



# **Public Board of Directors Meeting**

**9<sup>th</sup> December 2020 at 4.30pm  
Held Virtually**

**Board of Directors Meeting**  
*Meeting to be held on Wednesday 9<sup>th</sup> December 2020*  
*at 4.30pm to 5.15pm by Virtual Meeting*

**A G E N D A**

- |    |   |                 |             |
|----|---|-----------------|-------------|
| 1. | Apologies   | <i>verbal</i>   |             |
| 2. | Declarations of Interest  | <i>verbal</i>   |             |
| 3. | Minutes of the meeting held on the 28 <sup>th</sup> October 2020  | <i>attached</i> |             |
| 4. | Matters arising from the minutes of the previous meeting          | <i>verbal</i>   |             |
| 5. | GSTT-RBHT Merger – final board decision<br><i>Lawrence Tallon</i> | attached        | (BDA/20/12) |
| 6. | Any Other Business  |                 |             |

Arrangements for the next meeting of the Board of Directors meeting due to be held on 27<sup>th</sup> January 2021 at 3:45 pm arrangements will be confirmed in due course.

**Board of Directors**

**Minutes of the meeting held on Wednesday 28<sup>th</sup> October 2020  
at 3.30pm held Virtually**

**Present:** Sir H Taylor (Chairman)  
Dr I Abbs  
Mr P Cleal  
Mr J Findlay  
Dr F Harvey  
Ms T Lynch  
Ms J Parrott  
Mr J Pelly  
Ms J Screamon  
Mr M Shaw  
Dr S Shribman  
Dr P Singh  
Dr S Steddon  
Mr L Tallon  
Mr S Weiner

**Attendance:** Mr E Bradshaw (Secretary)  
Ms S Austin  
Ms B Bryant  
Ms G Charlton  
Ms S Clarke  
Ms J Dahlstrom  
Mr R Drummond  
Mr A Gourlay  
Ms A Knowles  
Ms R Liley  
Dr N Wigglesworth

Members of the Council of Governors; members of the public; and members of staff.

The Chairman welcomed participants to this virtual Board meeting. The Chairman emphasised that members of the Council of Governors would have the opportunity to ask questions during the afternoon.

**BOD/20/01 Care Awards**

The Chair informed the Board that the Care Awards would not take place as planned and would be rearranged for a later date.

**BOD/20/02 Apologies**

Apologies were received from Prof R Razavi.

**BOD/20/03**    **Declarations of Interest**

There were no declarations of interest.

**BOD/20/04**    **Minutes of the meeting held on 22<sup>nd</sup> July 2020**

The minutes of the meeting held on 22<sup>nd</sup> July 2020 were agreed as an accurate record.

**BOD/20/05**    **Matters arising**

There were no matters arising.

**BOD/20/06**    **COVID-19 update**

The Chief Operating Officer provided Board members with an overview of the current position regarding COVID-19. In recent weeks there had been an incremental increase in the number of inpatients who had been diagnosed with the virus, but the overall impact on the Trust remained very different to that in the first COVID-19 wave.

A 'command and control' structure had been set up to monitor and respond to events and to ensure rapid communication across the Trust. The Board was advised of the importance of restoring the elective activity that was stopped at the height of the pandemic and which had created a backlog of patients waiting for treatment. Board members noted the arrangements in place to address this across south east London through a surgical 'hub' model. Clarification was requested on how the Trust had modelled future activity levels and what the impact of the modelling was on the elective pathway and the availability of critical care beds.

Board members noted that patients were currently being managed within the Trust's normal ward and critical care infrastructure, but that the Trust was preparing for potential increases in patients, both due to COVID-19 and as a result of seasonal pressures. The risk of increasing staff sickness absence was highlighted; Board members noted that additional critical care nurses had been recruited and that there had been strong uptake from staff of the Trust's flu vaccination.

**BOD/20/07**    **Chairman's Report**

The Chairman stated that NHS England and NHS Improvement (NHSE&I) were placing increasing emphasis on the role of the South East London Integrated Care System (ICS) to collectively coordinate and deliver healthcare to the local population. The concept of 'System by Default' was explained. The Board noted that ICSs are not currently statutory bodies and that national developments over the coming months would provide more clarity about how they would operate in the future. The Chairman would provide a further update at the public Board meeting in January.

**ACTION: HT, EB**

The Chairman explained that the three acute providers in south east London had formed an Acute Provider Collaborative (APC) to formalise the collaborative work that had taken place throughout the COVID-19 pandemic. The APC seeks to ensure continued organisational alignment during the recovery phase, for example through the agreement of surgical 'hubs' and the provision of equitable access to treatment across south east London, particularly in high volume, low acuity procedures such as ophthalmology.

A Committee-in-Common (CiC) has been formed to support the APC. This is a forum for providing mutual challenge and assurance about the collective delivery of the system agenda. Executive and Non-Executive Directors from the three trusts are represented on the CiC, although it does not currently have any delegated powers from the trust Boards.

### **BOD/20/08 Chief Executive's Report**

The Board noted the Chief Executive's report, which stated that the COVID-19 response and recovery of non-COVID-19 services continue to be the major focus of the Trust's work. An overview was provided of the actions being taken in this area and how the Trust was mitigating the key risks identified. The Chief Executive thanked all of the Trust's staff for their work during a difficult and challenging period.

The Chief Executive outlined the steps being taken to address issues on equality, diversity and inclusion across the organisation. A current focus was to improve opportunities for career progression, remove discrimination and build cultural capability and confidence across all levels of management. The Trust's leadership is proud of the diversity of its staff base, but recognises the need to do more, at pace, to progress this important agenda and meet the Race Equality Standards.

The procurement exercise to appoint a new pathology service provider for four providers and GPs across south east London had been completed. The Boards of Guy's and St Thomas' and King's College Hospital had approved the full business case for this proposal and confirmed SYNLAB as their new partner. Board members noted the benefits of the venture, for example in expediting diagnoses of suspected cancers, and the timelines by which contracts will be signed and services commenced.

Board members received updates on two of the Trust's major programmes: the proposed merger with Royal Brompton & Harefield NHS Foundation Trust and the Evelina Expansion. For each programme the Board was reminded of the key benefits and were provided with an update on the status of the work and the timelines to completion.

The Trust's Joint Director of Infection, Prevention and Control (DIPC) informed the Board that the Trust had completed the Infection Prevention and Control (IPC) Board Assurance Framework (BAF) exercise that had been published by NHSE&I in May 2020. The exercise included assessments of the Trust's ability to manage hygiene, manage patients, isolate patients and provide testing. It had identified very high compliance, with mitigations already in place for minor gaps. The results had been presented to the Trust Board Quality and Performance Committee and subsequently shared with the Care Quality Commission (CQC), which was satisfied with the assurance provided.

The Board noted the Consultant appointments made since the last report. The Chief Executive highlighted the expanding number of Consultant Anaesthetists to support work in surgery and critical care.

**BOD/20/09 Freedom to Speak Up Annual Update**

The Freedom to Speak Up (FTSU) Guardian updated the Board on the case numbers and themes raised through the FTSU service over the past 15 months, and shared the learning, areas for improvement and priorities for the next 12 months.

Board members noted that although the number of cases dealt with by the FTSU service had increased slightly from the previous year, this indicated improved awareness of the service and increased staff confidence in using it. The concerns raised by the Trust staff were closely aligned with those reported by the National FTSU Guardian's office, and included Personal Protective Equipment (PPE) and social distancing measures.

The Board noted that feedback showed a high proportion of service users had reported a 'positive' or 'very positive' experience and that, despite the COVID-19 pandemic, this was consistent with the results from the previous year. Board members discussed how all staff could feel supported to speak up, and welcomed news that the FTSU team was working more closely with the Trust's Equality, Diversity and Inclusion (EDI) team to achieve this.

The Board reaffirmed its commitment to support the work of the FTSU service and thanked the FTSU Guardian and her team for the work they had done.

**BOD/20/10 GSTT Brexit Contingency Plan**

The Board received an update on the Trust's preparedness for exit from the European Union (EU) and the updates in guidance received since the UK entered the EU transition period, which ends on 31 December 2020.

The Trust's EU exit working group, chaired by the Chief Operating Officer and with representation from across the Trust, had been re-established in September 2020 to ensure directorates were reviving their preparations for a 'no-deal' exit.

Board members considered the key risks of a no-deal exit, including the supply of medicines, vaccines, clinical devices and consumables, and workforce. Whilst little national guidance or communication has been forthcoming to guide preparations, the Trust is not allowed to stockpile consumables to mitigate disruptions to deliveries during the early stages of the new arrangements. The importance of supply chain resilience was therefore noted.

The Trust's EU exit working group will review any new guidance, monitor the supply chain and will update risk assessments as required. The Board agreed that, in the event of a 'no deal' exit, the Trust would manage under the command and control arrangements currently in place and would review this as and when national guidance was made available.

**BOD/20/11 Reports from Board Committees for noting**

The Board noted the minutes and reports of its various Committees as follows:

- a) Audit and Risk Committee: minutes 16<sup>th</sup> September 2020
- b) Strategy and Partnerships Committee: minutes 29<sup>th</sup> July 2020 and 23<sup>rd</sup> September 2020
- c) Transformation and Major Programmes Committee: minutes 29<sup>th</sup> July 2020 and 23<sup>rd</sup> September 2020
- d) Quality and Performance Committee:
  - i. Minutes 2<sup>nd</sup> September 2020
  - ii. Month 5 Financial Report
  - iii. Balanced Score Card to Month 5

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**BOD/20/11 Register of Documents Signed Under Seal**

The Board noted the record of documents signed under Trust seal.

**BOD/20/12 Any Other Business**

The Chief Executive informed the Board that, in July 2020 the Council of Governors had invited the Trust Chairman to extend his term of office by up to two years, with effect from 31 January 2021 and up to 20 January 2023. The Chairman had accepted this invitation and an amendment to the Trust's Constitution to enable the extension had since been approved by the Council of Governors and the Transformation and Major Programmes Board Committee.

**BOD/20/13 Date and Time of Next Meeting**

Arrangements for the next meeting of the Board of Directors meeting due to be held on 27<sup>th</sup> January 2021 3:45 pm in the Robens Suite, Guy's Hospital will be confirmed in due course.

Board

**GUY'S AND ST THOMAS' NHS FOUNDATION TRUST**  
**BOARD OF DIRECTORS**  
**WEDNESDAY 09 DECEMBER 2020**

<b>Title:</b>	<b>GSTT-RBHT Merger – final board decision</b>
<b>Responsible Director:</b>	<b>Lawrence Tallon, Deputy CEO</b>
<b>Contact:</b>	<b>Victoria Fairhurst, victoria.fairhurst@gstt.nhs.uk</b>
<b>Purpose:</b>	To recommend that the Board approves Guy's and St Thomas' NHS Foundation Trust's (the Trust's) application to NHS Improvement (NHSI) for the merger with Royal Brompton and Harefield Foundation Trust (RBHT) via statutory acquisition, including relevant updates to the Trust's constitution which is appended.
<b>Strategic priority reference:</b>	TO BUILD RESILIENT HEALTH AND CARE SYSTEMS WITH OUR PARTNERS
<b>Key Issues Summary:</b>	<ul style="list-style-type: none"> <li>• This paper sets out the strategic rationale for the merger and the process by which the Board of Directors has met its obligations with regard to the proposed transaction.</li> <li>• NHSI agreement of the Board certifications is needed before the Trust can enter into a legally binding agreement with RBHT. The NHSI decision is expected on 8 December 2020 – after GSTT Board papers are circulated – so a verbal update will be provided to the Board of Directors on 9 December 2020.</li> <li>• The appropriate resolution has been drafted for consideration by the Board.</li> </ul>
<b>Recommendations:</b>	<p>The BOARD OF DIRECTORS is asked to:</p> <ol style="list-style-type: none"> <li>1. <u>Confirm</u> the process undertaken has been comprehensive and robust.</li> <li>2. <u>Agree</u> the proposed resolution to merge with RBHT by the mechanism of statutory acquisition.</li> </ol>



Board

**GUY'S AND ST THOMAS' NHS FOUNDATION TRUST  
BOARD OF DIRECTORS**

**WEDNESDAY 09 DECEMBER 2020**

**GSTT-RBHT MERGER – FINAL BOARD DECISION**

**PRESENTED BY LAWRENCE TALLON, DEPUTY CHIEF EXECUTIVE**

**1. Introduction**

- 1.1. Over the course of 2020, following the NHS England and NHSI Board meeting of January 2020, which signalled support in principle for our merger, the Trust has been working collegiately with RBHT to develop plans for a merger by acquisition of RBHT by GSTT. We now seek formal Board approval for this merger.
- 1.2. The draft Full Business Case (FBC) for the merger with RBHT was presented and discussed at the Transformation and Major Programmes Committee (TMP) on 28 October 2020, and was approved subject to finalisation of a small number of issues. An update on these matters will be provided to TMP on 9 December 2020 to confirm to the Committee that satisfactory progress has been made on all of those outstanding issues.
- 1.3. The required Board certifications have been submitted to NHSI. It is the Trust's understanding that a recommendation to agree the certifications is being taken to the NHSI Provider Oversight Committee on 8 December 2020 for approval. A verbal update on this outcome will be provided to the GSTT Board on 9 December 2020.

## Board

1.4. On the basis that the NHSI agreement is confirmed, it is recommended that the Board approves the application to proceed with the merger. The final part of the approvals process is then for the Board of RBHT, and for the Councils of Governors of both trusts, to confirm their support for completion of the merger.

## 2. Strategic Rationale

2.1. The collaboration between GSTT and RBHT began three years ago with the announcement of a partnership between Kings Health Partners (KHP) and RBHT. This has grown to the point where the best way to realise the many benefits of the relationship is to combine the two trusts. This will also enable the trusts to further build upon the relationship with two other founding members of KHP: King's College Hospital NHS Foundation Trust and King's College London. The merged trust will also seek to retain and nurture other important academic affiliations, in particular with Imperial College London which has a long standing relationship with RBHT.

2.2. The merger of GSTT and RBHT will facilitate:

- A world leading heart and lung institute, which will maintain the Royal Brompton and Harefield names, as an internationally recognised centre of excellence, providing clinical care and research locally, nationally and internationally;
- A nationally approved continuation of the Royal Brompton and Harefield's paediatric services, which may not be possible otherwise;
- A network that secures care from before birth to old age, caring for patients with lifelong heart and/or lung conditions;
- Subject to consultation, the integration of RBHT's paediatric services with the Evelina London Children's Hospital (Evelina London) at Guy's and St Thomas', to create a comprehensive children's hospital to rank with the best in Europe;

## Board

- As a related benefit, the building of one of the world's foremost centres of healthcare research and innovation as a major driver of medical technology and bio-medical innovation, to be built with private money near St Thomas', generating significant value for the UK in life sciences and health technologies; and
- Subject to consultation and other approvals (eg planning) over time, the development of a major centre of excellence on the St Thomas' site to enable the best patient care, research and educational value from RBHT joining with GSTT and working with KHP. This would enable the combined organisations to attract the best clinicians and researchers from across the world and to train and develop the world-class clinicians and scientists of the future.

### 3. Overview of the process undertaken

- 3.1. NHSE and NHSI gave their support in principle to the proposed merger between GSTT and RBHT in their January 2020 Board meeting, whilst recognising that any substantive service changes that may be proposed in future would remain subject to NHS national and regional specialised commissioning review and oversight, as well as public engagement and consultation where needed.
- 3.2. Following the NHSE and NHSI Board meeting, a Letter of Intent was signed between the two trusts in March 2020. A Strategic Case was developed and approved by both Trusts in July 2020. NHSI reviewed the Strategic Case and confirmed that the transaction was considered 'material' rather than 'significant' against the NHSI Transaction Guidance.<sup>1</sup> Therefore, the transaction requires Board self-certification, rather than a detailed review by the regulator.

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<sup>1</sup> [https://improvement.nhs.uk/documents/1983/Transactions\\_guidance\\_2017\\_Final.pdf](https://improvement.nhs.uk/documents/1983/Transactions_guidance_2017_Final.pdf)



## Board

- 3.3. In developing the FBC, the NHSI Transaction Guidance and good practice were followed. This included a comprehensive due diligence process and engagement with stakeholders including staff, members, patients, governors, MPs and Local Authority Oversight and Scrutiny Committees.
- 3.4. The Transformation and Major Programmes Board Committee considered the FBC for the merger in October 2020 and agreed that it should proceed, subject to finalisation of a number of matters. These issues have now been completed and the FBC and proposed constitution for the enlarged trust have been updated accordingly.

## 4. NHSI approvals

- 4.1. Board certifications were submitted to NHSI following approval at the Trust's Quality and Performance Committee on 25 November 2020.
- 4.2. NHSI's Provider Oversight Committee will meet on 8 December 2020 to agree the Board certifications and a verbal update will be provided on the NHSI decision at the GSTT Board meeting on 9 December 2020. NHSI agreement is required before legally binding agreements with RBHT can be progressed and finalised.

## 5. Process and next steps

- 5.1. Subject to receipt of the said NHSI confirmation, the next steps in the process to complete the transaction (the merger of GSTT and RBHT via statutory acquisition) are as follows:
  - On 9 December 2020, the RBHT and GSTT Boards decide on a series of resolutions to enable the transaction to proceed.
  - Later on 9 December 2020, the GSTT Council of Governors will be asked to approve the Board decisions.
  - On 15 December 2020, the RBHT Council of Governors will be asked to approve the RBHT Board decisions.

## Board

- On 16 December 2020, or soon after, RBHT and GSTT will sign the Transaction Agreement, subject to the approvals above.
- Also on 16 December 2020, or soon after, the trusts will make a joint written application to NHSI for the acquisition to be granted. This application is attached as Appendix 2. This will include the proposed new constitution, attached as Appendix 1.
- NHSI will then make the Grant of Acquisition, which specifies that the Grant will come into effect on 1 February 2021.
- On 1 February 2021, the merger by acquisition will be completed. RBHT will be dissolved and its assets and liabilities transferred to GSTT.

## 6. Recommendations

6.1. The Board is recommended to approve the resolution as set out below:

*The Board considered the draft joint application by the Trust and the Royal Brompton & Harefield NHS Foundation Trust (“RBHT”) for the acquisition of RBHT by the Trust pursuant to section 56A of the NHS Act 2006 (“the Application”).*

*The Board considered the draft amendments to the Trust’s Constitution appended to the Application, which would come into effect upon the grant of the Application.*

*The Chair noted that:*

- a. Further to paragraph 22 of the Trust’s Constitution and section 56A(2) of the NHS Act 2006, a joint application by the Trust and RBHT to Monitor for approval of the proposed acquisition of RBHT by the*



## Board

*Trust may only be made with the approval of more than half of the members of the Council of Governors of each applicant;*

- b. Further to paragraph 21.1 of the Constitution, the Trust may make amendments to the Constitution only if more than half of the members of the Council of Governors voting approve the amendments;*
- c. The proposed Application for the acquisition of RBHT is a “significant transaction” for the purposes of paragraph 17.2 of the Constitution which the Trust may only enter into with the approval of more than half of the members of the Council of Governors voting;*

### RESOLVED:

*The Board resolved:*

- o To approve the Application;*
- o To approve the amendments to the Trust’s Constitution appended to the Application;*
- o Subject to approval by the Trust’s Council of Governors and the Council of Governors of RBHT, to submit the Application and amended Trust Constitution to Monitor for formal approval pursuant to section 56A of the NHS Act 2006.*

**Board**

## **Appendix 1: Proposed constitution for the enlarged Trust**

See separate attachment.

## Board



### Appendix 2: Draft letter of application

The letter of application will take the following form and will be signed by the CEO and Chair of each trust.

Monitor  
NHS Improvement  
Skipton House  
80 London Road  
London SE1 6LH

[X] December 2020

Dear Sirs

#### **Proposed merger by acquisition of Royal Brompton and Harefield NHS Foundation Trust by Guy's and St Thomas' NHS Foundation Trust (“the Parties”)**

In accordance with section 56A of the National Health Service Act 2006 (the “Act”) and the enclosed transaction agreement dated XX between the Parties, this letter is the joint application of the Parties to NHS Improvement (acting in its capacity as Monitor) for their merger by way of the acquisition of **Royal Brompton and Harefield NHS Foundation Trust** by **Guy's and St Thomas' NHS Foundation Trust**.

The Parties request that NHS Improvement:



## Board

1. Grants this joint application pursuant to section 56A of the Act to confirm that it is satisfied that the Parties have taken such steps as are necessary to prepare for the merger taking effect on 1 February 2021.
2. Makes the grant of application pursuant to section 56A of the Act.

In compliance with section 56A of the Act, the Parties enclose:

3. A copy of minutes of meetings of the councils of governors of **Royal Brompton and Harefield NHS Foundation Trust** and **Guy's and St Thomas' NHS Foundation Trust** evidencing the approval to this application of more than half of the members of each council of governors.
4. A copy of the proposed constitution of **Guy's and St Thomas' NHS Foundation Trust**.

**GUY'S & ST THOMAS' NHS FOUNDATION TRUST**  
**(A PUBLIC BENEFIT CORPORATION)**

**6.a**

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**CONSTITUTION**

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**GUY'S & ST THOMAS' NHS FOUNDATION TRUST CONSTITUTION****1. DEFINITIONS AND INTERPRETATION**

1.1 In this constitution:

<b>"Accounting Officer"</b>	means that person who from time to time discharges the functions of Accounting Officer of the Trust for the purposes of Government accounting.
<b>"Area of the Trust"</b>	means the area specified as the area of the Public Constituency in Annex 1.
<b>"Board of Directors"</b>	means the board of directors of the Trust as constituted pursuant to this Constitution and the 2006 Act.
<b>"British Islands"</b>	has the same meaning as it has when used in the 2006 Act, currently "the United Kingdom, the Channel Islands and the Isle of Man".
<b>"Chair"</b>	means the Chair of the Trust.
<b>"Chief Executive"</b>	means the chief executive of the Trust.
<b>"Class"</b>	means the division of a Membership Constituency by reference to the description of individuals eligible to be Members of it.
<b>"Code of Conduct for Governors"</b>	means the code of conduct for Governors as set out in Annex 5.
<b>"Commissioner"</b>	means any organisation specified in paragraph 8.7.1.
<b>"Council of Governors"</b>	means the Council of Governors as constituted pursuant to this Constitution.
<b>"Director"</b>	means a director on the Board of Directors.
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out at Annex 6.
<b>"Election Scheme"</b>	means the electoral system specified at Annex 3 or as otherwise may be specified in regulations made by the Secretary of State.
<b>"Financial Year"</b>	means any period of twelve months beginning on 1st April.
<b>"Governor"</b>	means a person who is a member of the Council of Governors.
<b>"GST Clinicians Staff Class"</b>	means the Staff Class defined in paragraph 7.3.6.
<b>"GST CSD Staff Class"</b>	means the Staff Class defined in paragraph 7.3.5.
<b>"GST Other Staff Class"</b>	means the Staff Class defined in paragraph 7.3.7.

<b>"Health Service Body"</b>	shall have the same meaning as in Section 9(4) of the 2006 Act.
<b>"Local Authority Governor"</b>	means a Governor appointed in accordance with paragraph 8.8.
<b>"System Governor"</b>	means a Governor appointed in accordance with paragraph 8.7.
<b>"Material Transaction"</b>	is defined in paragraph 17.4.
<b>"Member"</b>	means a member of the Trust.
<b>"Membership Constituency"</b>	means any of (1) the Patients' Constituency; (2) the Public Constituency; or (3) the Staff Constituency.
<b>"Monitor"</b>	means the body corporate referred to in section 61 of the 2012 Act. Since April 2016, Monitor is part of NHS Improvement.
<b>"Nominations Committee"</b>	means a committee of the Council of Governors established in accordance with paragraph 8.18.
<b>"Non Principal Purpose Activities"</b>	means activities other than the provision of goods and services for the purposes of the National Health Service in England.
<b>"Partner Hospital Governor"</b>	means a Governor appointed in accordance with paragraph 8.10
<b>"Partner Hospitals"</b>	mean any organisation specified in paragraph 8.10.1.
<b>"Partnership Governor"</b>	means a System Governor, a Local Authority Governor, a University Governor or a Partner Hospital Governor.
<b>"Patient"</b>	means a person within the definition at paragraph 7.4.2.
<b>"Patient Carer"</b>	means a person within the definition at paragraph 7.4.3.
<b>"Patients' Constituency"</b>	means a constituency of the Trust constituted in accordance with paragraph 7.4.
<b>"Patient Governor"</b>	means a Governor elected by the Members of the Patients' Constituency in accordance with paragraph 8.5.
<b>"Principal Purpose"</b>	is defined in paragraph 3.1.
<b>"Public Constituency"</b>	means the constituency of the Trust constituted in accordance with paragraph 7.2.
<b>"Public Constituency Area"</b>	means any of the Public Constituency areas specified in Column 2 of the Table set out in Annex 1.
<b>"Public Governor"</b>	means a Governor elected by the Members of the Public Constituency in accordance with paragraph 8.4.
<b>"RBH Clinicians Staff Class"</b>	means the Staff Class defined in paragraph 7.3.8.

<b>"RBH Other Staff Class"</b>	means the Staff Class defined in paragraph 7.3.9.
<b>"RBHFT"</b>	means the Royal Brompton and Harefield NHS Foundation Trust (prior to its dissolution).
<b>"RBHFT Constitution"</b>	means the Constitution of RBHFT immediately prior to its dissolution.
<b>"Register of Members"</b>	means the register of members which the Trust is required to have and maintain under Paragraph 20 of Schedule 7 to the 2006 Act.
<b>"Secretary"</b>	means the Trust Secretary or any other person appointed by the Trust to perform the duties of the Trust Secretary including a joint, assistant or deputy Secretary or such other person as may be appointed by the Trust to perform the functions of the Secretary under this Constitution.
<b>"Significant Transaction"</b>	is defined in paragraph 17.2.
<b>"Staff Class"</b>	means any of the GST CSD Staff Class, the GST Clinicians Staff Class, the GST Other Staff Class, the RBH Clinicians Staff Class or the RBH Other Staff Class.
<b>"Staff Constituency"</b>	means the constituency of the Trust constituted in accordance with paragraph 7.3.
<b>"Staff Governor"</b>	means a Governor elected by the Members of the Staff Constituency in accordance with paragraph 8.6.
<b>"the 2006 Act"</b>	means the National Health Service Act 2006, as amended from time to time.
<b>"the 2012 Act"</b>	means the Health and Social Care Act 2012, as amended from time to time.
<b>"the Trust"</b>	means the Guy's & St Thomas' NHS Foundation Trust.
<b>"Trust Hospital"</b>	means all or any hospital or other patient care facilities administered by the Trust from time to time and designated by the Trust as falling within this definition.
<b>"University Governor"</b>	means a Governor appointed in accordance with paragraph 8.9.

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

1.3 Unless the contrary intention appears or the context otherwise requires:

1.3.1 words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.

1.3.2 references in this Constitution to legislation include all amendments, replacements, or re-enactments made to that legislation;

- 1.3.3 references to legislation include all regulations, statutory guidance or directions made in respect of that legislation;
- 1.3.4 references to paragraphs are to paragraphs in this Constitution;
- 1.3.5 all annexes referred to in this Constitution form part of it; and
- 1.3.6 words importing the singular shall include the plural and vice versa.

## 2. NAME

- 2.1 The name of the Foundation Trust is Guy's & St Thomas' NHS Foundation Trust.

## 3. PRINCIPAL PURPOSE

- 3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the National Health Service in England ("the Principal Purpose").
- 3.2 The Trust's total income in each Financial Year from the Principal Purpose must be greater than its total income from Non Principal Purpose Activities.

## 4. OTHER PURPOSES

- 4.1 The Trust may provide goods and services for any purposes related to:
  - 4.1.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
  - 4.1.2 the promotion and protection of public health.
- 4.2 Subject to the requirements set out in paragraph 16, the Trust may also carry on other activities for the purpose of making additional income available in order better to carry on the Principal Purpose.

## 5. POWERS

- 5.1 The Trust shall have all the powers of an NHS Foundation Trust as set out in the 2006 Act.

## 6. FRAMEWORK

- 6.1 The Trust shall have three Membership Constituencies, a Council of Governors and a Board of Directors. The Board of Directors will exercise the powers of the Trust. The Membership Constituencies will elect certain of their Members to the Council of Governors in accordance with this Constitution and other Governors will be appointed by various bodies which are also set out in this Constitution. The Council of Governors will fulfil those functions imposed on it by the 2006 Act and by this Constitution.

## 7. MEMBERS

### 7.1 The Membership Constituencies

- 7.1.1 The Trust shall have three Membership Constituencies, namely:
  - 7.1.1.1 the Public Constituency constituted in accordance with paragraph 7.2;
  - 7.1.1.2 the Staff Constituency constituted in accordance with paragraph 7.3; and

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- 7.1.1.3 the Patients' Constituency constituted in accordance with paragraph 7.4.
- 7.1.2 An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a Member of a Staff Class of the Staff Constituency in accordance with paragraph 7.3.
- 7.1.3 Where an individual applies to become a Member of the Trust, the Trust shall consider their application for membership as soon as reasonably practicable following its receipt and in any event no later than 28 days from the date upon which the application is received and unless that individual is ineligible for membership or is disqualified from membership the Secretary shall cause their name to be entered forthwith on the Trust's Register of Members and that individual shall thereupon become a Member.
- 7.1.4 Where an individual is invited by the Trust to become a Member in accordance with paragraph 7.3.1.3 that individual shall automatically become a Member and shall have their name entered on the Trust's Register of Members following the expiration of 14 days after the giving of that invitation unless within that period the individual has informed the Trust that they do not wish to become a Member.
- 7.1.5 An individual shall become a Member on the date upon which their name is entered on the Trust's Register of Members and that individual shall cease to be a Member upon the date upon which their name is removed from the Register of Members as provided for in this Constitution.
- 7.1.6 The Trust shall take reasonable steps to secure that taken as a whole the actual Membership of the Public Constituency and the Patients' Constituency is representative of those eligible for such Membership.
- 7.1.7 In deciding which areas are to comprise the Area of the Trust, or in deciding whether there shall continue to be a Patients' Constituency, the Trust shall have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services.
- 7.2 Public Constituency**
- 7.2.1 Members of the Public Constituency shall be individuals who:
- 7.2.1.1 live in one of the Public Constituency Areas specified in column 2 of the Table set out in Annex 1;
- 7.2.1.2 are not eligible to become a Member of the Staff Constituency and are not Members of any other Membership Constituency;
- 7.2.1.3 are not disqualified from membership under paragraph 7.5;
- 7.2.1.4 are at least 18 years of age at the time of their application to become a Member; and
- 7.2.1.5 have applied to the Trust to become a Member and that application has been accepted by the Trust in accordance with paragraph 7.1.3.
- 7.2.2 The Public Constituency is to be divided into the following three Public Constituency Areas as follows:
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7.2.2.1 Public Constituency Area 1 (see Annex 1, Row 3, Column 2);

7.2.2.2 Public Constituency Area 2 (see Annex 1, Row 4, Column 2);

7.2.2.3 Public Constituency Area 3 (see Annex 1, Row 5, Column 2).

7.2.3 The minimum number of Members required for each Public Constituency Area shall be the number given in the corresponding entry in column 3 of the Table set out at Annex 1.

7.2.4 An individual shall be deemed to live in one of the areas referred to at paragraph 7.2.2 and/or paragraph 7.2.3 above if this is evidenced by their name appearing on the then current Electoral Roll at an address within the Area of the Trust or the Trust acting by the Secretary is otherwise satisfied that the individual lives within the Area of the Trust.

### 7.3 Staff Constituency

7.3.1 Members of the Staff Constituency shall be individuals:

7.3.1.1 who:

(a) are employed under a contract of employment with the Trust which has no fixed term or is for a fixed term of at least 12 months; or

(b) have been continuously employed under a contract of employment with the Trust for at least 12 months; or

(c) exercise functions for the purposes of the Trust other than under a contract of employment with the Trust, have continuously exercised such functions for the Trust for at least 12 months, whose place of work is at the Trust and who are acknowledged in writing by the Trust as falling within the parameters of this paragraph 7.3.1.1(c). For the avoidance of doubt, individuals who exercise functions for the purposes of the Trust include a person who is:

i Employed by a university, any other NHS Trust or a voluntary organisation within the meaning of the 2006 Act and who holds an honorary contract with the Trust; or

ii A registered volunteer at the Trust.

7.3.1.2 who have not been disqualified from membership under paragraph 7.5; and

7.3.1.3 who have made an application to the Trust to become a Member of the relevant Class of the Staff Constituency applicable to them as defined in paragraph 7.3.4 and whose name has been entered on the Register of Members in accordance with paragraph 7.1.3 or have been invited by the Trust to become a Member of the relevant Class of that Membership Constituency as defined in paragraph 7.3.4 and their name has been entered on the Register of Members; and

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- 7.3.1.4 who are at least 18 years of age at the date of their application or invitation to become a Member (as the case may be) under paragraph 7.3.1.3.
- 7.3.2 Chapter 1 of Part XIV of the Employment Rights Act 1996 applies for the purpose of determining whether an individual has been continuously employed by the Trust for the purposes of paragraph 7.3.1.1(b) or has continuously exercised functions for the Trust for the purposes of paragraph 7.3.1.1(c)..
- 7.3.3 Notwithstanding the effect of paragraph 7.3.2 above, employment of individuals by RBHFT immediately prior to its dissolution shall count as part of their continuous employment with the Trust for the purpose of paragraph 7.3.1.1(b) and/or the continuous exercise of functions for the Trust for the purposes of paragraph 7.3.1.1(c).
- 7.3.4 The Staff Constituency is to be divided into five Staff Classes as follows:
- 7.3.4.1 the GST CSD Staff Class;
- 7.3.4.2 the GST Clinicians Staff Class;
- 7.3.4.3 the GST Other Staff Class;
- 7.3.4.4 the RBH Clinicians Staff Class;
- 7.3.4.5 the RBH Other Staff Class.
- 7.3.5 The Members of the GST CSD Staff Class are Members of the Staff Constituency who are employed under a contract of employment with the Trust in the Trust's Community Services Directorate.
- 7.3.6 The Members of the GST Clinicians Staff Class are Members of the Staff Constituency who are not Members of any other staff class, are not eligible to be Members of any other staff class and are regulated by a regulator overseen by the Professional Standards Authority for Health and Social Care, or are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class.
- 7.3.7 The Members of the GST Other Staff Class are Members of the Staff Constituency who are not Members of any other Staff Class, are not eligible to be Members of any other Staff Class and who are designated by the Trust from time to time as eligible to be Members of the GST Other Staff Class.
- 7.3.8 The Members of the RBH Clinicians Staff Class are individuals who are Members of the Staff Constituency who:
- 7.3.8.1 are not Members of any other Staff Class;
- 7.3.8.2 are employed under a contract of employment with the Trust and primarily work at the Royal Brompton Hospital and/or the Harefield Hospital or any other place that was part of RBHFT;
- 7.3.8.3 are not eligible to be Members of the GST CSD Staff Class, GST Other Staff Class or RBH Other Staff Class; and
- 7.3.8.4 are regulated by a regulator overseen by the Professional Standards Authority for Health and Social Care, or are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class.
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- 7.3.9 The Members of the RBH Other Staff Class are individuals who are Members of the Staff Constituency who:
- 7.3.9.1 are not Members of any other Staff Class;
  - 7.3.9.2 are not eligible to be Members of the GST CSD Staff Class, GST Clinicians Staff Class or RBH Clinicians Staff Class;
  - 7.3.9.3 are designated by the Trust from time to time as eligible to be Members of the RBH Other Staff Class
  - 7.3.9.4 are employed under a contract of employment with the Trust and primarily work at the Royal Brompton Hospital and/or the Harefield Hospital.
- 7.3.10 For the purposes of paragraphs 7.3.6 and 7.3.8 above, regulators overseen by the Professional Standards Authority for Health and Social Care include:
- 7.3.10.1 The General Dental Council;
  - 7.3.10.2 The General Medical Council;
  - 7.3.10.3 The General Optical Council;
  - 7.3.10.4 The General Osteopathic Council;
  - 7.3.10.5 The General Pharmaceutical Council;
  - 7.3.10.6 The Health & Care Professions Council;
  - 7.3.10.7 The Nursing & Midwifery Council;
  - 7.3.10.8 The Pharmaceutical Society of Northern Ireland;
  - 7.3.10.9 The General Chiropractic Council;
  - 7.3.10.10 Social Work England.
- 7.3.11 The minimum number of Members required for each Staff Class shall be the number given in the corresponding entry in column 3 of the Table set out at Annex 1.
- 7.3.12 A person who is eligible to be a Member of the Staff Constituency may not become or continue as a Member of any other Membership Constituency.
- 7.3.13 Members of the GST Clinicians Staff Class and the RBH Clinicians Staff Class shall be considered to remain employed in the relevant capacity if they shall have been appointed to a position within the management structure of the Trust.

#### **7.4 Patients' Constituency**

- 7.4.1 Members of the Patients' Constituency shall be individuals who:
- 7.4.1.1 are Patients or Patient Carers;
  - 7.4.1.2 are not eligible to become a Member of the Staff Constituency and are not Members of any other Membership Constituency and are not otherwise disqualified for membership;

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- 7.4.1.3 have made an application to the Trust to become a Member and whose name has been entered on the Register of Members in accordance with paragraph 7.1.3; and are not less than 18 years of age at the time of their application to become a Member.
- 7.4.2 A Patient is an individual whose name is recorded as a patient on the Trust's patient administration system or other record maintained by the Trust for the purpose of identifying patients of the Trust and who has attended the Trust as a patient within the period of five years immediately prior to that person applying to become a Member. A person ceases to be a Patient when five years have elapsed since their last attendance at the Trust as a patient.
- 7.4.3 A Patient Carer is an individual who:
- 7.4.3.1 is not less than 18 years of age at the date of applying to become a Member; and
- 7.4.3.2 provides care on a regular basis for a Patient who has not attained the age of 18 years or who is by reason of physical or mental incapacity unable to discharge the functions of a Member; and
- 7.4.3.3 does not (as set out in Paragraph 3(6) of Schedule 7 to the 2006 Act) provide that care:
- (a) by virtue of a contract of employment or other contract with any person; or
- (b) as a volunteer for a voluntary organisation; and
- 7.4.3.4 has either been:
- (a) nominated by that Patient as their Patient Carer for the time being for the purposes of this paragraph and has been accepted by the Trust as that Patient's Patient Carer for that purpose; or
- (b) has been accepted by the Trust as a Patient Carer for the purposes of this paragraph where the Patient is under 18 years of age or lacks the legal or mental capacity to nominate that individual as their Patient Carer and the Trust has to the extent that it is reasonably practicable to do so consulted with that Patient as to their wishes and has then agreed to treat that individual as the Patient Carer for the purposes of this paragraph provided the individual has agreed in writing to act in that capacity and are otherwise qualified in accordance with this paragraph 7.4.3.
- 7.4.3.5 An individual shall not be eligible to apply to become a Member of the Patient Carer Class or to continue as a Member of the Patient Carer Class if:
- (a) the Patient is a Member; or
- (b) the Patient has withdrawn their nomination of that individual under paragraph 7.4.3.4(a) as their Patient Carer; or
- (c) the Patient Carer is a Member of some other Membership Constituency or Class of Membership Constituency under this Constitution; or
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- (d) the Patient on whose behalf they are a Patient Carer is ineligible or disqualified from membership under paragraph 7.5; or
    - (e) where paragraph 7.4.3.4(b) applies the Patient becomes capable of discharging the functions of a Member and attains the age of 18 years of age.
  - 7.4.4 References in paragraphs 7.4.2 to 7.4.3 to the "Trust" include references to RBHFT (before its dissolution).
  - 7.4.5 The Patients' Constituency is to be divided into three classes as follows:
    - 7.4.5.1 the GST Patient Class;
    - 7.4.5.2 the RBH Patient Class; and
    - 7.4.5.3 the Patient Carer Class.
  - 7.4.6 The Members of the GST Patient Class are Members of the Patients' Constituency who are not members of the RBH Patient Class or the Patient Carer Class.
  - 7.4.7 The Members of the RBH Patient Class are members of the Patients' Constituency who are not members of the GST Patient Carer Class and:
    - 7.4.7.1 Immediately prior to its dissolution, were members of any of the patient constituency classes (other than the carers' class) of RBHFT (as more particularly set out at Annex 3 to the RBHFT Constitution); or
    - 7.4.7.2 Who have attended the Royal Brompton Hospital or the Harefield Hospital as patients within the period of five years immediately prior to applying to the Trust to become a Member of the RBH Patient Class.
  - 7.4.8 The Members of the Patient Carer Class are members of the Patients' Constituency who;
    - 7.4.8.1 Immediately prior to its dissolution, were members of the carers' class of RBHFT; or
    - 7.4.8.2 Qualify as a Patient Carer under paragraph 7.4.3.
  - 7.5 Disqualification from Membership**
    - 7.5.1 An individual shall not become or continue as a Member if:
      - 7.5.1.1 they are or become ineligible under paragraphs 7.2, 7.3 or 7.4 to be a Member; or
      - 7.5.1.2 the Council of Governors resolves for reasonable cause that their so doing would or would be likely to:
        - (a) prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
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- (b) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
- (c) adversely affect public confidence in the goods or services provided by the Trust; or
- (d) otherwise bring the Trust into disrepute; or

7.5.1.3 the Council of Governors resolves or ever has resolved in accordance with paragraph 8.12.3 that their tenure as a Governor be terminated.

7.5.2 It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A Member who becomes aware of their ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a Member.

7.5.3 Where the Trust has reason to believe that a Member is ineligible for Membership under paragraphs 7.2, 7.3 or 7.4 or may be disqualified from Membership under this paragraph 7.5, the Secretary shall carry out reasonable enquiries to establish if this is the case.

7.5.4 Where the Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified from Membership they shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within 28 days or such other reasonable period as the Secretary may in their absolute discretion determine. Any representations received shall be considered by the Secretary and they shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the Member or applicant within 14 days of the decision being made.

7.5.5 If no representations are received within the said period of 28 days or such longer period (if any) permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from them.

7.5.6 Any decision made under this paragraph 7.5 to disqualify a Member or an applicant for membership may be referred by the Member or applicant concerned to the Dispute Resolution Procedure under paragraph 20.

## **7.6 Termination of Membership**

7.6.1 A person's Membership shall be terminated if they:

- 7.6.1.1 resign by giving notice in writing to the Secretary;
- 7.6.1.2 are disqualified under paragraph 7.5; or
- 7.6.1.3 die.

7.6.2 When any of the circumstances set out in paragraph 7.6.1 arise the Secretary shall cause that person's name to be removed from the Register of Members forthwith and they shall thereupon cease to be a Member.

**7.7 Voting at Council of Governors Elections**

- 7.7.1 A Member may not vote at an election for a Public Governor or Patient Governor (as the case may be) unless within the specified period they have made a declaration in the specified form that they are a Member of the Public Constituency or Patients' Constituency (as the case may be) and stating the particulars of their qualification to vote as a Member of that Membership Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.
- 7.7.2 The form and content of the declaration and the period for making such a declaration for the purposes of paragraph 7.7.1 shall be specified and published by the Trust from time to time and shall be so published not less than 28 days prior to an election.

**8. COUNCIL OF GOVERNORS**

- 8.1 The Trust shall have a Council of Governors which shall consist of forty-three Governors as set out in paragraph 8.2. The aggregate number of Governors who are Public Governors or Patient Governors shall be more than half the total number of Governors.
- 8.2 The Council of Governors shall consist of:-
- 8.2.1 ten Public Governors elected in accordance with paragraph 8.4.
- 8.2.2 twelve Patient Governors elected in accordance with paragraph 8.5.
- 8.2.3 eight Staff Governors elected in accordance with paragraph 8.6.
- 8.2.4 thirteen Partnership Governors comprising:
- 8.2.4.1 three System Governors appointed in accordance with paragraph 8.7.
- 8.2.4.2 four Local Authority Governors appointed in accordance with paragraph 8.8.
- 8.2.4.3 four University Governors appointed in accordance with paragraph 8.9.
- 8.2.4.4 two Partner Hospital Governors appointed in accordance with paragraph 8.10.
- 8.3 No person shall be eligible to be elected or appointed (as the case may be) a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment they have attained the age of 18 years.

**8.4 Public Governors**

- 8.4.1 There shall be ten Public Governors elected from the Public Constituency. The number of Governors to be elected from each Public Constituency Area shall be as set out in Annex 1.
- 8.4.2 For the purposes of Annex 1, from the day of adoption of this revised constitution, any Public Governor previously elected from the Public Constituency shall be deemed as having been elected from Public Constituency Area 1.

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- 8.4.3 Members of the Public Constituency may elect any of their number to be a Public Governor, subject to paragraphs 8.3 and 8.4.5.
- 8.4.4 If contested, the election shall be by secret ballot in accordance with the Election Scheme, using the first past the post method of voting.
- 8.4.5 A person shall not stand for election to the Council of Governors as a Public Governor unless within the previous six months they have made a declaration in the form specified in Annex 4:
- 8.4.5.1 of the particulars of their qualification to vote as a Member of the Public Constituency
- 8.4.5.2 that they are not prevented from being a Governor by Paragraph 8 of Schedule 7 to the 2006 Act; and
- 8.4.5.3 that they are not otherwise disqualified under paragraph 8.13.
- 8.4.6 A Public Governor shall not vote at a meeting of the Council of Governors unless within the period since their election they have made a declaration in the form specified in Annex 4.
- 8.4.7 The declaration required under paragraphs 8.4.5.1 and 8.4.5.2 and the equivalent provisions of the declaration required under paragraph 8.4.6 are required by Section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under Section 60 of the 2006 Act which is false in a material particular.

## 8.5 Patient Governors

- 8.5.1 There shall be twelve Patient Governors elected from the Patients' Constituency. The number of Governors to be elected from each Patient Class shall be as set out in Annex 1.
- 8.5.2 For the purposes of Annex 1, from the day of adoption of this revised constitution, any Patient Governor previously elected from the Patients' Constituency who qualifies as a Patient Carer under paragraph 7.4.3 shall be deemed as having been elected from the Patient Carer Class.
- 8.5.3 Members of the Patients' Constituency may elect any of their number to be a Patient Governor, subject to paragraph 8.3 and paragraph 8.5.5.
- 8.5.4 If contested, the election shall be by secret ballot in accordance with the Election Scheme, using the first past the post method of voting.
- 8.5.5 A person shall not stand for election to the Council of Governors as a Patient Governor unless within the previous six months they have made a declaration in the form specified in Annex 4:
- 8.5.5.1 of the particulars of their qualification to vote as a Member of the Patients' Constituency;
- 8.5.5.2 that they are not prevented from being a Governor by Paragraph 8 of Schedule 7 to the 2006 Act; and
- 8.5.5.3 that they are not otherwise disqualified under paragraph 8.13.



- 8.5.6 A Patient Governor shall not vote at a meeting of the Council of Governors unless within the period since their election they have made a declaration in the form specified in Annex 4.
- 8.5.7 The declaration required under paragraphs 8.5.5.1 and 8.5.5.2 and the equivalent provisions of the declaration required under paragraph 8.5.6 are required by Section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under Section 60 of the 2006 Act which is false in a material particular.

## 8.6 Staff Governors

- 8.6.1 There shall be eight Staff Governors elected from the Staff Constituency. The number of Governors to be elected from each Staff Class shall be as set out in Annex 1.
- 8.6.2 For the purposes of Annex 1, from the day of adoption of this revised constitution any Staff Governor previously elected from the CSD Staff Class, the Clinicians Staff Class or Other Staff Class shall be deemed as having been elected from the GST CSD Staff Class, GST Clinicians Staff Class or GST Other Staff Class respectively.
- 8.6.3 Members of a Staff Class within the Staff Constituency may elect any of their number to be a Staff Governor for that Staff Class subject to paragraph 8.3.
- 8.6.4 If contested, the election will be by secret ballot in accordance with the Election Scheme, using the first past the post method of voting.
- 8.6.5 A Staff Governor shall not vote at a meeting of the Council of Governors unless within the period since their election they have made a declaration in the form specified in Annex 4.

## 8.7 System Governors

- 8.7.1 Each of:
- 8.7.1.1 the South East London CCG; and
- 8.7.1.2 the North West London Health and Care Partnership,
- are specified organisations for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act.
- 8.7.2 The South East London CCG shall be entitled to appoint two System Governors and the North West London Health and Care Partnership shall be entitled to appoint one System Governor, in accordance with a process of appointment agreed with the Secretary. The absence of any such agreed process shall not preclude either organisations from appointing its System Governors.
- 8.7.3 Notwithstanding the foregoing provisions of this paragraph the Trust shall in its absolute discretion be entitled:
- 8.7.3.1 to give not less than six months' notice to any of the organisations referred to in paragraphs 8.7.1 and 8.7.2 terminating their right to appoint a System Governor and upon the expiration of that notice period or such other date as the Trust and the relevant organisation may agree that their right to appoint a System Governor shall be terminated and the period of office of the Governor appointed by that organisation shall also come to an end on that date; and

- 8.7.3.2 to appoint another organisation for which the Trust provides goods and services to replace that organisation to which notice has been given under paragraph 8.7.3.1,

save that these provisions shall at all times be operated so as to ensure that the number of organisations entitled to appoint a System Governor under paragraph 8.7.1 remains lower or equal to the number of System Governors specified in paragraph 8.2.4.1.

## 8.8 Local Authority Governors

- 8.8.1 Each of the following local authorities :

- 8.8.1.1 London Borough of Hillingdon;  
 8.8.1.2 London Borough of Lambeth;  
 8.8.1.3 London Borough of Southwark; and  
 8.8.1.4 Royal Borough of Kensington and Chelsea,

shall be entitled to appoint a member or officer of the local authority as a Local Authority Governor in accordance with a process of appointment agreed by it with the Secretary

- 8.8.2 The absence of any such agreed process of appointment shall not preclude either of the local authorities named in paragraph 8.8.1 from appointing its Local Authority Governor.

- 8.8.3 If a local authority named in paragraph 8.8.1 declines or fails to appoint a Local Authority Governor within three months of being requested to do so by the Trust, the Secretary shall consult each local authority whose area includes the whole or part of the Area of the Trust and the Trust in its absolute discretion shall extend an invitation to any of those local authorities to appoint a Local Authority Governor in substitution for the local authority which has failed or declined to do so.

- 8.8.4 A Local Authority Governor appointed under paragraph 8.8.3 shall then serve on the Council of Governors for the period stipulated in paragraph 8.11.4. At the end of that period the Trust shall in its absolute discretion decide whether for the purposes of paragraph 8.8.1 to permit that local authority which had failed or declined to appoint a Local Authority Governor to appoint a Local Authority Governor for the next period (provided it remains eligible to do so) or to invite the local authority which had appointed a Local Authority Governor in substitution to do so.

## 8.9 University Governors

- 8.9.1 The following organisations shall be entitled to appoint one University Governor in accordance with a process of appointment agreed by it with the Secretary:

- 8.9.1.1 King's College London  
 8.9.1.2 Imperial College London  
 8.9.1.3 London Southbank University  
 8.9.1.4 An academic organisation chosen by the Board of Directors.

8.9.2 The absence of any such agreed process shall not preclude any of the above from appointing its University Governor.

#### **8.10 Partner Hospital Governors**

8.10.1 The following organisations shall be entitled to appoint one Partner Hospital Governor in accordance with a process of appointment agreed by it with the Secretary:

8.10.1.1 King's College Hospital NHS Foundation Trust; and

8.10.1.2 South London and Maudsley NHS Foundation Trust.

8.10.2 The absence of any such agreed process of appointment shall not preclude any Partner Hospital from appointing its Governor.

#### **8.11 Terms of Office**

8.11.1 A Public Governor:

8.11.1.1 shall hold office for a period of three years;

8.11.1.2 is eligible for re-election at the end of that period for one further and final three year term; and

8.11.1.3 shall cease to hold office if they cease to be a Member of the Public Constituency.

8.11.2 A Patient Governor:

8.11.2.1 shall hold office for a period of three years;

8.11.2.2 is eligible for re-election at the end of that period for one further and final three year term; and

8.11.2.3 shall cease to hold office if they cease to be a Member of the Patients' Constituency.

8.11.3 A Staff Governor:

8.11.3.1 shall hold office for a period of three years;

8.11.3.2 is eligible for re-election at the end of that period for one further and final three year term; and

8.11.3.3 shall cease to hold office if they cease to be a Member of the Staff Constituency.

8.11.4 Subject to paragraph 8.11.5, a Partnership Governor:

8.11.4.1 shall hold office for a period of three years;

8.11.4.2 is eligible for reappointment at the end of that period for one further and final three year term; and

8.11.4.3 shall cease to hold office if the organisation which appointed them withdraws its appointment of them.

8.11.5 For the purposes of paragraph 8.11.4 above, Partnership Governors appointed before the adoption of this revised constitution shall be deemed as having been appointed for the first time on the day of adoption of this revised constitution.

8.11.6 Governors shall cease to be Governors forthwith if their tenure is terminated under paragraph 8.12 or they are disqualified from being a Governor under paragraph 8.13.

## **8.12 Governor Termination of Tenure**

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

8.12.2 If a Governor fails to attend any meeting of the Council of Governors for a consecutive period of twelve months or alternatively for three successive meetings of the Council of Governors, their tenure of office shall be terminated immediately by the Secretary unless, on application by that Governor to the Council of Governors, the Council of Governors resolves that:

8.12.2.1 the absence was due to reasonable cause; and

8.12.2.2 the Governor will be able to start attending meetings of the Council of Governors within such a specified period as the Council of Governors considers reasonable.

8.12.3 The Council of Governors may by a resolution terminate a Governor's tenure of office if for reasonable cause it considers that:

8.12.3.1 they are disqualified from becoming or continuing as a Member under this Constitution; or

8.12.3.2 they have knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act; or

8.12.3.3 their continuing as a Governor would or would be likely to:

(a) contravene the Code of Conduct for Governors as set out at Annex 5 or as may be otherwise adopted by the Trust from time to time; or

(b) prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or

(c) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or

(d) adversely affect public confidence in the goods or services provided by the Trust; or

(e) otherwise bring the Trust into disrepute.

8.12.4 Upon a Governor resigning under paragraph 8.12.1, or upon the Council of Governors resolving to terminate a Governor's tenure of office under paragraphs 8.12.2 or 8.12.3 that Governor shall cease to be a Governor and their name shall be forthwith removed from the Register of Governors notwithstanding any reference to the Dispute Resolution Procedure.

- 8.12.5 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by that Governor to the Dispute Resolution Procedure within 28 days of the date upon which notice in writing of the Council of Governors' decision is given to the Governor.
- 8.12.6 A Governor who resigns under paragraph 8.12.1 or whose tenure of office is terminated under paragraph 8.12.2 shall not be eligible to stand for re-election for a period of three years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of, whichever is the later.
- 8.12.7 A Governor whose tenure of office is terminated under paragraph 8.12.3 shall not be eligible to stand for re-election.

### 8.13 Disqualification

- 8.13.1 A person may not become or continue as a Governor if:
- 8.13.1.1 they are a Director or Secretary of the Trust, or a governor, director or secretary of another Health Service Body, unless they are appointed as a Partnership Governor by an organisation which is a Health Service Body;
  - 8.13.1.2 they are an occupant of the same household as, and/or they are an immediate family member of, a Governor or a Director or Secretary of the Trust;
  - 8.13.1.3 in the case of a Staff Governor, Public Governor or Patient Governor they cease to be a Member of the Membership Constituency or the Class of a Membership Constituency by which they were elected;
  - 8.13.1.4 in the case of any other Governor the appointing organisation withdraws its appointment of them;
  - 8.13.1.5 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 8.13.1.6 they have made a composition or arrangement with or granted a trust deed for their creditors and has not been discharged in respect of it;
  - 8.13.1.7 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
  - 8.13.1.8 they are the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register;
  - 8.13.1.9 they have failed or refused to undergo Disclosure and Barring Service checks in accordance with the Trust's DBS Policy;
  - 8.13.1.10 by reference to information revealed by a Disclosure and Barring Service check, they are considered by the Trust to be inappropriate on the grounds that their appointment may adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;

- 8.13.1.11 Monitor has exercised its powers to remove that person as a Governor or has suspended them from office or has disqualified them from holding office as a Governor for a specified period or Monitor has exercised any of those powers in relation to the person concerned at any time whether in relation to the Trust or some other NHS Foundation Trust;
- 8.13.1.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a Health Service Body;
- 8.13.1.13 they are a person whose tenure of office as chair or as a governor, member or director of a Health Service Body has been terminated on the grounds that their appointment was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 8.13.1.14 they have had their name removed, from a relevant list of medical practitioners pursuant to Paragraph 10 of the National Health Service (Performers Lists) (England) Regulations 2013 or Section 151 of the 2006 Act (or similar provision elsewhere), and have not subsequently had their name included in such a list;
- 8.13.1.15 they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
- 8.13.1.16 they have failed or refused to make any declaration required by paragraph 8.4 or 8.5; or
- 8.13.1.17 they refuses to confirm that they will abide by the Code of Conduct for Governors as set out at Annex 5 or as may be otherwise adopted by the Trust from time to time.
- 8.13.2 The provisions of paragraph 8.13.1 apply to elected and appointed Governors and to those seeking election or appointment.
- 8.13.3 Where an individual has been elected or appointed to be a Governor and they become disqualified for appointment they shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render them disqualified.
- 8.13.4 If it comes to the notice of the Secretary that the Governor is disqualified, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give notice to them in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration.
- 8.13.5 Upon the giving of notice under paragraph 8.13.3 or paragraph 8.13.4 that individual's tenure of office, if any, shall be terminated forthwith and they shall cease to be a Governor and their name shall be removed from the Register of Governors. Any Governor may refer any dispute they may have with regard to that decision to the Dispute Resolution Procedure at paragraph 20.

#### **8.14 Vacancies**

- 8.14.1 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 8.12 or paragraph 8.13, Public Governors, Staff Governors and Patient Governors shall be replaced in accordance with

paragraphs 8.14.2 to 8.14.5 and other Governors shall be replaced in accordance with the processes for appointment agreed with the relevant appointing body pursuant to paragraphs 8.7 to 8.10.

- 8.14.2 For the purposes of paragraphs 8.14.3 to 8.14.5 the following definitions apply:
- 8.14.2.1 A "**cohort**" consists of those Governors in the same Membership Constituency (or Class of a Membership Constituency, as the case may be) whose current term of office commenced on the same date.
- 8.14.2.2 A "**first vacancy**" is where an elected Governor ceases to hold office during their term of office and they are the first Governor from their cohort to do so.
- 8.14.2.3 A "**second vacancy**" is where an elected Governor ceases to hold office during their term of office and they are not the first Governor from their cohort to do so.
- 8.14.3 Subject to paragraph 8.14.4:
- 8.14.3.1 on the occurrence of a first vacancy the Trust shall offer the candidate who secured the next highest number of votes in the last election for the Membership Constituency (or Class of a Membership Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office (the "**Reserve Governor**").
- 8.14.3.2 If the Reserve Governor assumes the vacant office, they shall hold office for a period of three years. They will be eligible for re-election at the end of that period for one further and final three year term, except where they have previously held office as a Governor in that Membership Constituency.
- 8.14.3.3 If the Reserve Governor is unwilling to fill the vacancy, an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
- 8.14.4 Where an election is due to be called within six months of a first vacancy having arisen, the office will stand vacant until such election, unless this causes the aggregate number of Governors who are Public Governors and Patient Governors to be less than half the total membership of the Council of Governors. In that event the vacancy shall be filled in accordance with paragraph 8.14.3.
- 8.14.5 On the occurrence of a second vacancy an election will be held in accordance with the Election Scheme, save that if an election is due to be called within six months of the vacancy having arisen the office will stand vacant until such election, unless this causes the aggregate number of Governors who are Public Governors and Patient Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
- 8.14.6 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 8.14.3 and 8.14.5.

## 8.15 Roles and Responsibilities of the Council of Governors

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- 8.15.1 The general responsibilities of the Council of Governors are to:
- 8.15.1.1 hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
  - 8.15.1.2 represent the interests of the Members of the Trust as a whole and the interests of the public.
- 8.15.2 The specific rights and duties of the Council of Governors are:
- 8.15.2.1 in a General Meeting to:
    - (a) appoint or remove the Chair and the other non- executive Directors of the Trust. The removal of any non-executive Director shall require the approval of three-quarters of the total number of Governors;
    - (b) approve the appointment of the Chief Executive of the Trust by the non-executive Directors;
    - (c) decide the remuneration and expenses and the other terms and conditions of office of the non-executive Directors;
    - (d) appoint or remove the Trust's auditor; and
    - (e) receive and consider the Trust's annual accounts, any auditor's reports on those annual accounts and the annual report from the Board of Directors;
  - 8.15.2.2 to be consulted by the Board of Directors regarding the Board of Directors' preparation of the forward planning information for each Financial Year;
  - 8.15.2.3 to determine whether it is satisfied that the carrying on of any proposed Non Principal Purpose Activity will not to any significant extent interfere with the fulfilment by the Trust of the Principal Purpose or the performance of its other functions;
  - 8.15.2.4 to approve any proposal to increase by 5% or more the proportion of the Trust's total income in any Financial Year attributable to Non Principal Purpose Activities;
  - 8.15.2.5 to approve any Significant Transaction, and to be consulted before the Trust enters into any Material Transaction;
  - 8.15.2.6 to respond as appropriate when consulted by the Board of Directors;
  - 8.15.2.7 to require one or more Directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance);
  - 8.15.2.8 to approve any merger, acquisition, separation or dissolution
  - 8.15.2.9 application in respect of the Trust before the application is made to Monitor; and
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8.15.2.10 to exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.

8.15.3 If Monitor has appointed a panel for advising governors, a Governor may refer a question to that panel as to whether the Trust has failed or is failing to act in accordance with this Constitution or Chapter 5 of the 2006 Act. A Governor may only refer a question under this paragraph if more than half of the members of the Council of Governors voting approve the referral.

8.15.4 All Governors shall comply with the Code of Conduct for Governors set out in Annex 5.

## 8.16 Expenses

8.16.1 Governors shall not receive remuneration for acting as Governors but may receive expenses as provided for in this paragraph.

8.16.2 The Trust may pay travelling and other expenses to Governors at the rates set out in the Trust's policy on Business Travel and Subsistence.

## 8.17 Meetings

8.17.1 The Council of Governors shall comply with the Standing Orders for its practice and procedure set out in Annex 2.

8.17.2 The Council of Governors shall meet not less than three times in each Financial Year.

8.17.3 The Trust shall publicise and hold a general meeting to take place in September of each year at which the Council of Governors shall receive from the Board of Directors in accordance with paragraph 9.10.11 and shall then consider the Trust's annual accounts, any report of the auditor on them and the Trust's annual report.

8.17.4 No proceedings of the Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Governor.

## 8.18 Lead Governor

8.18.1 In this paragraph 8.18 only:

8.18.1.1 "**Appointment Meeting**" means:

- if there is an Election in a calendar year, the first meeting of the Council of Governors to take place after the Election; or
- if there is no Election scheduled in a calendar year, the first meeting of the Council of Governors to take place after the anniversary of the last Election, and

8.18.1.2 "**Election**" means an election to fill a vacancy on the Council of Governors other than an election under paragraph 8.14.3.3 or 8.14.5.

8.18.2 Any Governor who, immediately after the Appointment Meeting, will have at least one year of their term remaining, may nominate themselves for the office

- of Lead Governor by giving notice to the Chair at least ten clear days before the Appointment Meeting.
- 8.18.3 As long as at least one nomination has been received in accordance with paragraph 8.18.2, the Council of Governors shall appoint the Lead Governor at the Appointment Meeting.
- 8.18.4 If:
- 8.18.4.1 one nomination has been received, the nominated Governor shall be appointed Lead Governor at the Appointment Meeting;
- 8.18.4.2 more than one nomination has been received, the Council of Governors shall choose the Lead Governor by paper ballot at the Appointment Meeting, and if there is an equality of votes, the tied nominees shall draw lots to decide which of them shall be chosen;
- 8.18.4.3 no nomination has been received, the office shall lie vacant until the next Appointment Meeting.
- 8.18.5 The Secretary shall ensure that Monitor is provided with details of the serving Lead Governor.
- 8.18.6 Subject to paragraph 8.18.7, the Lead Governor shall hold office until the results are announced of the next Election after their appointment.
- 8.18.7 If no Election is held within one calendar year of the incumbent Lead Governor's appointment, the Lead Governor shall hold office for one year.
- 8.18.8 The serving Lead Governor may nominate themselves for re-appointment as long as they will have at least one year of their term as a Governor remaining after the next Appointment Meeting.
- 8.18.9 The Lead Governor may resign from the office at any time by giving written notice to the Chair, and shall cease to hold the office immediately if they cease to be a Governor or if they become leader of any working group of the Council of Governors.
- 8.18.10 If a Lead Governor ceases to hold office during their term, the second-placed nominee in the last ballot for the office shall be offered the opportunity to assume the vacant office for the unexpired balance of the retiring Lead Governor's term. If that candidate does not agree to fill the vacancy it will then be offered to the third-placed nominee and so on until the vacancy is filled. If no candidate is available or willing to fill the vacancy, the office shall remain vacant until the next Appointment Meeting.
- 8.18.11 The Lead Governor's duties shall be as follows:
- 8.18.11.1 facilitating communication between Governors and members of the Board of Directors;
- 8.18.11.2 assisting the Chair in settling the agenda for meetings of the Council of Governors and other meetings involving Governors;
- 8.18.11.3 chairing the Council of Governors when required to do so by the Standing Orders attached at Annex 2;

- 8.18.11.4 contributing to the appraisal of the Chair in such manner and to such extent as the person conducting the appraisal may see fit;
- 8.18.11.5 initiating proceedings to remove a Governor where circumstances set out in this Constitution for removal have arisen (without prejudice to the right of any other Governor to initiate such proceedings);
- 8.18.11.6 liaising, as appropriate, with councils of governors for other NHS Foundation Trusts, and
- 8.18.11.7 such other duties, consistent with the 2006 Act and this Constitution, as may be approved by the Governors.

#### **8.19 Nominations Committee**

- 8.19.1 The Council of Governors may appoint a Nominations Committee consisting of all or some Governors to assist it in carrying out the functions set out in paragraph 9.6 but not otherwise.

#### **8.20 Conflict of Interest of Governors**

- 8.20.1 If a Governor has a pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council of Governors or has any other conflict of interest they shall disclose that to the rest of the Council of Governors as soon as they are aware of it.
- 8.20.2 The Council of Governors shall abide by the Standing Orders attached at Annex 2 specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter as appropriate where the Governor has a pecuniary interest or any other conflict of interest in relation to it.

#### **8.21 Transitional provisions**

- 8.21.1 Notwithstanding anything to the contrary in this Constitution:
  - 8.21.1.1 From the date of adoption of this revised Constitution all Governors shall be appointed or elected (as the case may be) in accordance with its provisions.
  - 8.21.1.2 Each Governor serving at the date of adoption of this revised Constitution shall serve under the arrangements existing at the time of their election or appointment (as the case may be).
  - 8.21.1.3 For the avoidance of doubt, at all times more than half the Governors will be elected by members of the Public Constituency or the Patients' Constituency and the composition of the Council of Governors will satisfy the provisions of paragraph 9 of Schedule 7 to the Act.

### **9. BOARD OF DIRECTORS**

- 9.1 The Trust shall have a Board of Directors which shall consist of executive and non-executive Directors.
- 9.2 The Board of Directors shall comprise:

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- 9.2.1 the following non-executive Directors:
- 9.2.1.1 a Chair; and
- 9.2.1.2 no fewer than five nor more than eleven other non-executive Directors one of whom shall be appointed having been nominated by King's College London; and
- 9.2.2 the following executive Directors:
- 9.2.2.1 a Chief Executive (who shall also at all times be the Accounting Officer);
- 9.2.2.2 a Finance Director; and
- 9.2.2.3 not less than three nor more than six other executive Directors.
- 9.3 The executive Directors shall include one person who is a registered medical practitioner or registered dentist (within the meaning of the Dentists Act 1984) and one other who is to be a registered nurse or registered midwife.
- 9.4 The power to appoint non-executive Directors and executive Directors shall at all times be exercised so as to ensure that the aggregate voting rights vested in the Chair and non-executive Directors exceed the aggregate of those votes vested in the executive Directors. The Directors shall at all times have one vote each save that the Chair shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 9.5 Only a Member of the Public Constituency or the Patients Constituency or an individual exercising functions for King's College London may be appointed as a non-executive Director.
- 9.6 Non-executive Directors are to be appointed as follows:
- 9.6.1 The Council of Governors shall create a duly authorised Nominations Committee consisting of some or all Governors in accordance with paragraph 8.18;
- 9.6.2 The Nominations Committee shall seek the views of the Board of Directors as to their recommended criteria and process for the selection of candidates and, having regard to those views, shall then seek, shortlist and interview such candidates as the Nominations Committee considers appropriate and shall make recommendations to the Council of Governors as to potential appointments as non-executive Directors and shall advise the Board of Directors of those recommendations;
- 9.6.3 The Nominations Committee shall be at liberty to request the attendance of and seek advice and assistance from persons other than members of the Nominations Committee or other Governors in arriving at its said recommendations; and
- 9.6.4 The Nominations Committee shall provide advice to the Council of Governors on the levels of remuneration for the Chair and non-executive Directors.
- 9.6.5 The Nominations Committee shall receive reports on behalf of the Council of Governors on the process and outcome of appraisal for the Chair and non-executive Directors.
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9.6.6 The Council of Governors shall resolve in general meeting to appoint such candidate or candidates as they consider appropriate and shall have regard to the recommendation of the Nominations Committee and views of the Chief Executive and the Board of Directors in reaching that decision. The Secretary will convey the decision of the Council of Governors to the successful candidate.

9.7 The validity of any act of the Trust shall not be affected by any vacancy among the Directors or by any defect in the appointment of any Director.

## 9.8 Terms of Office

9.8.1 The non-executive Directors (excluding the Chair) shall be eligible for appointment for two four year terms of office, and in exceptional circumstances a further term of two years. No non-executive Director (excluding the Chair) shall be appointed to that office for a total period which exceeds ten years in aggregate.

9.8.2 The Chair shall be eligible for appointment for two four year terms of office, and in exceptional circumstances a further term of four years. The Chair shall not be appointed to that office for a total period which exceeds twelve years in aggregate.

9.8.3 The executive Directors including the Chief Executive (and Accounting Officer) and the Finance Director shall hold office for a period in accordance with the terms and conditions of office decided by the relevant committee of non-executive Directors.

9.8.4 Where a non-executive Director, other than a non-executive Director appointed having been nominated by King's College London, ceases to be a Member they shall cease to be eligible to be a non-executive Director and shall resign as such or if they fail or decline to do so they shall be removed from office in accordance with the terms of this Constitution.

## 9.9 Disqualification

9.9.1 A person may not become or continue as a Director if:

9.9.1.1 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;

9.9.1.2 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;

9.9.1.3 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;

9.9.1.4 in the case of a non-executive Director, they no longer satisfy paragraph 9.5;

9.9.1.5 they are otherwise disqualified at law from acting as a director of an NHS Foundation Trust;

9.9.1.6 Monitor has exercised its powers under the 2006 Act to remove that person as a Director of the Trust or any other Foundation Trust within their jurisdiction or has suspended them from office or has

disqualified them from holding office as a Director of the Trust or of any other Foundation Trust for a specified period;

- 9.9.1.7 they are a person whose tenure of office as chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the public service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 9.9.1.8 they have had their name removed, from a relevant list of medical practitioners pursuant to Paragraph 14 of the National Health Service (Performers Lists) (England) Regulations 2013 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had their name included in such a list; or
- 9.9.1.9 they have within the preceding two years been dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body.
- 9.9.2 Any person who is disqualified from becoming or continuing as a Director on any of the grounds set out in paragraph 9.9.1 shall forthwith resign as a Director of the Trust or if they decline or fail to do so shall be removed forthwith by the Board of Directors and a new Director appointed in their place in accordance with the provisions of this Constitution.

#### **9.10 Roles and Responsibilities**

- 9.10.1 The powers of the Trust shall be exercisable by the Board of Directors on its behalf.
- 9.10.2 Any of those powers may be delegated to a committee of Directors or to an executive Director in accordance with a Scheme of Delegation approved by the Board of Directors.
- 9.10.3 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.
- 9.10.4 Subject to paragraph 9.10.3, a committee established pursuant to paragraph 9.10.2 above may meet in common with a committee of Directors of another NHS Foundation Trust.
- 9.10.5 A committee of non-executive Directors established as an audit committee shall monitor, review and carry out such functions in relation to the auditor outlined in paragraph 14 as are appropriate.
- 9.10.6 The non-executive Directors shall appoint or remove the Chief Executive (and Accounting Officer). The appointment of a Chief Executive (but not their removal) shall require the approval of the Council of Governors.
- 9.10.7 A committee consisting of the Chair, the Chief Executive (and Accounting Officer) and the other non-executive Directors shall appoint the executive Directors.
- 9.10.8 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 executive Directors.

- 9.10.9 The Trust may establish advisory committees whose membership may include Governors, executive and non-executive Directors of the Trust, external advisors and other persons as the Trust may think fit.
- 9.10.10 The Board of Directors shall provide forward planning information in respect of each Financial Year to Monitor. The Board of Directors shall have regard to the views of the Council of Governors when preparing the forward planning information.
- 9.10.11 The Board of Directors shall present to the Council of Governors in a general meeting the Trust's annual accounts, any report of the auditor on them, and the Trust's annual report.
- 9.10.12 All the functions of the Trust under paragraphs 15.4, 15.5 and 15.7 are delegated by this Constitution to the Chief Executive as Accounting Officer.

### **9.11 Annual Public Meeting**

- 9.11.1 The Trust shall hold a public meeting of its Members in September each year. This meeting may be combined with the meeting of the Council of Governors referred to in paragraph 8.17.3.
- 9.11.2 At least one Director shall attend the meeting and present the following documents to the Members at the meeting:
- 9.11.2.1 the annual accounts
  - 9.11.2.2 any report of the auditor on them; and
  - 9.11.2.3 the annual report.
- 9.11.3 Where an amendment has been made to this Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust), at least one Governor shall attend the next annual public meeting to be held, at which the Governor shall present the amendment and the Members shall be entitled to vote on whether they approve the amendment.
- 9.11.4 If more than half of the Members voting approve the amendment, the amendment shall continue to have effect; otherwise it shall cease to have effect and the Trust shall take such steps as are necessary as a result.

## **10. MEETINGS OF DIRECTORS**

- 10.1 The Board of Directors shall adopt Standing Orders covering the proceedings and business of its meetings. These shall include setting a quorum for meetings, both of executive and non-executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership or defect in a Director's appointment.
- 10.2 Before holding a meeting, the Board of Directors shall send a copy of the agenda to the Council of Governors.
- 10.3 As soon as practicable after holding a meeting, the Board of Directors shall send a copy of the minutes of the meeting to the Council of Governors.
- 10.4 Meetings of the Board of Directors shall be open to members of the public, unless and to the extent that the Board of Directors has resolved that members of the public should be excluded from a meeting for such special reasons as the Board of Directors considers appropriate.

**11. CONFLICTS OF INTEREST OF DIRECTORS**

- 11.1 Each Director has 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. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter has been authorised in accordance with this Constitution.
- 11.2 Each Director has 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. This duty is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 11.3 If a Director is aware that they have in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, they shall disclose the nature and extent of that interest to the other Directors as soon as they are aware of it and in all cases, before the Trust enters into the transaction or arrangement. If any declaration proves to be or becomes inaccurate or incomplete, the Director shall make a further declaration.
- 11.4 A Director need not declare an interest:
- 11.4.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 11.4.2 if, or to the extent that, the directors are already aware of it;
  - 11.4.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
    - 11.4.3.1 by a meeting of the Board of Directors; or
    - 11.4.3.2 by a committee of the Directors appointed for that purpose under this Constitution.
- 11.5 The Board of Directors shall adopt Standing Orders making further provision about Directors' interests and specifying the arrangements for excluding Directors from discussion or consideration of a contract or other matter as appropriate.

**12. REGISTERS**

- 12.1 The Trust shall have and maintain:
- 12.1.1 a Register of Members showing, in respect of each Member, the Membership Constituency (and Class within a Membership Constituency, where appropriate) to which they belong;
  - 12.1.2 a register of Governors;
  - 12.1.3 a register of interests of Governors;
  - 12.1.4 a register of Directors; and
  - 12.1.5 a register of interests of Directors.
- 12.2 The information to be included in the above registers shall be such as will comply with the requirements of the 2006 Act, any subordinate legislation made under it and the provisions of this Constitution.



- 12.3 Members will be removed from the Register of Members if:
- 12.3.1 the Member is no longer eligible or is disqualified; or
  - 12.3.2 the Member dies.

### 13. PUBLIC DOCUMENTS

- 13.1 The following documents of the Trust shall be available for inspection by members of the public free of charge at all reasonable times:
- 13.1.1 a copy of the current Constitution;
  - 13.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 13.1.3 a copy of the latest annual report.
- 13.2 All documents required by Paragraphs 22(1)(g) to 22(1)(p) inclusive of Schedule 7 to the 2006 Act (relating to special administration) shall be available for inspection by members of the public free of charge at all reasonable times.
- 13.3 Any person who requests it shall be provided with a copy or extract from any of the above documents.
- 13.4 If the person requesting a copy or extract under this paragraph is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.
- 13.5 The registers mentioned in paragraph 12 shall all be made available for inspection by members of the public except in circumstances prescribed by regulations made under the 2006 Act. The Trust shall not make any part of its Register of Members available for inspection by members of the public that shows details of:
- 13.5.1 any Member who belongs to the Patients' Constituency where that Member has not consented to their details being made so available; or
  - 13.5.2 any other Member if they so request.

### 14. AUDITOR

- 14.1 The Trust shall have an auditor and shall provide the auditor with every facility and all information which they may reasonably require for the purposes of their functions under Chapter 5 of Part 2 of the 2006 Act.
- 14.2 A person may only be appointed auditor if they (or in the case of a firm each of its members) they are eligible for appointment as a statutory auditor or local auditor within the meaning of Paragraphs 23(4)(a) or (b) or are a member of one or more of the bodies referred to in Paragraph 23(4)(c) of Schedule 7 to the 2006 Act.
- 14.3 The appointment of the auditor by the Council of Governors is covered in paragraph 8.15.2.1(d), and the monitoring of the auditor's functions by a committee of non-executive Directors is covered in paragraph 9.10.3.
- 14.4 The auditor shall carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

**15. ACCOUNTS**

- 15.1 The Trust shall keep proper accounts and proper records in relation to the accounts, which shall comply with any directions made by Monitor with the approval of the Secretary of State, as to the content and form of the Trust's accounts.
- 15.2 The accounts shall be audited by the Trust's auditor.
- 15.3 The following documents shall be made available to the Comptroller and Auditor General for examination at their request:
- 15.3.1 the accounts;
  - 15.3.2 the records relating to them; and
  - 15.3.3 any report of the auditor on them.
- 15.4 The Trust (through its Chief Executive and Accounting Officer) shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 15.5 The Trust shall comply with any directions given by Monitor with the approval of the Secretary of State as to:
- 15.5.1 the period or periods in respect of which the Trust should prepare accounts; and
  - 15.5.2 the audit requirements of any such accounts.
- 15.6 In preparing accounts the Trust shall comply with any directions given by Monitor with the approval of the Secretary of State as to:
- 15.6.1 the methods and principles according to which the accounts are to be prepared; and
  - 15.6.2 the content and form of the accounts.
- 15.7 The Trust shall:
- 15.7.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament;
  - 15.7.2 send copies of those documents to Monitor within such period as Monitor may direct; and
  - 15.7.3 send copies of any accounts prepared pursuant to paragraph 15.5, and any report of an auditor on them to Monitor within such period as Monitor may direct.

**16. ANNUAL REPORTS AND FORWARD PLANS**

- 16.1 The Trust shall prepare annual reports and send them to Monitor.
- 16.2 The reports shall give information on:
- 16.2.1 the impact that income received by the Trust from Non Principal Purpose Activities has had on the Principal Purpose.

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- 16.2.2 any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its Public Constituency and the Patients' Constituency is representative of those eligible for such Membership;
- 16.2.3 any exercise by the Council of Governors of its power to require a Director to attend a meeting for the specific reasons set out in paragraph 8.15.2.7;
- 16.2.4 the Trust's policy on pay, on the work of the committee of non-executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors, and on such other procedures as the Trust has on pay;
- 16.2.5 the remuneration of the Directors and on the expenses of the Governors and the Directors; and
- 16.2.6 any other information Monitor requires.
- 16.3 The Trust shall comply with any decision Monitor makes as to:
- 16.3.1 the form of the reports;
- 16.3.2 when the reports are to be sent to it; and
- 16.3.3 the periods to which the reports are to relate.
- 16.4 The Trust shall give information to Monitor as to its forward planning in respect of each Financial Year. The forward planning information shall be prepared by the Board of Directors who in doing so shall have regard to the views of the Council of Governors (which in turn may be informed by a group of Governors).
- 16.5 The forward planning information shall include information on:
- 16.5.1 the Non Principal Purpose Activities that the Trust proposes to carry on; and
- 16.5.2 the income that the Trust expects to receive from doing so.
- 16.6 Where the forward planning information contains a proposal that the Trust carry out Non Principal Purpose Activities, the Council of Governors shall:
- 16.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of the Principal Purpose or the performance of its other functions; and
- 16.6.2 notify the Board of Directors of its determination.
- 16.7 The Trust may only implement any proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to Non Principal Purpose Activities if more than half of the members of the Council of Governors voting approve the proposal's implementation.
- 17. SIGNIFICANT TRANSACTIONS**
- 17.1 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.
- 17.2 "**Significant Transaction**" means:

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- 17.2.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or
- 17.2.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or
- 17.2.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's gross assets before the transaction.
- 17.3 For the purpose of this paragraph 17:
- 17.3.1 "gross assets" means the total of fixed assets and current assets;
- 17.3.2 in assessing the value of any contingent liability for the purposes of sub-paragraph 17.2.3, the Directors:
- 17.3.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
- 17.3.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- 17.3.2.3 may take account of the likelihood of the contingency occurring.
- 17.4 The views of the Council of Governors will be taken into account before the Trust enters into any proposed transaction which would exceed a threshold of 10% for any of the criteria set out in paragraph 17.2 (a "Material Transaction").

## 18. INDEMNITY

- 18.1 Governors and Directors who act honestly and in good faith and not recklessly will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Council of Governors or Board of Directors functions. Any such liabilities will be liabilities of the Trust.
- 18.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 18.1.

## 19. INSTRUMENTS ETC

- 19.1 The Trust is to have a seal which shall not be affixed except under the authority of the Board of Directors.
- 19.2 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

## 20. DISPUTE RESOLUTION PROCEDURE

- 20.1 The Trust shall apply the Dispute Resolution Procedure set out at Annex 6 to this Constitution in regard to disputes:

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- 20.1.1 with Members and potential Members in relation to matters of eligibility and disqualification; and
  - 20.1.2 with Governors in relation to matters of eligibility, disqualification and termination of tenure; and
  - 20.1.3 between the Council of Governors and the Board of Directors in relation to the interpretation and application of their respective powers and obligations under this Constitution.

## **21. AMENDMENT OF THE CONSTITUTION**

- 21.1 The Trust may make amendments to this Constitution only if:
  - 21.1.1 more than half of the members of the Board of Directors voting; and
  - 21.1.2 more than half of the members of the Council of Governors voting, approve the amendments.
- 21.2 An amendment shall have no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 21.3 The Trust shall inform Monitor of amendments to the Constitution.
- 21.4 If an amendment relates to the powers or duties of the Council of Governors, paragraphs 9.11.3 and 9.11.4 shall apply.

## **22. MERGERS, ACQUISITIONS, SEPARATIONS AND DISSOLUTION**

- 22.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

**ANNEX 1:  
CONSTITUENCIES OF THE TRUST**

1.	2.	3.	4.
Name of Membership Constituency	Area/Qualification	Minimum number of Members	Number of Governors
Public Constituency Area 1 – around Guy's and St. Thomas' Hospitals	The London Borough of Lambeth, The London Borough of Southwark, The London Borough of Lewisham, The London Borough of Wandsworth, The City of Westminster.	250	8
Public Constituency Area 2 – around Royal Brompton and Harefield Hospitals	<p>1. North London Comprising the following electoral areas: Harrow; Hillingdon; Brent; Ealing; Hounslow; Kensington &amp; Chelsea and Hammersmith &amp; Fulham; Barnet; Enfield; Haringey; Islington; City; Tower Hamlets; Hackney; Waltham Forest; Newham; Barking &amp; Dagenham; Redbridge; Havering.</p> <p>and</p> <p>2. Bedfordshire, Hertfordshire &amp; Essex Comprising the following electoral areas: Bedford; Central Bedfordshire; Luton; Broxbourne; Dacorum; East Herts; Hertsmere; North Herts; St Albans; Stevenage; Three Rivers; Watford; Welwyn; Hatfield; Harlow; Epping Forest; Brentwood; Basildon; Castle Point; Rochford; Maldon; City of Chelmsford; Uttlesford; Braintree; Colchester; Tendring; Thurrock; Southend.</p>	150	1
Public Constituency Area 3 – the rest of England and Wales	All other electoral wards and boroughs in England and Wales not included above	50	1

## Constitution

## Guy's &amp; St Thomas' NHS Foundation Trust

GST Patient Class	Patients as defined in paragraph 7.4.6 of this Constitution	250	7
RBH Patient Class	Patients as defined in paragraph 7.4.7 of this Constitution	250	3
Patient Carer Class	Patient Carers as defined in paragraph 7.4.8 of this Constitution	100	2
GST CSD Staff Class	As defined in paragraph 7.3.5 of this Constitution	100	1
GST Clinicians Staff Class	As defined in paragraph 7.3.6 of this Constitution	100	3
GST Other Staff Class	As defined in paragraph 7.3.7 of this Constitution	100	2
RBH Clinicians Staff Class	As defined in paragraph 7.3.8 of this Constitution	100	1
RBH Other Staff Class	As defined in paragraph 7.3.9 of this Constitution	100	1

6.a

**ANNEX 2:****STANDING ORDERS FOR THE REGULATION OF PROCEEDINGS AND BUSINESS OF THE COUNCIL OF GOVERNORS**

These Standing Orders form part of the Constitution of the Guy's & St. Thomas' Hospital NHS Foundation Trust.

**1. INTERPRETATION**

- 1.1 The Chair shall be the final authority on the interpretation of Standing Orders.

**2. THE TRUST**

- 2.1 All business shall be conducted in the name of the Trust.

**3. MEETINGS OF THE COUNCIL OF GOVERNORS**

- 3.1 **Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend all meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

*"That representatives of the Press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted publicly on which would be prejudicial to the public interest".*

- 3.2 The right of attendance referred to above carries no right to ask questions or otherwise participate in the meeting.

- 3.3 The Chair (or other person presiding under the provisions of Standing Order 3.14) shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press to ensure that the business of the meeting shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:

*"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the completion of business without the presence of the public".*

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

- 3.4 **Calling Meetings** - Ordinary meetings of the Council of Governors shall be held at such times and places as it may determine.

- 3.5 Meetings of the Council of Governors may only be called in accordance with this paragraph. The Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors, has been presented to them, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to them, at the Trust's headquarters, such one third or more Members may forthwith call a meeting.



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- 3.6 **Notice of Meetings** - Before each meeting of the Council of Governors a notice of the meeting, specifying the business proposed to be transacted at it and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on their 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 them at least seven clear days before the meeting.
- 3.7 Subject to Standing Order 3.9, lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 3.8 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.9 Failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 3.10 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.
- 3.11 **Setting the Agenda** - The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
- 3.12 A Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 clear days before the meeting, subject to Standing Order 3.6. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.13 **Chair of Meeting** – The Chair shall preside at meetings of the Council of Governors and shall be entitled to exercise a casting vote where the number of votes for and against a motion is equal.
- 3.14 If the Chair is absent from a meeting of the Council of Governors, the Governors shall appoint another non-executive Director to preside over that meeting and they shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.15 If any matter for consideration at a meeting of the Council of Governors relates to the conduct or interests of the Chair or of the non-executive Directors as a class, neither the Chair nor any of the non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. In these circumstances the period of the meeting shall be chaired by the Lead Governor, or in their absence, by another Governor chosen by the Governors. This person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.16 **Notices of Motion** – A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This Standing Order shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.8.
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- 3.17 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.18 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor(s) who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 3.19 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.20 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 3.20.1 An amendment to the motion.
- 3.20.2 The adjournment of the discussion or the meeting.
- 3.20.3 That the meeting proceed to the next business.
- 3.20.4 The appointment of an ad hoc committee to deal with a specific item of business.
- 3.20.5 That the motion be now put.
- 3.21 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
- 3.22 **Chairman's Ruling** - Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.
- 3.23 **Voting** – If, in the opinion of the Chair, a vote should be required on a question at a meeting, the result shall be determined by a majority of the votes of the Governors present and voting on the question.
- 3.24 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 3.25 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.26 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.27 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.28 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
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- 3.29 Minutes shall be circulated with the notice of the next meeting or otherwise in accordance with Governors' wishes. Where providing a record of a public meeting, the minutes shall be made available to the public.
- 3.30 **Suspension of Standing Orders** - Except where this would contravene any provision of the constitution or any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, including one elected Governor and one nominated Governor and that a majority of those present vote in favour of suspension.
- 3.31 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.32 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 3.33 No formal business may be transacted while Standing Orders are suspended. Formal business shall include the proposal of motions and the determination of questions and resolutions, by voting or otherwise.
- 3.34 The Audit Committee of the Board of Directors shall review every decision of the Council of Governors to suspend Standing Orders.
- 3.35 **Record of Attendance** - The names of the Governors present at the meeting shall be recorded in the minutes.
- 3.36 **Quorum** - No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of Governors are present including at least one elected Member from the Public Constituency, one elected member from the Patients' Constituency, one elected Member from the Staff Constituency and one nominated Governor.
- 3.37 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 (see Standing Order 6 or 7) they 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.
- 3.38 Any resolution for the removal of a non-executive Director shall require the approval of three-quarters of the total number of Governors.

#### 4. NOMINATIONS COMMITTEE

- 4.1 The Council of Governors shall create a duly authorised Nominations Committee consisting of some or all of its Members in accordance with paragraph 8.19 of the Constitution.
- 4.2 The Nominations Committee shall seek the views of the Board of Directors as to their recommended criteria and process for the selection of candidates and, having regard to those views, shall then seek, shortlist and interview such candidates as the Nominations Committee considers appropriate and shall make recommendations to the Council of Governors as to potential appointments as non-executive Directors and shall advise the Board of Directors of those recommendations.
- 4.3 Subject to any provisions to the contrary in this Standing Order 4, the provisions of Standing Order 3, as far as they are applicable, shall apply with appropriate alteration to meetings of the Nominations Committee.

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- 4.4 The Secretary shall attend the Nominations Committee and take minutes of any proceedings.
- 4.5 The Nominations Committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council of Governors), as the Council of Governors, shall decide subject to the provisions of the Constitution. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 4.6 The Council of Governors shall approve the appointments to the Nominations Committee. The chair of the Nominations Committee shall be the Chair.
- 4.7 **Confidentiality** - A member of the Nominations Committee shall not disclose a matter dealt with by, or brought before, the Nominations Committee without its permission until the Nominations Committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 4.8 A member of the Nominations Committee shall not disclose any matter reported to or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or the committee shall resolve that it is confidential.

## 5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 5.1 Interests which should be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the register, are:
- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
  - (b) Ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - (c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
  - (d) A position of authority in a charity or voluntary organisation in the field of health and social care.
  - (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
  - (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
  - (g) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means. Such organisations include Masonic lodges and religious societies whose membership consists of professional and business people.

If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair.

- 5.2 At the time the interests are declared, they should be recorded in the Council of Governors minutes as appropriate. Any changes in interests should be officially declared at the next Council meeting following the change occurring. It is the obligation of the Governor to inform the Secretary of the Trust in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 3 working days.

- 5.3 Governors' directorships of companies (Standing Order 5.1(a)), or in companies likely or possibly seeking to do business with the NHS (Standing Order 5.1(b)), should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 5.4 During the course of a Council meeting, if a conflict of interest is established, the Governor(s) concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, a majority will resolve the issue with the Chair having the casting vote.
- 5.5 There is no requirement for the interests of Governors' spouses or partners to be declared. Note however that Standing Order 7 requires that the interest of Governors' spouses, if living together, in contracts should be declared.
- 5.6 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Member Governors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared, as defined in Standing Order 5.2.
- 5.7 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.
- 5.8 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.

## 6. **DISABILITY OF CHAIR OR GOVERNOR IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 6.1 Subject to the following provisions of this Standing Order, if a Governor or the Chair has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council of Governors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 6.2 The Trust may require the Chair or a Governor to withdraw from a meeting of the Council of Governors while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 6.3 For the purpose of this Standing Order the Chair or Governor shall be treated, subject to Standing Order 7.2 and Standing Order 7.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) they, or a nominee of their, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
  - (b) they are a partner of, or are in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
  - (c) and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this Standing

Order to be also an interest of the other.

- 6.4 The Chair or Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of their membership of a company or other body, they no beneficial interest in any securities of that company or other body of an interest in any company, body or person with which they are connected as mentioned in Standing Order 6.3 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member or director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 6.5 Where the Chair or a Governor:
- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
  - (b) the total nominal value of those securities does not exceed one-hundredth of the total nominal value of the issued share capital of the company or body, and
  - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class; and
  - (d) this Standing Order shall not prohibit them from taking part in the consideration or discussion of a contract or other matter or from voting on any question with respect to it without prejudice however to their duty to disclose their interest.
- 6.6 Standing Order 7 applies to the committee of the Council of Governors as it applies to the Council of Governors and applies to any member of the committee as it applies to a Governor.

## 7. STANDARDS OF BUSINESS CONDUCT

- 7.1 **Interest of Governors in Contracts** - If it comes to the knowledge of a Governor, that a contract in which they have any pecuniary interest not being a contract to which they are a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive of the fact that they are interested therein. In the case of married persons, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 7.2 A Governor must also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a member of their family or of someone with whom they have a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 7.3 **Canvassing of, and Recommendations by, Governors in Relation to Appointments** - Canvassing of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 7.4 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 7.5 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

- 7.6 **Relatives of Governor** - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any Governor. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render the, liable to instant dismissal.
- 7.7 The Governors shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Chief Executive to report to the Council of Governors and Board of Directors any such disclosure made.
- 7.8 On election or appointment, Governors should disclose to the Trust whether they are related to any other Governor or holder of any office under the Trust.
- 7.9 Where the relationship of a Governor is disclosed, the Standing Order headed 'Disability of Chair or Governor in proceedings on account of pecuniary interest' (Standing Order 6) shall apply.

## 8. MISCELLANEOUS

- 8.1 **Standing Orders to be given to Governors** - It is the duty of the Chief Executive to ensure that existing Governors and all new Governors are notified of and understand their responsibilities within Standing Orders.
- 8.2 **Review of Standing Orders** – These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 8.3 Variation and Amendment of Standing Orders - These Standing Orders shall be amended only if:
- (a) a notice of motion under Standing Order 3.16 has been given; and no fewer than two thirds of the total of the Governors vote in;
  - (b) favour of amendment; and
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**PART 1: INTERPRETATION**


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**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

“*e-voting*” means voting using either the internet, telephone or text message; “*e-voting information*” has the meaning set out in rule 24.2;

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

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

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

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

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

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

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

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

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

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

“*telephone voting facility*” has the meaning set out in rule 26.2; “*telephone voting record*” has the meaning set out in rule 26.5 (d);

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

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

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

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

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

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

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

**PART 2: TIMETABLE FOR ELECTIONS**

**2. Timetable**

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

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

**3. Computation of time**

- 3.1 In computing any period of time for the purposes of the timetable:  
 a Saturday or Sunday;  
 Christmas day, Good Friday, or a bank holiday, or  
 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.

6.a

**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:  
any expenses incurred by that officer in the exercise of his or her functions under these rules, 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:  
the constituency, or class within a constituency, for which the election is being held,  
the number of members of the council of governors to be elected from that constituency, or class within that constituency,  
the details of any nomination committee that has been established by the corporation,  
the address and times at which nomination forms may be obtained;  
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,  
the date and time by which any notice of withdrawal must be received by the returning officer  
the contact details of the returning officer  
the date and time of the close of the poll in the event of a contest.

**9. Nomination of candidates**

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

is to supply any member of the corporation with a nomination form, and

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:

full name,

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

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:
  - (iii) configured in accordance with these rules; and
  - (iv) 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:
  - (v) configured in accordance with these rules; and
  - (vi) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

## 20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

- 21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:
- (a) that the voter is the person:
    - (i) to whom the ballot paper was addressed, and/or

- (ii) to whom the voter ID number contained within the e-voting information was allocated,
  - (b) that he or she has not marked or returned any other voting information in the election, and
  - (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,
    - ("declaration of identity")
- and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.
- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

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

**22. List of eligible voters**

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
  - (b) the member's e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

**23. Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
  - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (URL) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

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

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
  - (b) the ID declaration form (if required),
  - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - (d) a covering envelope; ("postal voting information").
- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter's voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,
- ("e-voting information").
- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
  - (b) only be sent e-voting information; or
  - (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

## 25. Ballot paper envelope and covering envelope

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

## 26. E-voting systems

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,

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

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- 29.3 The returning officer may not issue a replacement ballot paper for a spoiled 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 spoiled ballot paper, the returning officer shall enter in a list ("the list of spoiled ballot papers"):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the spoiled 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 "spoiled 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 spoiled 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 spoiled 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 spoiled text message vote, the returning officer shall enter in a list ("the list of spoiled text message votes"):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
  - (c) the details of the replacement voter ID number issued to the voter.
- 30. Lost voting information**
- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
  - (b) has no reason to doubt that the voter did not receive the original voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
  - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
  - (c) the voter ID number of the voter.
- 31. Issue of replacement voting information**
- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition
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to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.

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

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

*Polling by internet, telephone or text*

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

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

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

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

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

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

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

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

**36. Receipt of voting documents**

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

**37. Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper "disqualified",
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the "list of disqualified documents"); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

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

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

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

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

### 39. De-duplication of votes

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

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

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

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

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

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

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

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

**40. Sealing of packets**

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 spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

**PART 6: COUNTING THE VOTES****STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

*“mark”* means a figure, an identifiable written word, or a mark such as “X”, *“non-transferable vote”* means a ballot document:

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

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

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

#### 43. The count

- 43.1 The returning officer is to:
- (a) count and record the number of:
    - (i) ballot papers that have been returned; and
    - (ii) 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.

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- FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.3 A ballot paper on which a vote is marked:
- (a) elsewhere than in the proper place,
  - (b) otherwise than by means of a clear mark,
  - (c) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
- FPP44.4 The returning officer is to:
- (a) endorse the word "rejected" on any ballot paper which under this rule is not to be counted, and
  - (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.
- FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- (a) does not bear proper features that have been incorporated into the ballot paper,
  - (b) voting for more candidates than the voter is entitled to,
  - (c) writing or mark by which voter could be identified, and
  - (d) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of ballot papers rejected in part.
- FPP44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
  - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
  - (c) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.
- FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP448 A text voting record on which a vote is marked:
- (a) otherwise than by means of a clear mark,
  - (b) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
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- 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.



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- 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
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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.

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- 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**

## Constitution

## Guy's &amp; St Thomas' NHS Foundation Trust

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- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

**STV51. Order of election of candidates**

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

**FPP51. Equality of votes**

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

**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS****FPP52. Declaration of result for contested elections**

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
  - (b) give notice of the name of each candidate who he or she has declared elected:
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the 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 [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
    - (ii) in any other case, to the chairman of the corporation, and
  - (c) give public notice of the name of each candidate 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.

#### **STV53. Declaration of result for uncontested elections**

- STV53.1 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 spoilt ballot papers and the list of spoilt text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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

voting information to be issued,

The returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the 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 –
  - (b) any rejected ballot papers, including ballot papers rejected in part,
    - (i) any rejected text voting records, including text voting records rejected in part,
    - (ii) any disqualified documents, or the list of disqualified documents,
    - (iii) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
    - (iv) the list of eligible voters, or
    - (v) 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 4:  
DECLARATION OF ELIGIBILITY TO STAND FOR ELECTION TO THE COUNCIL OF GOVERNORS  
AND TO VOTE AT A MEETING OF THE COUNCIL OF GOVERNORS**

**GUY'S & ST THOMAS' NHS FOUNDATION TRUST**

1. A person shall not stand for election to the Council of Governors as a Public Governor or as a Patient Governor unless within the previous six months they have made a declaration in the form specified in this Annex 4:
  - 1.1 of the particulars of their qualification to vote as a Member of the Public Constituency;
  - 1.2 that they are not prevented from being a Governor by Paragraph 8 of Schedule 7 to the 2006 Act; and
  - 1.3 that they are not otherwise disqualified under paragraph 8.13.
2. An elected Governor shall not vote at a meeting of the Council of Governors unless within the period since their election they have made a declaration in the form specified in this Annex 4.
3. Paragraph 8 of Schedule 7 to the 2006 Act provides that you may not become or continue as a Governor of the Trust if you have been:
  - 3.1 adjudged bankrupt or your estate has been sequestrated and, in either case you have not been discharged;
  - 3.2 you have made a composition or arrangement with, or entered into a Trust Deed for your creditors and you have not been discharged in respect of it; or
  - 3.3 you are a person who has in the preceding five years has been convicted in the British Islands of any offence for which 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 you;
4. There are other circumstances in which you may not become or continue as a Member of the Trust or a Governor. Before voting at a Council of Governor's meeting you should satisfy yourself as to your eligibility and that you are not disqualified. A copy of the Constitution can be obtained from the Trust Secretary.
5. If you are in any doubt as to your eligibility please contact the Trust Secretary.
6. Would you therefore please complete the information below and return it to the Trust in accordance with the instructions given in the final paragraph.
7. This document constitutes your formal declaration for the purposes of Section 60(3) of the 2006 Act.
8. **IT IS A CRIMINAL OFFENCE** if you make a declaration which you know to be false in some material respect or if you make such a declaration recklessly which is false in some material respect.
9. ***If you wish to vote at a meeting of the Council of Governors this form must be returned to the Trust Secretary after your election and before the vote in question.***

1. My Name	
2. My Address	
3. My Trust Membership Number	
4. The Membership Constituency of which I am a Member is as appears opposite <i>(insert full name of Membership Constituency of which you are a Member)</i>	
5. The details of why I am entitled to be a Member of that Class are as appears opposite <i>(insert details)</i>	
<p>6. I declare</p> <p>(a). that the above statements are correct to the best of my knowledge and belief and</p> <p>(b). I remain eligible to be a Member of the above Membership Constituency and am not otherwise disqualified from membership of the Trust</p> <p>(c). I am not prevented from being a Governor by Paragraph 8 of Schedule 7 to the National Health Service Act 2006</p>	
Signature	Date

6.a

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**ANNEX 5:**

**CODE OF CONDUCT FOR GOVERNORS**

As a member of the Guy's and St Thomas' NHS Foundation Trust Council of Governors I will:

- Do right to all manner of people without fear or favour, affection or ill-will;
- Treat other Governors, Directors and Trust staff with respect and fairness at all times
- Uphold the Nolan principles of public life
- Act at all times in the best interests of the Trust and refrain from acting in a manner that could reasonably be regarded as bringing my office or the Trust into disrepute
- Actively support the values of the Trust in developing as a successful Foundation Trust; so as to maximise the benefits for the members and the public
- Act to support the directors with a view to promoting success of the Trust at all times
- Contribute to the work of the Council of Governors in order for it to fulfil its role and functions as defined in the Trust's constitution
- Recognise that the role of the Council of Governors is as part of the governance of the Trust and so the governors have no managerial role
- Respect the confidentiality of information received as a governor
- Adhere to the Trust's rules and policies, including the constitution, standing orders and standing financial instructions
- Regularly attend meetings of the Council of Governors, members' meetings and training events
- Conduct myself in a manner that reflects positively on the Foundation Trust, acting as an ambassador for the Trust

**The Seven Principles of Public Life (Nolan)**

**Selflessness**

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

**Integrity**

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

**Objectivity**

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

### **Accountability**

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

### **Openness**

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

### **Honesty**

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

### **Leadership**

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

These principles apply to all aspects of public life. The Nolan Committee has set them out here for the benefit of all who serve the public in any way.



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**ANNEX 6:**

**DISPUTE RESOLUTION PROCEDURE**

1. In the event of a dispute with:
  - (a) a Member or prospective Member in relation to matters of eligibility or disqualification; or
  - (b) a Governor or prospective Governor in relation to matters of eligibility, disqualification or termination of tenure,

the individual concerned shall be invited to an informal meeting with the Secretary or with one or more Directors to discuss the matters in dispute, any Director(s) to be determined by mutual agreement of the Secretary and the individual concerned. If not resolved, the dispute shall be referred to a panel consisting of the Chair, at least one elected Governor and either the Secretary or at least one Director. The decision of that panel shall be final.
2. A dispute arising between the Council of Governors and the Board of Directors shall be referred to the joint consideration of a panel consisting of the Chair, the Chief Executive and two Governors nominated by the Council of Governors. The Chair shall not participate in the nomination of Governors to this panel. The panel shall use all reasonable endeavours to facilitate the resolution of the dispute.
3. In the event that a resolution is not reached under paragraph 2 of this Dispute Resolution Procedure the panel constituted pursuant to that paragraph shall consult the Council of Governors and Board of Directors to determine whether the matter should be referred to mediation, in which case, an external mediator shall be appointed by the Centre for Dispute Resolution or such other organisation as the panel shall agree.
4. Nothing in this Dispute Resolution Procedure shall preclude any party from referring any dispute to a court of competent jurisdiction in England and Wales, or a Governor from exercising their right under paragraph 8.15.3 of the Constitution.

6.a