executive is to be appointed in accordance with paragraph 30 below.
- 29.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

**30. Board of Directors – appointment and removal of initial Chief Executive**

- 30.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.
- 30.2 The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

**31. Board of Directors – disqualification**

- 31.1 The following may not become or continue as a member of the Board of Directors:
- 31.1.1 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 31.1.2 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;
- 31.1.3 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; or
- 31.1.4 A person who (if they were to be a member of the Trust) would be disqualified in terms of paragraphs 1 - 5 of Annex 8 (Disqualification from membership) of this Constitution and/or who would be disqualified as a Governor of the Trust in terms of paragraphs 1 – 7 of Annex 5 (Eligibility to be a governor) of this Constitution (which shall apply with appropriate amendment to the Board of Directors).

**32. Board of Directors – meetings**

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

**33. Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

**34. Board of Directors – conflicts of interest of directors**

- 34.1 The duties that a director of the Trust has by virtue of being a director include in particular –
- 34.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 34.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

- 34.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if –
- 34.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 34.2.2 The matter has been authorized in accordance with the constitution.
- 34.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4 In sub-paragraph 34.1.2, “third party” means a person other than –
- 34.4.1 The Trust, or
  - 34.4.2 A person acting on its behalf.
- 34.5 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.
- 34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 34.8 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.
- 34.9 A director need not declare an interest –
- 34.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 34.9.2 If, or to the extent that, the directors are already aware of it;
  - 34.9.3 If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
    - 34.9.3.1 By a meeting of the Board of Directors, or
    - 34.9.3.2 By a committee of the directors appointed for the purpose under the constitution.
- 34.10 A matter shall have been authorised for the purposes of paragraph 34.2.2 if the Board of Directors have authorised it by a majority vote of those present and voting but excluding the director whose interest is the subject of authorisation.

**35. Board of Directors – remuneration and terms of office**

- 35.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors, following consideration of recommendations made by the Remuneration Committee of the Council of Governors.

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

### **36. Registers**

- 36.1 The Trust shall have:
- 36.1.1 A register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
  - 36.1.2 A register of members of the Council of Governors;
  - 36.1.3 A register of interests of governors;
  - 36.1.4 A register of directors; and
  - 36.1.5 A register of interests of the directors.

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

- 37.1 The Board of Directors shall nominate a Registrar who may or may not be an employee. The Registrar may not be a governor or the Chief Executive or the Finance Director.
- 37.2 The Registrar shall be responsible for keeping the registers up to date from information received by him, and the registers may be kept in either paper or electronic form.
- 37.3 Removal of members from the members' Register shall be in accordance with Annex 8 of this Constitution.

### **38. Registers – inspection and copies**

- 38.1 The Trust shall make the registers in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 38.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 38.3 So far as the registers are required to be made available:
- 38.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 38.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 38.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **39. Documents available for public inspection**

- 39.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 39.1.1 a copy of the current constitution,
  - 39.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
  - 39.1.3 a copy of the latest annual report.
- 39.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 39.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 39.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 39.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 39.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 39.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 39.2.6 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.
  - 39.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 39.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act.
  - 39.2.9 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.
  - 39.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 39.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.



39.4 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.

**40. Auditor**

40.1 The Trust shall have an auditor.

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

**41. Audit committee**

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

**42. Accounts**

42.1 The Trust must keep proper accounts and proper records in relation to the accounts.

42.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

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

42.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may, with the approval of the Secretary of State, direct.

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

**43. Annual report and forward plans**

43.1 The Trust shall prepare an Annual Report and send it to Monitor.

43.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.

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

43.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

43.5 Each forward plan must include information about –

43.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and

43.5.2 the income it expects to receive from doing so.

43.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 43.5.1 the Council of Governors must –

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

43.6.2 notify the directors of the Trust of its determination.

43.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

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

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

44.1.1 The annual accounts;

44.1.2 Any report of the auditor on them; and

44.1.3 The annual report.

44.2 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.

44.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 44.1 with the Annual Members' Meeting.

#### **45. Instruments**

45.1 The Trust shall have a seal.

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

#### **46. Changes to the Constitution**

46.1 The Trust may make amendments of its constitution only if –

46.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and

46.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

46.2 Amendments made under paragraph 46.1 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 of the amendment, not accord with schedule 7 of the 2006 Act.

46.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –

46.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

46.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

46.4 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.

46.5 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.

**47. Mergers**

The Trust may make an application under section 56 (Mergers), 56A (Acquisitions), 56B (Separations) or 57A (Dissolution) of the 2006 Act to Monitor only with the approval of more than half of the members of the Council of Governors.

**48. Significant transactions**

The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.

## ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 7.1 and 7.3)

Area	Local Government electoral wards covered	Minimum membership
1. Bradford East	Bolton & Undercliffe Bowling & Barkerend Bradford Moor Eccleshill Idle & Thackley <del>Manningham</del> <u>Little Horton</u>	20
2. Bradford South	Great Horton Queensbury Royds Wibsey Tong Wyke	20
3. Bradford West	City Clayton & Fairweather Green Heaton Little Horton Thornton & Allerton Toller <u>Manningham</u>	20
4. Shipley	Baildon Bingley Bingley Rural Shipley Windhill & Rose Wharfedale	20
5. Keighley	Worth Valley Ilkley Keighley Central Keighley East Keighley West	20
6. Craven	Aire Valley with Lothersdale Barden Fell Bentham Cowling Embsay-with-Eastby Gargrave and Malhamdale Glusburn Grassington Hellifield and Long Preston Ingleton and Clapham Penyghent	10

	Settle and Ribblesbanks Skipton East Skipton North Skipton South Skipton West Sutton-in-Craven Upper Wharfedale West Craven	
7. Rest of England	Remaining electoral wards in England	5
<b>Total minimum membership:</b>		<b>115</b>

## ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.4 and 8.5)

<b>Class</b>	<b>Minimum membership</b>
Clinical	10
Non-Clinical	10
<b>Total minimum membership:</b>	<b>20</b>

The Clinical Group will contain all staff who are qualified or non-registered and who deliver healthcare services and treatment directly or undertake a managerial role within a clinical team. The non-clinical constituency will contain all other staff such as those in corporate roles e.g. human resources, finance, estates and facilities and those who provide administrative support in the Trust.

### **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

(Paragraphs 11.2 and 11.3)

The Council of Governors shall consist of:

- Elected governors, elected by:
  - (a) Members of the Public Constituency as defined in Annex 1 of the Constitution (who shall elect more than half of the members of the Council of Governor) ; and
  - (b) Members of the Staff Constituency as defined in Annex 2 of the Constitution;
  
- Appointed governors, appointed by partnership organisations.

**Elected governors:**

**(a) Public elected governors**

<b>Public elected governors to represent</b>	<b>Number of governors to be elected</b>	<b>Role</b>
Area 1 Bradford East	3	To assist the Trust in developing its service and ensure active representation from the public.
Area 2 Bradford South	3	
Area 3 Bradford West	3	
Area 4 Shipley	2	
Area 5 Keighley	2	
Area 6 Craven	1	
Area 7 Rest of England	1	
<b>Total public elected governors</b>	<b>15</b>	

**(b) Staff elected governors**

<b>Staff elected governors to represent</b>	<b>Number of governors to be elected</b>	<b>Role</b>
Clinical	3	To assist the Trust in developing its service and ensure active representation from those who deliver the services.
Non-Clinical	2	
<b>Total staff elected governors</b>	<b>5</b>	



**Appointed governors:**

<b>Appointing organisation</b>	<b>Number of governors to be appointed:</b>	<b>Role</b>
<b>Local authority governors:</b>		
City of Bradford Metropolitan District Council	2	To represent the key local non-NHS health economy partners
Craven District Council	1	
<b>Partnership governors:</b>		
Bradford University	1	To represent strong teaching and research partnership interests
Sharing Voices	1	To build on existing partnership arrangements and represent the black and ethnic minority community and seldom heard groups
Bradford Assembly	1	To represent the voluntary and community sector.
Barnardo's	1	To build on existing partnership arrangements and to represent young people
<b>Total appointed governors</b>	<b>7</b>	

**Total membership of Council of Governors:**

<b>Type of governor</b>	<b>Number</b>
Public elected governors	15
Staff elected governors	5
Appointed governors	7
<b>Total membership of Council of Governors</b>	<b>27</b>

## **ANNEX 4 – FTN MODEL RULES FOR ELECTIONS**

(Paragraph 12.2)

The Trust has adopted the FTN Model Rules for Elections contained in this Annex. It will determine the result of the election using the First Past the Post option.

### **Part 1: Interpretation**

1. Interpretation

### **Part 2: Timetable for election**

2. Timetable
3. Computation of time

### **Part 3: Returning officer**

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

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

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

### **Part 5: Contested elections**

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

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

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

#### *The poll*

27. Eligibility to vote

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

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

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

**Part 6: Counting the votes**

- STV41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

**Part 7: Final proceedings in contested and uncontested elections**

- FPP52. Declaration of result for contested elections
- STV52. 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
- STV59. Countermand or abandonment of poll on death of candidate

**Part 10: Election expenses and publicity**

*Expenses*

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

*Publicity*

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

**Part 11: Questioning elections and irregularities**

- 66. Application to question an election

**Part 12: Miscellaneous**

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

## Part 1: Interpretation

### 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

“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;

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

2.

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

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

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

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

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

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

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

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

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

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

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

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

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

## Part 2: Timetable for elections

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

### **Part 3: returning officer**

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

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

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

#### **5. Staff**

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

#### **6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

#### **7. Duty of co-operation**

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



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

### 8. Notice of election

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

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

### 9. Nomination of candidates

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

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
  - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

### 10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

### 11. Declaration of interests

11.1 The nomination form must state:

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

### 12. Declaration of eligibility

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

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

### **13. Signature of candidate**

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

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

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

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

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

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

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

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

### 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 is 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:
  3. (i) configured in accordance with these rules; and
  4. (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:

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

("declaration of identity")

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

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

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

*Action to be taken before the poll*

## 22. List of eligible voters

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

22.2 The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

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

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

23.1 The returning officer is to publish a notice of the poll stating:

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

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

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

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

("postal voting information").

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

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

(d) contact details of the returning officer,  
("e-voting information").

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

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

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

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

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

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

- (a) require a voter to:
  - (i) enter his or her voter ID number; and

- (ii) where the election is for a public or patient constituency, make a declaration of identity; in order to be able to cast his or her vote;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (v) instructions on how to vote and how to make a declaration of identity,
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer;

6. (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
- ~~7.~~ (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

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

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

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

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

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

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

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

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

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

### **39. De-duplication of votes**

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

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

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

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

- (a) mark the ballot paper "disqualified",
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,
- 

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

- (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.

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## Part 6: COUNTING THE VOTES

### STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

- (a) on which no second or subsequent preference is recorded for a continuing candidate,
- or
- (b) which is excluded by the returning officer under rule STV49,

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

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

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

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

~~8.7.~~  
“*quota*” means the number calculated in accordance with rule STV46,

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

“*stage of the count*” means:

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

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

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

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

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

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

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

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

#### **43. The count**

43.1 The returning officer is to:

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

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

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

STV44.1 Any ballot paper:

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



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

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

STV44.3 Any text voting record:

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

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

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

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

**FPP44. Rejected ballot papers and rejected text voting records**

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

#### **STV45. First stage**

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

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

#### **STV46. The quota**

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

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

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a

candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

**STV47. Transfer of votes**

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

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

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

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

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

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

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

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

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

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

STV49.1 If:

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

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

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

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

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

- (a) record:
  - (i) the total value of votes, or
  - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

- (d) compare:
- (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
  - (ii) the recorded total of valid first preference votes.

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

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

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

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

#### **STV50. Filling of last vacancies**

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

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

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

#### **STV51. Order of election of candidates**

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

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

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

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

**FPP51. Equality of votes**

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



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

### 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 ~~the [insert name] Foundation NHS~~ Trust by section 33(4) of the 2006 Act, to the chairman \_\_\_\_\_ of the NHS Trust, or
  - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

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

available on request.

### STV52. Declaration of result for contested elections

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

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

STV52.2 The returning officer is to make:

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

available on request.

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

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

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

## Part 8: disposal of documents

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

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

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

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

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

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of 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

~~9.8.~~ (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

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

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

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

FPP59.6 The returning officer is to endorse on each packet a description of:

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

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

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

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

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

## Part 10: election EXPENSES AND PUBLICITY

### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

### *Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

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

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



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

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

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

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

64.2 The information must consist of:

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

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

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

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

## **Part 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES**

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

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

## Part 12: MISCELLANEOUS

### 67. Secrecy

67.1 The following persons:

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

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

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

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

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

### 68. Prohibition of disclosure of vote

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

### 69. Disqualification

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

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

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

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

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

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

## **ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

(Paragraph 14.3, 14.4, 22 and 31.1.4)

### **Eligibility to be a governor**

A person may not become a governor of the Trust, and if already holding such office will immediately cease to do so, if:

1. He is a director of the Trust, or a governor or director of another NHS Foundation Trust or any other NHS body, unless such Foundation Trust or NHS body is an appointing organisation which is appointing him under this Constitution;
2. He is under sixteen years of age;
3. Being a member of one of the public constituencies, he fails to sign a declaration in the form specified by the Council of Governors of the particulars of his qualification to vote as a member of the Trust, and that he is not prevented from being a member of the Council of Governors;
4. He is or has been subject to a sex offender order;
5. He has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
6. He is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
7. He has had his name removed from any List prepared pursuant to sections 91, 106, 123 or Chapter 6 of the National Health Service Act 2006, and has not subsequently had his name included in such a list.

### **Requirement of governor to notify Trust**

Where a person has been elected or appointed to be a governor and he becomes disqualified from office under paragraph 14 of this Constitution or this Annex 5, he shall immediately notify the Secretary in writing of such disqualification.

### **Termination of office and removal of governors**

A person holding office as a governor shall immediately cease to do so if:

1. He resigns by notice in writing to the Secretary;
2. It otherwise comes to the notice of the Secretary at the time the governor takes office or later that the governor is disqualified;
3. He fails to attend two meetings in any Financial Year, unless the other governors are satisfied that:

- (a) the absences were due to reasonable causes; and
  - (b) he will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
4. In the case of an elected governor, he ceases to be a member of the Trust;
  5. In the case of an appointed governor, the appointing organisation terminates the appointment;
  6. He has failed to undertake any training which the Council of Governors requires all governors to undertake, without reasonable cause;
  7. He has failed to sign and deliver to the Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's Code of Conduct;
  8. He is removed from the Council of Governors by a resolution approved by a majority of the governors present and voting at a General Meeting on the grounds that:
    - (a) He has committed a serious breach of the Trust's Code of Conduct; or
    - (b) He has acted in a manner detrimental to the interests of the Trust; or
    - (c) He has failed to discharge his responsibilities as a governor.

#### **Process for investigating allegations against a governor**

1. Where it is alleged that a governor has:
  - 1.1 committed a breach of the Trust's Code of Conduct; or
  - 1.2 acted in a manner detrimental to the interests of the Trust; or
  - 1.3 failed to discharge his responsibilities as a governor;

the Council of Governors may convene a panel consisting of the Chairman and two (2) governors (the "Panel") to consider the allegations and what (if any) action should be taken.
2. The Panel will notify the governor concerned of the allegations made against him prior to the Panel making any findings or making a recommendation to the Council of Governors. The governor shall be invited to make written or oral representations to the Panel in respect of the allegations against him.
3. The Panel will make a recommendation to the Council of Governors based on a majority vote of its members, which may include a recommendation to the Council of Governors to terminate the tenure of office of the governor in question.
4. The Council of Governors will consider the Panel's recommendations at its next meeting, which shall be held in private session. The Council of Governors will receive representations from the Panel and from the governor concerned.
5. Any recommendation to terminate the Governor's tenure of office will require the approval of a majority of the members of the Council of Governors present and voting (in accordance with paragraph 8 above).
6. The decision of the Council of Governors will be confirmed in writing to the governor concerned within seven (7) days of the date of the meeting.

7. If the Council of Governors decides to terminate the governor's tenure of office, the governor may apply in writing to the Council of Governors within seven (7) days of the date of the written confirmation referred to in paragraph 6 above, for the decision to be referred to an independent assessor.
8. Any decision to terminate the tenure of office of the governor concerned shall not take effect until the later of:
  - a) seven (7) days after the date of the written confirmation referred to in paragraph 6 above; or
  - b) where the governor applies for the decision to be referred to an independent assessor in accordance with paragraph 7 above, the date on which the independent assessor determines the matter.
9. On receipt of an application under paragraph 7 above the Council of Governors and the applicant governor will co-operate in good faith to agree on the appointment of the independent assessor.
10. The independent assessor will consider the evidence and conclude whether the decision to remove the governor was reasonable or otherwise.
11. The independent assessor's decision will be binding on the parties.
12. If the independent assessor finds that the decision of the Council of Governors to remove the governor was not reasonable, the decision of the Council of Governors will be rescinded.
13. Pending a final decision being made in accordance with this process, the Council of Governors may on a majority vote of its members suspend a governor who is the subject of allegations that the Panel is investigating.

#### **Dispute resolution process**

1. Any individual whose office as a governor is terminated in accordance with this Constitution may request a review of that termination in accordance with the following process.
2. The individual concerned shall write to the Council of Governors within twenty-one (21) days of the date of termination setting out the grounds on which he requests a review of the termination of his office.
3. If the Council of Governors receives a request in writing from a former governor in accordance with paragraph 2 above it may convene a panel consisting of the Chairman and two (2) governors (the "Panel") to consider the relevant information and what (if any) action should be taken.
4. The individual shall be invited to make written or oral representations to the Panel in support of the information provided by him in writing.
5. The Panel will make a recommendation to the Council of Governors based on a majority vote of its members, which may include a recommendation to the Council of Governors to reinstate the individual as a governor.

6. The Council of Governors will consider the Panel's recommendations at its next meeting, which shall be held in private session. The Council of Governors will receive representations from the Panel and from the individual concerned.
7. The decision of the Council of Governors will be confirmed in writing to the individual concerned within seven (7) days of the date of the meeting.
8. If the Council of Governors decides not to reinstate the individual concerned as a governor, the individual may apply in writing to the Council of Governors within seven (7) days of the date of the written confirmation referred to in paragraph 7 above, for the decision to be referred to an independent assessor.
9. On receipt of an application under paragraph 8 above the Council of Governors and the applicant will co-operate in good faith to agree on the appointment of the independent assessor.
10. The independent assessor will consider the evidence and conclude whether the decision not to reinstate the individual as a governor was reasonable or otherwise.
11. The independent assessor's decision will be binding on the parties.
12. If the independent assessor finds that the decision of the Council of Governors not to reinstate the individual as a governor was not reasonable, the decision of the Council of Governors will be rescinded.

### **Vacancies amongst governors**

Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the provisions of paragraph 15 of the Constitution will apply.

### **Roles and Responsibilities**

The roles and responsibilities of the governors are described in the current Governance Manual.

### **Appointment of non-executive directors (including Chairman and deputy chairman)**

1. The Council of Governors shall establish an ~~Appointments-Nominations~~ Committee of the Council to assist in the process of appointment of non-executive directors (including Chairman and Deputy Chairman). The ~~Appointments-Nominations~~ Committee shall comprise three governors and two directors of the Board (at least one of whom will be a non-executive director). The committee may have an independent assessor in attendance if appropriate. Save when his/her appointment is being considered, the Chairman or an independent non-executive director shall chair the ~~Appointments-Nominations~~ Committee.
2. The ~~Appointments-Nominations~~ Committee will, taking into account the views of the Board of Directors, identify the balance of individual skills, knowledge and experience that is required at the time a vacancy arises and, accordingly, draw up a job description and person profile for each new appointment.
3. Suitable candidates will be identified, after public advertisement, by the ~~Appointments Nominations~~ Committee which may, if it considers it appropriate in particular



circumstances, engage an external organisation, recognised as an expert in this field, to assist it in the whole process.

4. On expiry of the initial non-executive directors' current terms of appointment and on any subsequent vacancy, the ~~Appointments-Nominations~~ Committee shall consider whether to recommend to the Council of Governors to reappoint the retiring non-executive director or Chairman or Deputy Chairman. The committee may not make any such recommendation other than for a first renewal of the appointment of a non-executive director or Chairman without first taking the steps outlined in 2 and 3 above. If the Council of Governors does not so appoint, if the individual does not wish to continue or if the committee does not consider the reappointment appropriate, then suitable new candidates will be identified in accordance with the procedure outlined in 2 and 3 above. At times when the committee considers the appointment of a replacement Chair/non-executive director, the retiring Chair/non-executive director shall not be included in that particular committee meeting.
5. Suitable candidates identified shall be considered by the ~~Appointments-Nominations~~ Committee. The ~~Appointments-Nominations~~ Committee shall recommend to the Council of Governors an individual for an appointment. At a general meeting, the Council of Governors shall either appoint the recommended individual or invite the ~~Appointments Nominations~~ Committee to make an alternative recommendation.

#### **Remuneration of the Chairman and other non-executive directors**

In order to determine the proper level of remuneration and allowances that should be paid to the Chairman and other non-executive directors, the Council may, from time to time, and at least every three years shall, consult, at the Trust's expense, with external professional advisers.

## ANNEX 6 – STANDING ORDERS FOR THE COUNCIL OF GOVERNORS

(Paragraph 18)

### 1. Interpretation

- 1.1. Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

**ACCOUNTING OFFICER** is the Chief Executive of the Trust.

**BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of the Chairman, and non-executive directors, appointed by the Council of Governors, and the executive directors, appointed by the Chair and the non-executive directors and (except for his own appointment) by the Chief Executive.

**BUDGET** means a resource, expressed in financial terms, approved by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

**CHAIRMAN** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The Chairman shall be deemed to include the non-executive director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

**COMMITTEE OF THE BOARD** means a committee appointed by the Board with specific terms of reference, chair, and membership approved by the Board.

**COMMITTEE OF THE COUNCIL** means a committee appointed by the Council of Governors with specific terms of reference, chair, and membership approved by the Council of Governors.

**COUNCIL** means the Council of Governors, formally constituted in accordance with this Constitution, meeting in public and presided over by the Chairman.

**DIRECTOR** means a person appointed to the Board in terms of paragraph 23 of this Constitution.

**GOVERNOR** means a person elected or appointed to the Council in terms of paragraph 11 of this Constitution.

**MEMBER** means a person registered as a member of a constituency in terms of paragraph 5 of this Constitution.

**MOTION** means a formal proposition to be discussed and voted on during the course of a meeting.

**OFFICER** means an employee of the Trust.

**TRUST** means the Bradford District Care NHS Foundation Trust.

- 1.2. Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Chief Executive and Director of Finance).

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## **2. General Information**

- 2.1. The purpose of the Council Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance, which is founded on "The Combined Code," and the Trust's Code of Conduct for Governors.
- 2.2. All business shall be conducted in the name of the Trust.
- 2.3. The Board shall appoint trustees to administer, separately, charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4. A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a governor save where the Governor has acted recklessly. On behalf of the Council and as part of the Trust's overall insurance arrangements the Board shall put in place appropriate insurance provision to cover such indemnity.

## **3. Composition of the Council of Governors**

- 3.1. The composition of the Council shall be in accordance with paragraph 10 of the Constitution.
- 3.2. **Appointment and Removal of the Chairman and Deputy Chairman of the Trust** - The Chairman or Deputy Chairman of the Trust will preside over meetings of the Council, such persons being appointed and removed by the Governors in accordance with the provisions of paragraphs 26 and 28 of the Constitution.
- 3.3. **Duties of Deputy Chairman** - Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy Chairman.

## **4. Meetings of the Council of Governors**

### **4.1. Meetings in Public**

- 4.1.1. Meetings of the Council must be open to the public subject to the provisions of paragraph 4.1.2 below.
- 4.1.2. The Council may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:
  - (a) publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - (b) there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.1.3. The Chairman may exclude any member of the public from the meeting of the Council if he is interfering with or preventing the reasonable conduct of the meeting.

4.1.4. Meetings of the Council shall be held a minimum of four times each year, at such times and places that the Council may determine.

4.1.5. The Council may request the Chief Executive, and other appropriate Directors, to attend any meeting of the Council to enable Governors to raise questions about the Trust affairs.

4.2. **Calling Meetings** - Notwithstanding, paragraph 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if, without so refusing, the Chairman does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of Governors.

#### 4.3. **Notice of Meetings**

4.3.1. Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least five clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting subject to paragraph 4.3.3.

4.3.2. Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least 50% of Governors.

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

#### 4.4. **Setting the Agenda**

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

4.4.2. A Governor desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5. **Chairman of Meeting** - At any meeting of the Council, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman shall preside. Otherwise, such Governor as the Governors present shall choose shall preside. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, he/she shall not chair that part of the meeting and another chair shall be appointed for that/those item(s) in accordance with this paragraph.

#### 4.6. Notices of Motions

- 4.6.1. A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the Meeting to the Chairman, who shall insert in the Agenda for the Meeting. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to paragraph 4.3 of these Standing Orders.
- 4.6.2. A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 4.6.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who give it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate.
- 4.6.4. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

- (a) An amendment to the motion.
- (b) The adjournment of the discussion or the meeting.
- (c) The appointment of an ad hoc committee to deal with a specific item of business.
- (d) That the meeting proceeds to the next business.
- (e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed.

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

In the case of motions under ~~(d)~~(d)4.6.5.4 and ~~(e)~~(e)4.6.5.5, to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

- 4.7. **Chairman's Ruling** - Statements of Governors made at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

#### 4.8. Voting

- 4.8.1. Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

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

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

4.8.4. If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

4.8.5. In no circumstances may an absent Governor vote by proxy although the Council may agree that its Governors may participate in its meetings by telephone, video or video media link. Subject to participation in a meeting in this manner (which shall be deemed to constitute presence in person at the meeting) absence is defined as being absent at the time of the vote.

#### 4.9. Written Resolutions

4.9.1. The Council may use the process for adopting a written resolution set out in this paragraph 4.9 to enable them to transact business between meetings of the Council. The process for adopting a written resolution shall not be used to replace meetings of the Council.

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#### Proposing written resolutions

4.9.2. At the Chairman's request, the Secretary shall propose a written resolution to the Governors.

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4.9.3. A written resolution is proposed by giving notice of the proposed resolution to the Governors. Such notice shall stipulate:

(a) The proposed resolution; and

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(b) The long-stop date by which the written resolution is to be adopted, which shall be not less than ten (10) days from the date the written resolution is dispatched by the Secretary.

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4.9.4. Notice of a proposed written resolution must be given in writing to each Governor. Notice by email or post is permitted.

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#### Adopting written resolutions

4.9.5. A proposed written resolution shall be adopted when it has been signed and returned to the Secretary by email or post by a majority of the Governors. Where a Governor returns the proposed written resolution to the Secretary by email, the written resolution shall be deemed to have been duly signed by the relevant Governor even in the absence of a physical signature.

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4.9.6. For the avoidance of doubt, the proposed written resolution shall lapse if it has not been signed and returned by the requisite number of Governors pursuant to paragraph 4.9.5 above, by the longstop date.

4.8.5-4.9.7. If a written resolution is adopted, it shall be:

(a) reported to the next meeting of the Council; and

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(b) treated as if it was a decision taken at a Council meeting in accordance with these Standing Orders.

4.8.6.4.9.8. The Secretary shall ensure that the Trust keeps a record, in writing, of all written resolutions for at least six (6) years from the date of their adoption.

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#### 4.9.4.10. Suspension of Standing Orders

4.9.1.4.10.1. Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.

4.9.2.4.10.2. A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.

4.9.3.4.10.3. A separate record of matters discussed during the suspension of the Standing Orders shall be made and shall be available to the Directors.

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

4.9.5.4.10.5. The Trust's Audit Committee shall review every decision to suspend the Standing Orders.

4.10.4.11. Variation and Amendment of Standing Orders - These Standing Orders may be amended only in accordance with paragraph 46 of the Constitution.

4.11.4.12. Record of Attendance - The names of the Governors present at the meeting shall be recorded in the minutes.

#### 4.12.4.13. Minutes

4.12.1.4.13.1. The Minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.12.2.4.13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.12.3.4.13.3. Minutes shall be circulated in accordance with the Governors' wishes. The Minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of paragraph 4.1.2 of these Standing Orders (required by Code of Practice on Openness in the NHS).

#### 4.12.4.4.13.4. Quorum

- (a) No business shall be transacted at a meeting of the Council unless at least one-third of the whole number of the Governors is present.
- (b) If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the

passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

## 5. Arrangements ~~for the~~ to assist the Council with the Exercise of its Functions ~~by~~ Delegation

~~5.1. Emergency Powers - The powers which the Council has retained to itself within these Standing Orders may in emergency be exercised by the Chairman after having consulted at least five elected Governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council for ratification.~~

~~5.2.5.1. Delegation to Committees~~Appointment of Working Groups - The Council may agree from time to time to the ~~delegation of its duties to committees or sub-committees, which it has formally constituted~~appointment of working groups to assist it with the exercise of its functions. To ensure clarity of purpose, the terms of reference and membership of these ~~committees, or sub-committees~~working groups, and their specific ~~powers responsibilities~~ shall be laid out in accordance with Trust policy and approved by the Council. For the avoidance of doubt, the Council may not delegate any of its functions to a working group.

~~5.3.5.2. Delegation to an individual~~ Governors – The Council may ~~delegate duties to~~request an individual Governor ~~but only under a clear remit approved by the Council to undertake specific tasks to assist the Council with the exercise of its functions. For the avoidance of doubt, the Council may not delegate any of its functions to an individual Governor.~~

~~5.4.5.3. Governance Manual~~ – The Trust shall produce a Governance Manual which shall provide details of the ~~matters that the Council has delegated to Committees of the Council~~working groups that have been appointed by the Council (including the terms of reference and membership of each ~~working group-Committee of the Council~~). The Governance Manual shall also include the Code of Conduct for Governors, details of the matters that the Board has, for the time being, reserved for itself and/or delegated to Committees of the Board and/or delegated to the Chief Executive and executive Directors of the Trust and the Trust's Standing Financial Instructions. The Governance Manual shall be reviewed at least annually by the Council and, if necessary, any provisions relating to the terms of reference and membership of each ~~Committee working group~~ of the Council, may be amended.

## 6. ~~Committees~~Working groups of the Council

6.1. Save as stipulated in Annex 5 of this Constitution (Appointment of Non-Executive Directors) the Council may appoint ~~committees working groups~~ of the Council consisting wholly of persons who are Governors. Non-governors may attend such ~~committees working groups~~ if appropriate under the ~~committee's working group's~~ terms of reference, but they shall have no vote.

~~6.2. A committee of the Council may appoint sub-committees consisting wholly of persons who are Governors. Non-governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.~~

~~6.3.6.2.~~ These Standing Orders, as far as they are applicable, shall apply also, with appropriate alteration, to meetings of any ~~committees working groups or sub-committees~~ so established by the Council.



~~6.4.6.3.~~ Each such ~~committee or sub-committee~~working group shall have such terms of reference and ~~powers-responsibilities~~ and be subject to such conditions (as to reporting back to the Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.

~~6.5. Committees of the Council may not delegate their powers to a sub-committee unless expressly authorised by the Council.~~

~~6.6.6.4.~~ The Council shall approve the membership ~~to—of~~ all ~~committees/sub~~committeesworking groups that it has formally constituted and shall determine the Chairman of each ~~committee/sub-committee~~working group.

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## 7. Confidentiality

7.1. A Governor or a non-governor in attendance at a ~~committee~~working group shall not disclose a matter dealt with by, or brought before, the Council without its permission or until the ~~committee~~working group shall have reported to the Council or shall otherwise have concluded on that matter.

7.2. A Governor or a non-governor in attendance at a ~~committee~~working group shall not disclose any matter dealt with by, the ~~committee~~working group, notwithstanding that the matter has been reported or action has been concluded, if the Council or ~~committee~~working group resolves that it is confidential.

## 8. Declaration of Interests and Register of Interests

### 8.1. Declaration of Interests

8.1.1. Governors are required to comply with the Trust's standards of business conduct and to declare interests that are relevant and material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

8.1.2. Interests regarded as "relevant and material" are:

- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- (b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- (c) Employment with any private company, business or consultancy;
- (d) Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS;
- (e) A position of authority in a charity or voluntary organisation in the field of health and social care; or
- (f) Any connection with a voluntary or other organisation contracting for NHS services.

8.1.3. If a Governor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

- 8.1.4. At the time Governors' interests are declared, they should be recorded in the Council minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 8.1.5. Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.
- 8.1.6. During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision.
- 8.1.7. There is no requirement for the interests of Governors' spouses or partners to be declared except where a Governor is cohabiting with his spouse or partner, whereby any interest of a spouse or partner in a contract shall be declared.

## **8.2. Register of Interests**

- 8.2.1. The Registrar will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 8.2.2. Details of the Register will be kept up to date and reviewed annually.
- 8.2.3. The Register will be available to the public.

## **9. Compliance - Other Matters**

- 9.1. Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board for the guidance of all staff employed by the Trust.
- 9.2. Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct as amended from time to time):
  - 9.2.1. selflessness;
  - 9.2.2. integrity;
  - 9.2.3. objectivity;
  - 9.2.4. accountability;
  - 9.2.5. openness;
  - 9.2.6. honesty; and
  - 9.2.7. leadership.

## **10. Resolution of Disputes with the Board**

- 10.1. Should a dispute arise between the Council and the Board then the disputes resolution procedure set out below shall apply.

- 10.1.1. The Chairman, or Deputy Chairman (if the dispute involves the Chairman) shall first endeavour through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties.
- 10.1.2. Failing resolution under 10.1.1 above then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.1.3. The Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.1.4. The Chairman or Deputy Chairman (if the dispute involves the Chairman) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.1.1 above shall be repeated.
- 10.1.5. If, in the opinion of the Chairman or Deputy Chairman (if the dispute involves the Chairman), and following the further discussions prescribed in 10.1.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly.
- 10.1.6. On the satisfactory completion of this disputes process the Board shall implement agreed changes.
- 10.1.7. On the unsatisfactory completion of this disputes process the view of the Board shall prevail.
- 10.2. Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its provider licence.

**11. Council Performance** - The Chairman shall, at least annually, lead a performance assessment process for the Council to enable the Council to review its roles, structure, composition and procedures taking into account emerging best practice.

## ANNEX 7 – STANDING ORDERS FOR THE BOARD OF DIRECTORS

(Paragraph 33)

### 1. Interpretation

- 1.1 Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

**ACCOUNTING OFFICER** is the Chief Executive of the Trust.

**BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of the Chairman, and non-executive directors, appointed by the Council of Governors, and the executive directors, appointed by the Chair and the non-executive directors and (except for his own appointment) by the Chief Executive.

**BUDGET** means a resource, expressed in financial terms, approved by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

**CHAIRMAN** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The Chairman shall be deemed to include the non-executive director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

**COMMITTEE OF THE BOARD** means a committee appointed by the Board with specific terms of reference, chair, and membership approved by the Board.

**COMMITTEE OF THE COUNCIL** means a committee appointed by the Council of Governors with specific terms of reference, chair, and membership approved by the Council of Governors.

**COUNCIL** means the Council of Governors, formally constituted in accordance with this Constitution, meeting in public and presided over by the Chairman.

**DIRECTOR** means a person appointed to the Board in terms of paragraph 23 of this Constitution.

**GOVERNOR** means a person elected or appointed to the Council in terms of paragraph 11 of this Constitution.

**MEMBER** means a person registered as a member of a constituency in terms of paragraph 5 of this Constitution.

**MOTION** means a formal proposition to be discussed and voted on during the course of a meeting.

**OFFICER** means an employee of the Trust.

**TRUST** means the Bradford District Care NHS Foundation Trust.

- 1.2 Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Chief Executive and Director of Finance).

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## 2. **General Information**

- 2.1 The purpose of the Board Standing Orders is to ensure that the highest standards of Corporate Governance and conduct are achieved in the Board and throughout the organisation. The Board shall at all times seek to comply with the NHS Foundation Trust Code of Governance, which is founded on “The Combined Code.”
- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 The Directors shall appoint trustees to administer separately Charitable Funds received by the Trust and for which they are accountable to the Charity Commission.

## 3. **The Board**

- 3.1 The composition of the Board shall, as a minimum, be:
  - 3.1.1 A non – executive Chairman
  - 3.1.2 Five independent non-executive Directors.
  - 3.1.3 Five executive Directors including the:
    - 3.1.3.1 Chief Executive (the Accounting Officer);
    - 3.1.3.2 Finance Director;
    - 3.1.3.3 A registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984); and
    - 3.1.3.4 A registered nurse or a registered midwife.
- 3.2 The number of Directors may be increased, with the approval of the Board, provided always that at least half the Board, excluding the Chairman, comprises independent non-executive Directors.
- 3.3 The Board shall approve a formal declaration process to enable it to assess the independent status or otherwise of each non-executive Director. The process shall apply to all proposed new appointees and annually to those already appointed. The Chief Executive and Chairman of the Audit Committee shall review the declarations and shall report the outcome to the Board. The declaration of the Chairman of the Audit Committee, himself a non-executive Director under the terms of this Constitution, shall be reviewed and the outcome reported to the Board by the Trust Chairman and the Chief Executive. The Board shall then determine the status of each non-executive Director.
- 3.4 The Chairman shall appoint one of the independent non-executive Directors as the ‘Senior Independent Director’ in consultation with the Governors and other non-executive Directors. The Chairman shall normally, but not necessarily, appoint the deputy chairman to this position.
- 3.5 The Chairman and non-executive Directors are appointed / removed by the Council in accordance with paragraph 26 of this Constitution.
- 3.6 In accordance with paragraph 29 of this Constitution the non-executive Directors shall appoint the Chief Executive (which appointment shall be approved by the Council)

and a committee consisting of the Chairman, Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

- 3.7 The term of office of each of the Directors shall be determined in accordance with paragraph 35 of this Constitution.
- 3.8 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council shall, in accordance with paragraph 28 of this Constitution, appoint one of the non-executive Directors to be deputy chairman.
- 3.9 Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his duties, be taken to include references to the deputy chairman (if any) or otherwise to a non-executive Director appointed by the Board to preside for the time being over its meetings.
- 3.10 Where more than one person is appointed jointly to a post then those persons may, with the approval of the Board, be appointed as an executive Director jointly, and shall count as one person.
- 3.11 The Board shall appoint a Secretary who, under the direction of the Chairman, shall ensure good information flows within the Board and Council and their Committees, between Directors and Governors, and between senior management and non-executive Directors. The Secretary shall also advise the Board and Council on all governance matters and shall facilitate induction and professional development as required.
- 3.12 The Board's Nominations Committee shall meet to appraise the Chairman's performance, at least annually, and on such other occasions as are deemed by the Board to be appropriate, with or without the Chairman present, and led by the Senior Independent Non-Executive Director. The Committee shall prepare a written appraisal and circulate it in confidence to all non-executive Directors including the Chairman. If appropriate, and with the approval of the majority of the non-executive Directors, the Senior Independent Non-Executive Director shall make recommendations to the Chairman or he shall appraise the Chief Executive of the Committee's report and together they may make recommendations to the Chairman. Exceptionally the Senior Independent Director may, with the approval of the Committee, disclose the Committee's recommendations to the Board sitting in Private Session.
- 3.13 The Board shall approve a formal Letter of Understanding between the Chairman and Chief Executive setting out, as clearly as possible, a division of their responsibilities. The Letter shall be reviewed and modified as the Board shall, from time to time, decide.
- 3.14 A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a Director save where the Director has acted recklessly. On behalf of the Directors and as part of the Trust's overall insurance arrangements, the Board shall put in place appropriate insurance provision to cover such indemnity.

- 3.15 Non-executive Directors may, at the Trust's expense, seek external advice or appoint an external adviser on any material matter of concern provided the decision to do so is a collective one by the majority of non-executive Directors.

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

- 4.1 **Ordinary meetings** - ordinary meetings shall be held at regular intervals at such times and places as the Board may determine. Meetings will be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of such meetings for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from the meeting if they are interfering with or preventing the proper conduct of the meeting.
- 4.2 **Calling Meetings** – Notwithstanding paragraph 4.1 above, the Chairman may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust's headquarters, such one third or more Directors may forthwith call a meeting.
- 4.3 **Notice of Meetings** - Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least five clear days before the meeting. Lack of service of the notice on any Director shall not affect the validity of a meeting subject to paragraph 4.6.
- 4.4 Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least two-thirds of Directors (executive and non-executive Directors taken together) but to include a minimum of two executive Directors and two non-executive Directors.
- 4.5 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.6 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 4.7 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 4.8 A Director desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.
- 4.9 **Chairman of Meeting** - At any meeting of the Trust, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the deputy chairman, appointed by the Council to take on the Chairman's duties, shall preside.

Otherwise, such non-executive Director as the Directors present shall choose shall preside.

- 4.10 **Notices of Motions** - A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert it in the agenda for the meeting. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to paragraph 4.5 above.
- 4.11 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 4.12 Notice of a motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board it shall not be competent for any Director, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he considers it appropriate.
- 4.13 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.14 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- 4.14.1 An amendment to the motion;
  - 4.14.2 The adjournment of the discussion or the meeting;
  - 4.14.3 The appointment of an ad hoc committee to deal with a specific item of business;
  - 4.14.4 That the meeting proceed to the next business; and/or
  - 4.14.5 That the motion be now put.
- Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.
- In the case of motions under 4.14.4 and 4.14.5, to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate.
- 4.15 **Chairman's Ruling** - Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- 4.16 **Voting** - Decisions at meetings shall be determined by a majority of the votes of the Directors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.



- 4.17 All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.18 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstain.
- 4.19 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.20 In no circumstances may an absent Director vote by proxy although the Board may agree that its members may participate in its meetings by telephone, video or video media link. Subject to participation in a meeting in this manner (which shall be deemed to constitute presence in person at the meeting) absence is defined as being absent at the time of the vote.
- 4.21 An Officer who has been formally appointed by the Board to act up for an executive Director during a period of incapacity or temporarily to fill an executive Director vacancy, shall be entitled to exercise the voting rights of that executive Director. An Officer attending the Board to represent an executive Director during a period of incapacity or temporary absence without status may not exercise the voting rights of that executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.
- 4.22 **Joint Directors** - Where an executive Director post is shared by more than one person:
- 4.22.1 each person shall be entitled to attend meetings of the Board;
- 4.22.2 each of those persons shall be eligible to vote in the case of agreement between them;
- 4.22.3 in the case of disagreement between them no vote should be cast; and
- 4.22.4 the presence of those persons shall count as one person.
- 4.23 **Suspension of Standing Orders**
- 4.23.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including two executive Directors and two non-executive Directors, and that a majority of those present vote in favour of suspension.
- 4.23.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 4.23.3 A separate record of matters discussed during the suspension of the Standing Orders shall be made and shall be available to the directors.
- 4.23.4 No formal business may be transacted while the Standing Orders are suspended.

4.23.5 The Audit Committee of the Trust shall review every decision to suspend the Standing Orders.

#### 4.24 **Variation and Amendment of Standing Orders**

4.24.1 These Standing Orders may be amended only in accordance with paragraph 46 of the Constitution.

4.25 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.

#### 4.26 **Minutes**

4.26.1 The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.26.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.26.3 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public (required by Code of Practice on Openness in the NHS).

#### 4.27 **Quorum**

4.27.1 No business shall be transacted at a meeting of the Board unless at least one-third of the whole number of the Directors is present including at least one executive Director and one non-executive Director.

4.27.2 An Officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.

4.27.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

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

5.1 The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, or by a Director of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit. Any such committee or sub-committee shall be comprised solely of Directors of the Trust.

5.2 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.

- 5.3 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted in accordance with paragraph 5.1 above. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
- 5.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to one of its Committees shall be exercised on behalf of the Board by the Chief Executive. He shall determine which functions he will perform personally and shall nominate Officers to undertake remaining functions but still retain accountability for these to the Board.
- 5.5 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals that shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.
- 5.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of any executive Director to provide information and advise the Board in accordance with any statutory requirements.
- 5.7 The arrangements made by the Board as set out in the "Scheme of Delegation" shall have effect as if incorporated in these Standing Orders.
- 5.8 **Governance Manual** – The Trust shall produce a Governance Manual which shall provide details of the matters that the Board has, for the time being, reserved for itself and/or delegated to Committees of the Board (including the terms of reference and membership of each Committee of the Board) and/or delegated to the Chief Executive and executive Directors of the Trust. The Governance Manual shall also include the Code of Conduct for Governors, details of the Committees of the Council and the Trust's Standing Financial Instructions. The Governance Manual shall be reviewed at least annually by the Board and, except in relation to any provisions relating to the terms of reference and membership of each Committee of the Council, if necessary, amended.

## 6. **Committees of the Board**

- 6.1 The Board may delegate any of its powers to a committee or sub-committee of the Board. Any such committee or sub-committee shall be comprised solely of Directors of the Trust.
- 6.2 The Board may appoint working groups or sub-working groups consisting wholly or partly of individuals who are not Directors of the Trust for any purpose that is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to any such working groups or sub-working groups.
- 6.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Trust.
- 6.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board) as the

Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

- 6.5 Committees of the Board may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 6.6 The Board shall approve the appointments to each of the committees and working groups that it has formally constituted. Where the Board determines that individuals, who are neither Directors nor Officers, shall be appointed to a working group, the terms of such appointment shall be determined by the Board.
- 6.7 Where the Trust is required to appoint persons to a committee or working group which is to operate independently of the Trust, such appointment shall be approved by the Board.

## **7. Confidentiality**

- 7.1 A member of the Board or a committee or sub-committee of the Board shall not disclose a matter dealt with by or brought before the Board/committee/sub-committee without its permission or until the matter has been reported to the Board or has otherwise been concluded.
- 7.2 A member of the Board or a committee or sub-committee of the Board shall not disclose any matter dealt with by, or brought before, the Board/committee/sub-committee notwithstanding that the matter has been reported to the Board or has otherwise been concluded if the Board/committee/sub-committee has resolved that it is confidential.

## **8. Declaration of Interests**

- 8.1 The Trust's Directors shall declare any interests that they are required to declare in accordance with paragraph 34 of the Constitution.
- 8.2 If Directors have any doubt about whether an interest should be declared, this should be discussed with the Chairman.
- 8.3 At the time Directors' interests are declared, they should be entered into the Register of Interests and recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.
- 8.4 Where Directors declare directorships of companies in accordance with paragraph 34 of the Constitution, this information should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 8.5 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

## **9. Register of Interests**

- 9.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Directors.

- 9.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 9.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

#### 10. **Compliance - Other Matters**

- 10.1 Directors shall comply with Standing Financial Instructions prepared by the Finance Director and approved by the Board for the guidance of all staff employed by the Trust.
- 10.2 Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life:
- 10.2.1 selflessness;
  - 10.2.2 integrity;
  - 10.2.3 objectivity;
  - 10.2.4 accountability;
  - 10.2.5 openness;
  - 10.2.6 honesty; and
  - 10.2.7 leadership.

#### 11. **Resolution of Disputes with the Council of Governors**

- 11.1 Should any dispute arise between the Board of Directors and the Council of Governors, the following disputes resolution procedure shall apply:
- 11.1.1 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) shall first endeavour through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties.
  - 11.1.2 Failing resolution under 11.1.1 above then the Board or the Council, as appropriate, shall, at its next formal meeting, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
  - 11.1.3 The Trust Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
  - 11.1.4 The Chairman or Deputy Chairman (if the dispute involves the Chairman) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the Response to Disputes Statement. If the matter

remains unresolved or only partially resolved then the procedure outlined in 11.1.1 above shall be repeated.

11.1.5 If, in the opinion of the Chairman or Deputy Chairman (if the dispute involves the Chairman), and following the further discussions prescribed in 11.1.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly.

11.1.6 On the satisfactory completion of this disputes process the Board shall implement agreed changes.

11.1.7 On the unsatisfactory completion of this disputes process the view of the Board shall prevail.

11.2 Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its provider licence.

**12. Notification of Monitor and Council of Governors** - The Board shall notify Monitor and the Council of any major changes in the circumstances of the Trust which have made or could lead to a substantial change to its financial well being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with its provider licence.

**13. Board Performance** - The Chairman, with the assistance of the Secretary, shall lead, at least annually, a performance assessment process for the Board. This process should act as the basis for determining individual and collective professional development programs for Directors.

## **ANNEX 8 – FURTHER PROVISIONS IN RELATION TO MEMBERS**

(Paragraph 9.4 and 31.1.4)

### **Disqualification from membership**

1. A person may not become a member of the Trust if within the last five years:
  - (a) he has been involved in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's employees, or registered volunteers or
  - (b) he has been classified as a vexatious complainant as detailed in the Trust's Complaints policy.
2. A person may not become a member of the Trust unless he is age 14 or above.
3. A person may not become or remain a member of the Public Constituency if they are eligible to become a member of the Staff Constituency.
4. A person may not be a member of more than one constituency.
5. Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member it shall give the member 14 days written notice to show cause why his name should not be removed from the register of members. On receipt of any such information supplied by the member, the Registrar may, if he considers it appropriate, remove the member from the register of members. In the event of any dispute the Registrar shall refer the matter to the Council of Governors to determine.

### **Requirement of member to notify Trust**

All members of the Trust shall be under a duty to notify the Registrar of any change in their particulars which may affect their entitlement as a member.

### **Termination of membership**

A member shall cease to be a member if:

1. he resigns on notice to the Secretary;
2. he ceases to be entitled under this Constitution to be a member of any of the constituencies;
3. he is expelled under this Constitution; or
4. if it appears to the Secretary that he no longer wishes to be a member and after enquiries made in accordance with a process approved by the Council of Governors, he fails to confirm that he wishes to continue to be a member of the Trust.

### **Expulsion**

A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted:

1. Any member may complain to the Registrar that another member has acted in a way detrimental to the interests of the Trust.

2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
  - (a) dismiss the complaint and take no further action; or
  - (b) arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
3. If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
4. At the Meeting, the Council of Governors will consider any oral and written evidence produced in support of the complaint and any oral and written evidence submitted for or on behalf of the Member about whom complaint has been made.
5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.

No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council.

#### **Voting at Public Governor elections**

A person may not vote at a public election for an elected governor unless within the specified period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the constituency for which the election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.



## ANNEX 9 – STANDING ORDERS FOR ANNUAL MEMBERS’ MEETINGS

### 1. Interpretation

- 1.1. Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

**CHAIRMAN** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole.

**MEMBER** means a person registered as a member of a constituency in terms of paragraph 5 of this Constitution.

**OFFICER** means an employee of the Trust.

**TRUST MEANS THE** Bradford District Care NHS Foundation Trust.

- 1.2. Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Chief Executive and Director of Finance).

### 2. General Information

- 2.1. The purpose of the Standing Orders for Annual Members’ Meetings is to ensure that the highest standards of corporate governance and conduct are applied to all Annual Members’ Meetings.
- 2.2. All business shall be conducted in the name of the Trust.

### 3. Attendance

- 3.1. Each Member shall be entitled to attend an Annual Members’ Meeting.

### 4. Meetings in Public

- 4.1. Meetings of the Annual Members’ Meetings must be open to the public subject to the provisions of paragraph 4.2 below.
- 4.2. The Chairman may exclude any member of the public from an Annual Members’ Meeting if he is interfering with or preventing the reasonable conduct of the meeting.
- 4.3. Annual Members’ Meetings shall be held at such times and places that the Chairman may determine.

### 5. Notice of Meetings

- 5.1. Before each Annual Members’ Meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an officer of the Trust authorised by the Chairman to sign on his behalf, shall be posted on the Trust’s website.

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## **6. Setting the Agenda**

- 6.1. The Chairman shall determine the agenda for Annual Members' Meetings.

## **7. Chairman of Annual Members' Meetings**

- 7.1. The Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman shall preside.

## **8. Chairman's Ruling**

- 8.1. Statements of Members made at Annual Members' Meetings shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

## **9. Voting**

- 9.1. Decisions at meetings shall be determined by a majority of the votes of the Members present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 9.2. All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands.
- 9.3. A Member may not vote at an Annual Members' Meeting unless he/she has made a declaration in the specified form that he/she is a Member of a Public Constituency.
- 9.4. The form and content of the declaration for the purposes of paragraph 9.3 above shall be specified and published by the Trust from time to time and shall be so published not less than 28 days prior to the Annual Members' Meeting.
- 9.5. In no circumstances may an absent Member vote by proxy.

## **10. Suspension of Standing Orders**

- 10.1. Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at an Annual Members' Meeting, provided that a majority of members present vote in favour of suspension.
- 10.2. A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 10.3. A separate record of matters discussed during the suspension of the Standing Orders shall be made and shall be available to the members.
- 10.4. No formal business may be transacted while the Standing Orders are suspended.
- 10.5. The Trust's Audit Committee shall review every decision to suspend the Standing Orders.

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

- 11.1. These Standing Orders may be amended in accordance with paragraph 46 of the Constitution.

## **12. Record of Attendance**

- 12.1. The Secretary shall keep a record of the names of the Members present at an Annual Members' Meeting.

## **13. Minutes**

- 13.1. The Minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it.
- 13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 13.3. The Minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

## **14. Quorum**

- 14.1. No business shall be transacted at an Annual Members' Meeting unless at least 20 members are present.