Bradford Teaching Hospitals
NHS Foundation Trust

Constitution

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BRADFORD TEACHING HOSPITALS NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

Unless the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the National Health Service Act 2006 (as amended).

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

1. DEFINITIONS

In this Constitution:-

"the 2006 Act"	means the NHS Act 2006 (as amended);
“Annual Members Meeting”	means the Annual Meeting of Members open to members of the public;
“Area of the Foundation Trust”	means the area, consisting of all the areas, specified in Annex 1, as an area for a public constituency;
“Board of Directors”	means the Board of Directors as constituted in accordance with this Constitution;
“Council of Governors”	means the Council of Governors as constituted in accordance with this Constitution;
"Director"	means a member of the Board of Directors;
“Financial year”	means- (a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31st March; and (b) each successive period of twelve months beginning with 1st April;
“Governor”	means a member of the Council of Governors;
“Lead Governor”	means a Governor elected by the Council of Governors to fulfil the statutory role originally set out by Monitor (now NHS England);
“Local Authority Governor”	means a member of the Council of Governors appointed by one or more local authorities

	whose area includes the whole or part of the area of the Foundation Trust;
"Member"	means a member of the Foundation Trust;
“Non-Executive Director”	means the Non-Executive Directors of the Board of Directors including the Chair;
“Patient”	means an individual who has attended any of the Foundation Trust’s hospitals or clinics, whether NHS or private, at any time;
“Carer”	means an individual who has attended any of the Foundation Trust’s hospitals or clinics as a carer of a patient other than an individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation;
“Partner Governor”	means a member of the Council of Governors appointed by a Partner Organisation specified in Annex 3;
“Patient Governor”	means a member of the Council of Governors elected by the members of the Patient Constituency;
“Public Governor”	means a member of the Council of Governors elected by the members of the Public Constituency;
"Secretary"	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary of the Foundation Trust;
“Staff Governor”	means a member of the Council of Governors elected by the members of a Staff Class;
“Standing Orders”	means the Standing Orders of the Foundation Trust;
“the Foundation Trust”	means Bradford Teaching Hospitals NHS Foundation Trust;
“University Governor”	means a member of the Council of Governors appointed by a University providing medical or dental hospital or professional training to the Foundation Trust.

2 NAME

2.1 The name of the Foundation Trust is "Bradford Teaching Hospitals NHS Foundation Trust".

3 PRINCIPAL PURPOSE

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

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

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

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

3.3.2 the promotion and protection of public health.

3.4 Subject to paragraph 15 the Foundation Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order to better carry on its principal purpose.

4 POWERS

4.1 The powers of the trust are set out in the 2006 Act.

4.2 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

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

5 MEMBERS

5.1 Constituencies

The Foundation Trust is to have members, each of whom shall be a member of one of the membership Constituencies, namely -

(a) The “Public Constituencies”,

(b) a “Staff Constituency” and,

(c) a “Patients’ Constituency”.

5.2 **Public Constituency**

5.2.1 The Public Constituencies are to be known by the names listed in column 1 of Annex 1.

5.2.2 Members of the Foundation Trust who are members of the Public Constituency listed in column 1 of Annex 1 are to be individuals:

(a) who are at least 16 years old and live in the area specified for that Constituency in the corresponding entry in column 2 of that Annex; and

(b) who are not eligible to become a member of the Staff Constituency and are not members of any other constituency or are otherwise disqualified from membership under paragraph 5.5; and

(c) who have made an application for membership to the Foundation Trust. Membership is potentially available to all these individuals, and the Foundation Trust is to use its best endeavours to ensure that, taken as a whole, the actual membership of the Foundation Trust’s Public Constituencies that fall within the Bradford Metropolitan District Council area is representative of those eligible for membership.

5.2.3 The minimum number of members required for each Public Constituency is to be the number given in column three of Annex 1.

5.3 **Staff Constituency**

5.3.1 The staff constituency shall be divided into four classes of individuals as follows:

a) Medical and Dental practitioners staff class;

b) Nurses and Midwives staff class

c) Allied Health Professionals and Scientists class

d) All Other Staff Class

The minimum number of members in each class of the staff constituencies is specified in Annex 2.

5.3.2 The members of the Medical and Dental Staff Class are individuals who are members of the Staff Constituency who are fully registered within the meaning of the Medicines Act 1956.

5.3.3 The members of the Nurses and Midwives Staff Class are individuals who are members of the Staff Constituency who are registered Nurses or registered Midwives.

5.3.4 The members of the Allied Health Professionals and Scientists Staff Class are members of the Staff Constituency whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professionals established by section 25 of the NHS Reform and Health Care Professionals Act 2002, except that they are not registered Nurses or Midwives

5.3.5 The members of the All Other Staff Class are members of the Staff Constituency who do not come within paragraphs 5.3.2 to 5.3.4 above.

5.3.6 Members of the Foundation Trust who are members of the Staff Constituency are to be individuals who:

a) are employed under a permanent contract of employment by the Foundation Trust; or

b) are individuals who are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust; and

c) who satisfy the minimum duration requirements set out in paragraph 3 of Schedule 7 to the 2006 Act; and

d) have made an application for membership of the Foundation Trust; or

e) on appointment shall become a member of the appropriate class within the Staff Constituency without an application being made, unless they inform the Foundation Trust that they do not wish to become a member.

5.3.7 The minimum number of members of each Staff class is to be 100.

5.3.8 A person who is eligible to be a member of the Staff Constituency may not become or continue to be a member of any Constituency other than the Staff Constituency and may not become or continue to be a member of more than one Staff class.

5.4 Patients Constituency

5.4.1 The members of the Foundation Trust who are members of the Patient Constituency are individuals:

a) who are at least 16 years old and have attended any of the Foundation Trust's hospitals or clinics as a patient (as defined within this Constitution), or

b) the carer of a Patient as identified in 5.4.1 a);

c) is not eligible to become a member of the Staff Constituency and are not members of any other Constituency and are not otherwise disqualified from membership, and has a postcode outside of the BMDC area; and

d) has made an application for membership of the Foundation Trust.

5.4.2 The minimum number of members required for the Patients' Constituency is to be 100.

5.5 Disqualification for Membership

5.5.1 A person may not be a member of the Foundation Trust;

(a) Unless they are of 16 years of age or over.

(b) If they have demonstrated aggressive or violent behaviour towards Foundation Trust staff, that is, if a Warning Letter has been issued to them under Stage 3 of the Foundation Trust's Policy for Withholding Treatment from Violent and Abusive Patients, a final Written Warning has been issued under Stage 4, or, they have been asked to leave, have been removed or excluded from the Foundation Trust's premises under the Policy.

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

5.6 Termination of Membership

5.6.1 A member shall cease to be a member if they:-

(a) Resign by notice to the Secretary

(b) Cease to fulfil the requirements of paragraphs 5.2, 5.3 or 5.4

(c) Become disqualified from membership by reason of

paragraph 5.5.1(b)

5.7 Voting at Governor Elections

5.7.1 A person may not vote at an election for a Public or Patient Governor unless within the specified period they have made a declaration in the specified form stating the particulars of their qualification to vote as a member of the Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in any material particular.

5.8 Annual Members Meeting

5.8.1 The Foundation Trust shall hold an annual meeting of its members ('Annual Members Meeting'). The Annual Members Meeting shall be open to members of the public.

5.8.2 The following documents shall be presented to the members of the Foundation Trust at the Annual Members Meeting by at least one member of the Board of Directors:

a) the Annual Accounts;

b) any report of the External Auditor on the Annual Accounts; and

c) the Annual Report

The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of being presented with the above documents with the Annual Members' Meeting.

5.8.3 In accordance with paragraph 18 of this Constitution where an amendment has been made to the Constitution in relation to the powers or duties of the Council of Governors, members must be given the opportunity to vote at the Annual Members Meeting on whether they approve the amendment.

6 COUNCIL OF GOVERNORS

6.1 Composition of the Council of Governors

6.1.1 The Foundation Trust shall have a Council of Governors. It shall consist of Public Governors, Staff Governors, Patient Governors, University Governors, Local Authority Governors and other Partner Governors.

6.1.2 The Council of Governors shall include:

(a) 11 Public Governors

(b) 2 Patient Governors

(c) 6 Staff Governors

(i) 1 being elected by the Medical and Dental Practitioners Class
(ii) 2 being elected by the registered Nurses and Midwives Class
(iii) 1 being elected by the Allied Health Professionals and Scientists Class
(iv) 2 being elected by the All Other Staff Class

(d) 1 Local Authority Governor

(e) 2 University Governors

(f) 2 Partner Governors

6.1.3 The aggregate number of members of Public Governors and Patient Governors is to be more than half the total membership of the Council of Governors.

6.2 Public Governors

6.2.1 Members of a Public Constituency may elect any of their number to be a Public Governor from within their constituency according to the Election Scheme.

6.2.2 If contested, the election will be by secret ballot.

6.2.3 The Election Scheme, including the process for ratifying Governors if the election is uncontested, is set out in Annex 4.

6.2.4 A person may not stand for election to the Council of Governors as a Public Governor unless they have made a declaration in the form specified in Annex 4 of their qualification to vote as a member for the Public Constituency for which the election is being held and is not prevented from being a member of the Council of Governors by paragraph 8 to Schedule 7 of the 2006 Act or paragraph 6.11 below. It is an offence to knowingly or recklessly make a declaration under paragraph 60 of the 2006 Act which is false in a material particular.

6.2.5 Paragraph 5.7.1 (voting at Governor elections) applies.

6.3 Patient Governors

6.3.1 Members of the Patient Constituency may elect any of their number to be a Patient Governor.

6.3.2 If contested the election must be by secret ballot.

6.3.3 The election scheme is set out in Annex 4

6.3.4 A person may not stand for election to the Council of Governors as a Patient Governor unless within the period specified in Annex 4 they have made a declaration in the form specified in Annex 4 of the particulars of their qualification to vote as a member of the Patients' Constituency and is not prevented from being a member of the Council of Governors by paragraph 8 to Schedule 7 of the 2006 Act or paragraph 7.10 below. It is an offence to knowingly or recklessly make a declaration under paragraph 60 of the 2006 Act which is false in a material particular.

6.3.5 Paragraph 5.7.1 (voting at Governor elections) applies.

6.4 Staff Governors

6.4.1 Members of a Class of the Staff Constituency may elect any of their number to be a Staff Governor from within that Class.

6.4.2 If contested, the election will be by secret ballot.

6.4.3 The Election Scheme is set out in Annex 4

6.5 Role of Local Authority, University and Partner Governors

6.5.1 Subject to the overriding principle that the Governors' first responsibility is to the Council of Governors and the Trust the role of Governors appointed as Local Authority Governors, University Governors and other Partner Governors shall in addition to their general responsibilities as Governors be:

a) to speak with authority for the organisation they represent and be able to explain its policies;

b) to support the role of the Council of Governors as set out in paragraph 6.13;

c) to represent the Foundation Trust to the organisation they represent.

6.5.2 The appointment of Local Authority Governors, University Governors and other Partner Governors shall be in accordance with a process agreed with the Secretary of the Foundation Trust.

6.6 University Governors

6.6.1 The University of Leeds and the University of Bradford shall each appoint a University Governor.

6.7 Local Authority Governors

6.7.1 The Bradford Metropolitan District Council shall appoint one Local Authority Governor.

6.8 Partner Governors

6.8.1 Healthwatch Bradford and District and a Mental Health, Learning Disabilities and Autism representative organisation (to be determined by the Trust) shall each appoint one Partner Governor.

6.9 Terms of Office

6.9.1 Public Governors, Staff Governors and Patient Governors;

(a) may hold office for a period of three years

(b) are eligible for re-election at the end of that period; and

(c) may not hold office for longer than nine consecutive years.

6.9.2 Local Authority Governors;

(a) may hold office for a period of three years

(b) are eligible for reappointment at the end of that period; and

(c) may not hold office for longer than nine consecutive years.

6.9.3 University Governors;

(a) may hold office for a period of three years;

(b) are eligible for reappointment at the end of that period; and

(c) may not hold office for longer than nine consecutive years.

6.9.4 Other Partner Governors;

(a) may hold office for a period of three years;

(b) are eligible for reappointment at the end of that period; and

(c) may not hold office for longer than nine consecutive years.

6.10 **Termination of tenure**

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

6.10.2 If the Governor fails to attend two consecutive meetings of the Council of Governors their tenure of office is to be terminated one month following the second meeting unless in the meantime they have satisfied the Chair that:

a) the absence was due to a reasonable cause; and

b) they will be able to start attending meetings of the Council of Governors again within such a period as the Chair considers reasonable.

6.10.3 If the Governor fails to attend a training session for Governors as recommended by the Secretary and approved by the Council of Governors by a date six months from the date of the Governor's election or appointment then their tenure in office is to be terminated six weeks from the said date unless in the meantime they have satisfied the Chair that:

a) the absence was due to a reasonable cause; and

b) they will be able to attend a training session within such a period as the Chair considers reasonable.

6.11 **Disqualification and Removal of a Governor**

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

a) in the case of a Patient Governor, Staff Governor or Public Governor, they cease to be a member of the Constituency they represent;

b) in the case of a University Governor, Local Authority Governor or other Partner Governor, the appointing organisation withdraws their appointment of them;

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

d) they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

e) 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;

f) 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;

g) they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

h) they are a person whose tenure of office as the 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 Health Service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

i) they are an Executive or Non-Executive Director of the Foundation Trust, or a Governor, Non-Executive Director, Chair, Chief Executive Officer of another NHS Foundation Trust;

j) they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;

k) they have failed to declare an interest as required by this Constitution or Standing Orders or, have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or Standing Orders, and in this Paragraph interest includes a pecuniary and a non- pecuniary interest in either case whether direct or indirect;

l) they have previously been removed from the Council of Governors; or

m) they have failed to confirm their acceptance of the Non-Executive Directors' and Governors' Code of Conduct within 14 calendar days of their election or appointment to the Council of Governors.

6.11.2 Where a person has been elected or appointed to be a Governor and they become disqualified under paragraph 6.11.1

to hold that office, they shall immediately notify the Secretary in writing of such disqualification and upon giving such notice that Governor's term of office, if any, shall terminate and they shall cease to act as a Governor.

6.11.3 If it comes to the notice of the Secretary that a person elected or appointed to be a Governor may be disqualified under Paragraph 6.11.1 to hold that office and the Secretary has not received a notice under Paragraph 6.11.2 from that person, the Secretary shall make such enquiries as they think fit and, if satisfied that the person may be so disqualified, the Secretary shall give notice in writing to that person that the Foundation Trust proposes to declare the person disqualified as a Governor. In this notice, the Secretary shall specify the grounds on which it appears to them that the person is disqualified and give that person a period of at least 14 but no more than 28 days in which to make representations, orally or in writing, on the proposed disqualification. Any representations shall be to, and considered by, a committee of the Directors which in this case shall determine the proposal. If no representations are received within the specified time or the committee of Directors upholds the proposal to disqualify having heard representations, the Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect. On such declaration the person's tenure of office shall be terminated and they shall cease to act as a Governor.

6.11.4 At the commencement of their term of office a Governor shall sign the Non-Executive Directors' and Governor's Code of Conduct ('Code of Conduct') as agreed by the Council of Governors. A Governor may be subject to removal from office for non-compliance with the Code of Conduct. The process to be undertaken is specified with the Process for managing concerns in relation to the Chair, another NED or a Governor.

6.12 Vacancies

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

6.12.2 Where the vacancy arises amongst appointed Governors, the Secretary shall request that the appointing organisation appoint a replacement to hold office for the remainder of the term of office.

6.12.3 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:

a) to call an election within three months, provided that the period of the vacancy exceeds three months; or

b) to invite the next highest polling Candidate for that seat at the most recent election, who is willing to take office to fill the seat until the next scheduled election, at which time the seat will become vacant and subject to election.

c) If no-one is available under 6.12.3 (b) and the vacancy is for three months or less the seat will remain vacant until the next scheduled election.

6.13 Duties and Responsibilities of Governors

6.13.1 The general duties of the Council of Governors are to:

a) Hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

b) Represent the interests of the members of the Foundation Trust as a whole and the interests of the public.

6.13.2 The roles and responsibilities of the Council of Governors are to:

a) Represent the views of their respective members and organisations to the Trust, in order that the Foundation Trust may undertake its business in ways consistent with the needs of its members and the wider community, and to represent the views of the Foundation Trust to their members and organisations in a reciprocal manner.

b) Appoint or dismiss the Chair and the other Non-Executive Directors and to decide their remuneration, allowances and other Terms and Conditions of their offices. The removal of the Chair or a Non-Executive Director requires a motion in accordance with Standing Orders approved by three-quarters of the Governors.

c) Approve (by a majority vote) the appointment (by the Non-Executive Directors) of the Chief Executive.

d) Appoint or remove the Foundation Trust's External Auditor.

e) Give the views of the Council of Governors to the Board of Directors for the purposes of their preparation by the Board of Directors of the document containing the information as to the Foundation Trust's forward planning in respect of each financial year to be given to the Integrated Care Board (ICB) and NHS England (NHSE).

f) Respond appropriately when consulted by the Board of Directors in accordance with this Constitution.

g) Consider and receive the Annual Accounts, any report by the External Auditor on them and the Annual Report.

h) Receive and consider the views of the members on matters of significance to the future plans of the Foundation Trust.

6.13.3 The Foundation Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

6.14 **Declaration of Interests**

6.14.1 A Governor must declare to the Secretary:

a) any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Foundation Trust;

b) any interests which are relevant and material to the business of the Foundation Trust;

c) any other interest as set out in the Standing Orders; and

d) any other interest as set out in the 'Conflicts of Interest Policy for Bradford Teaching Hospitals NHS Foundation Trust'.

6.14.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared in accordance with this Constitution or Standing Orders and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within 28 days of becoming aware of the existence of an interest. In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if they have declared a pecuniary interest, they shall not take part in the consideration or discussion of the matter. This Paragraph applies to any Committee or Sub-Committee of the Council of Governors as it applies to the Council of Governors and applies to any member of any such Committee or Sub-Committee (whether or not they are also a Governor) as it applies to a Governor. The provisions of this Paragraph are subject to Paragraph 6.14.7.

6.14.3 “relevant and material" interests are:

a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);

b) Ownership or part-ownership or Directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;

c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

d) A position of authority in a charity or voluntary organisation in the field of Health and Social Care;

e) Any connection with a voluntary or other organisation contracting for or commissioning NHS services; and

f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Foundation Trust, including but not limited to, lenders or banks.

6.14.4 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.

6.14.5 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

a) they, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

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.

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

a) of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;

b) of an interest in any company, body or person with which they are connected as mentioned in paragraphs 6.14.3 and 6.14.5 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

6.14.7 Where 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 £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

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,

The Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest.

6.14.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of this Constitution to be also an interest of the other.

6.15 Expenses

6.15.1 The Foundation Trust may pay travelling and other expenses to Governors at such rates as it decides. These are to be published in the Annual Report.

6.16 Remuneration

6.16.1 Governors are not to receive remuneration.

6.17 Meetings

6.17.1 The Chair of the Foundation Trust or, in their absence, the Deputy Chair of the Board is to preside at meetings of the Council of Governors.

6.17.2 Meetings of the Council of Governors are to be open to members of the public except in the following circumstances:

a) The Council of Governors may, by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest or the interest of the Foundation Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or the proceedings.

b) Without prejudice to the generality of (a) above, the Council of Governors may treat the need to consider the following matters as of a confidential nature:

- approval of the appointment or dismissal of the Chief Executive;
- any disciplinary or other matter arising from a contract of employment with the Foundation Trust;
- any matter which involves the consideration of information held by the Foundation Trust in confidence, whether that confidentiality covers clinical, commercial or other information;
- commercial matters where publication may be to the detriment of the Foundation Trust;
- legal advice; and
- litigation actual or anticipated, including any arbitration or dispute resolution process or any matter of a litigious nature whether in a Court, Tribunal or Inquiry.

c) Without prejudice to the generality of (a) above and without regard to the subject or purport of the recommendation or advice, the Council of Governors may treat as a special reason the need to receive or consider recommendations or advice from sources other than a Director, or the Board of Directors, or the Council of Governors Nominations and Remuneration Committee in accordance with paragraph 7.1.4 to 7.1.7 of this Constitution.

6.17.3 The Council of Governors will meet at least 5 times per year inclusive of the Annual General Meeting.

6.17.4 At a general meeting in September of each year or on such other date approved by the Chair, the Council of Governors are to receive and consider the Annual Accounts, any report of the Auditor on them, and the Annual Report. These documents shall be presented by at least one member of the Board of Directors. This meeting may be combined with the Annual Members' Meeting as set out in paragraph 5.8.

6.17.5 The Council of Governors shall adopt its own Standing Orders

for its practice and procedure.

6.17.6 The proceedings of a Meeting of the Governors shall not be invalidated by any vacancy in its membership.

6.17.7 A Governor elected to the Council of Governors by a Public Constituency, the Patients' Constituency or a Class of the Staff Constituency may not vote at a meeting of the Council unless, immediately prior to the commencement of each meeting, they have made a declaration in a form as determined by the Secretary stating which Constituency or Class they are a member of and is not prevented from being a member of the Council of Governors by paragraph 9 of Schedule 7 to the 2006 Act or under this Constitution.

6.17.8 The Council of Governors may require one or more of the Directors to attend a meeting for the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Directors' performance).

7 BOARD OF DIRECTORS

7.1 Composition of the Board of Directors

7.1.1 The Foundation Trust is to have a Board of Directors. It is to consist of Executive and Non-Executive Directors

7.1.2 The Board is to include–

(a) The following Non-Executive Directors-

(i) a Chair
(ii) a Non-Executive Director appointed by the Leeds Medical School, and may include a Non-Executive Director appointed by the University of Bradford, such appointments being subject to approval of the Council of Governors at a general meeting,
(iii) at least 5 other Non-Executive Directors

(b) The following Executive Directors –

(i) a Chief Executive (and Accounting Officer),
(ii) a Finance Director,
(iii) a Medical Leader, who must be a registered Medical or Dental practitioner (within the meaning of the Dentists Act 1984),
(iv) a Chief Nurse, who must be a registered Nurse or registered Midwife,

v) a Chief Operating Officer, and
vi) a Director of Strategy and Transformation.

7.1.3 Only a member of the Public or the Patients' Constituency, or an individual exercising functions for the Leeds Medical School, or the University of Bradford, is eligible for appointment as a Non-Executive Director.

7.1.4 All current Directors and future appointments must clearly satisfy and continue to meet the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 including all future amendments to the regulation.

7.1.5 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Foundation Trust and the other Non-Executive Directors in accordance with the Governors Standing Orders.

7.1.6 Further provisions for the appointment of the Chair and the other Non-Executive Directors and the role of the Council of Governors in the said appointments are set out in the Terms of Reference of the Council of Governors Nominations and Remuneration Committee.

7.1.7 The Council of Governors will not consider nominations for membership of the Board of Directors other than the recommendations of the Council of Governors Nominations and Remuneration Committee.

7.2 Terms of office

7.2.1 The Chair and the Non-Executive Directors are to be appointed for a period of office in accordance with the Terms and Conditions of office decided by the Council of Governors at a general meeting.

7.2.2 The Chief Executive (and Accounting Officer) shall hold office for a period in accordance with the Terms and Conditions of office decided by the relevant committee of Non-Executive Directors.

7.2.3 The Executive Directors other than the Chief Executive shall hold office for a period in accordance with the Terms and Conditions decided by the relevant committee of Non-Executive Directors advised by the Chief Executive.

7.2.4 On termination of their contract of employment an Executive Director shall cease to be a member of the Board of Directors.

7.2.5 If an Executive Director is suspended from their contract of employment or on long term sick leave, the Non-Executive Directors in the case of the Chief Executive and the Non-Executive Directors and the Chief Executive in the case of the other Executive Directors may appoint another person as an Executive Director in an acting capacity in their place.

7.3 Disqualification

7.3.1 A person may not be a Director of the Foundation Trust if–

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

(b) they are a person in relation to whom a moratorium period under a debt relief order applies (under Part7A of the Insolvency Act 1986);

(c) 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;

(d) 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;

(e) they are a person whose tenure of office as a 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 public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

(f) they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

(g) in the case of a Non-Executive Director, they no longer satisfy paragraph 7.1.3;

(h) they have failed to declare an interest as required by this Constitution or Standing Orders or, any other interest as set out in the ‘Conflicts of Interest Policy for Bradford Teaching Hospitals NHS Foundation Trust’;

(i) have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or Standing Orders, and in this Paragraph interest includes a pecuniary

and a non- pecuniary interest in either case whether direct or indirect;

(j) they have previously been removed from the Board of Directors; or

(k) they have failed to confirm their acceptance of the Non-Executive Directors' and Governors' Code of Conduct within 14 calendar days of their election or appointment to the Council of Governors.

7.4 Duties, Roles and Responsibilities

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 Foundation Trust so as to maximise the benefits for the members of the Foundation Trust as a whole and for the public.

7.4.1 The powers of the Foundation Trust are to be exercisable by the Board of Directors on its behalf.

7.4.2 Any of those powers may be delegated to a Committee of Directors or to an Executive Director.

7.4.3 A Committee of Non-Executive Directors established as an Audit Committee is to monitor, review and carry out such other functions in relation to the External Auditor as appropriate.

7.4.4 It is for the Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.

7.4.5 It is for a Committee of the Chair, Chief Executive and the other Non-Executive Directors to appoint or remove the Executive Directors.

7.4.6 The process for removal of the Executive Directors will be for the Chief Executive to make such a recommendation to the Board of Directors in writing setting out the case for removal and for the Board to dispose of the recommendation by way of a resolution in accordance with Standing Orders.

7.4.7 The Foundation Trust is to establish a Committee of all Non-Executive Directors to decide the remuneration and allowances, and the other Terms and Conditions of office, of the Chief Executive.

7.4.8 The Foundation Trust is to establish a Committee of Non-Executive Directors advised by the Chief Executive to decide

the remuneration and allowances, and the other Terms and Conditions of office, of the Executive Directors.

7.4.9 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Foundation Trust's forward planning in respect of each financial year to be given to the ICB and NHSE.

7.4.10 The Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the External Auditor on them, and the Annual Report.

7.4.11 The functions of the Foundation Trust under subparagraphs (a) and (b) of paragraph 13.6 below are delegated to the Chief Executive as Accounting Officer.

8 MEETINGS OF THE BOARD OF DIRECTORS

8.1 The Board of Directors, in consultation with the Council of Governors, is to adopt Standing Orders covering the proceedings and business of its meetings and such other matters relating to the conduct of the Foundation Trust's business and functions as it considers appropriate. These are to include setting a quorum for meetings, both of Executive and Non-Executive Directors. The proceedings of the Board of Directors shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

8.2 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

a) The Board of Directors may, by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest or the interest of the Foundation Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or the proceedings.

b) Without prejudice to the generality of (a) above, the Board of Directors may treat the need to consider the following matters as of a confidential nature:

- approval of the appointment or dismissal of the Chief Executive;
- any disciplinary or other matter arising from a contract of employment with the Foundation Trust;
- any matter which involves the consideration of information held by the Foundation Trust in confidence, whether that confidentiality covers clinical, commercial or other

information;
- commercial matters where publication may be to the detriment of the Foundation Trust;
- legal advice; and,
- litigation actual or anticipated, including any arbitration or dispute resolution process or any matter of a litigious nature whether in a Court, Tribunal or Inquiry.

8.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

9. CONFLICTS OF INTERESTS DIRECTORS

9.1 The duties that a Director of the Foundation Trust has by virtue of being a Director include in particular:

9.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Foundation Trust.

9.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.

9.2 The duty referred to in sub-paragraph 9.1.1 is not infringed if:

9.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

9.2.2 The matter has been authorised in accordance with the Constitution.

9.3 The duty referred to in sub-paragraph 9.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

9.4 In sub-paragraph 10.1.2, “third party” means a person other than:

9.4.1 The Foundation Trust, or

9.4.2 A person acting on its behalf.

9.5 If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.

9.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

9.7 Any declaration required by this paragraph must be made before the Foundation Trust enters into the transaction or arrangement.

9.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

9.9 A Director need not declare an interest:

9.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

9.9.2 if, or to the extent that, the Directors are already aware of it;

9.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –

9.9.3.1 By a meeting of the Board of Directors, or

9.9.3.2 By a Committee of the Directors appointed for the purpose under the Constitution.

9.10 If, during the course of a meeting of the Board of Directors, a conflict of interest is established, the Director concerned shall withdraw from the meeting and play no part in the relevant discussion or decision. If there is a dispute as to whether a conflict of interest exists, the majority of the Directors present at the meeting shall resolve the issue, with the Chair having a casting vote.

10 REGISTERS

10.1 The Foundation Trust shall have:

10.1.1 a register of Members showing, in respect of each Member, the Constituency or class to which they belong;

10.1.2 a Register of Members of the Council of Governors;

10.1.3 a Register of interests of Governors;

10.1.4 a Register of Directors; and

10.1.5 a Register of interests of Directors.

10.2 The Secretary shall be responsible for compiling and maintaining the Registers. Removal from any Register shall be in accordance with the provisions of this Constitution.

a) Register of Members

Members must complete and sign an application in the form prescribed by the Secretary.

b) Register of Governors

The Register shall list the names of Governors, their category of membership of the Council (Public, Staff or organisation represented) and an address through which they may be contacted which may be that of the Secretary.

c) Register of Interests of the Governors

The Register shall contain the names of each Governor, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution or Standing Orders.

d) Register of Directors

The Register shall list the names of Directors, their capacity on the Board and an address through which they may be contacted which may be the address of the Secretary.

e) Register of interests of Directors

The Register shall contain the names of each Director, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution or Standing Orders.

11 PUBLIC DOCUMENTS

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

a) a copy of the current Constitution;

b) a copy of the latest Annual Accounts and of any report of the Auditor on them; and

c) a copy of the latest Annual Report.

11.2 The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times:

a) a copy of any order made under section 65D (appointment of Foundation Trust Special Administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final

report), 65L(Foundation Trusts coming out of administration) or 65LA (Foundation Trusts to be dissolved) of the 2006 Act.

b) a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

c) a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

d) a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

e) a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.

f) a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(NHSE/I's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

g) a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

h) a copy of any final report published under section 65I (administrator's final report).

i) a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

j) a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

11.3 Any person who requests it is to be provided with a copy or extract from any of the above documents.

11.4 The Registers mentioned in the paragraph 10.1 above are also available for inspection by members of the public, except in circumstances prescribed by regulations made under the 2006 Act; and insofar as those Registers are required to be available:

a) they are to be provided free of charge at all reasonable times

b) a person who requests it is to be provided with a copy of or extract from them

11.5 If the person requesting a copy or extract is not a Member of the

Foundation Trust, the Foundation Trust may impose a reasonable charge for providing the copy or extract.

12 EXTERNAL AUDITOR

12.1 The Foundation Trust is to have an External Auditor and is to provide the External 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.

12.2 A person may only be appointed as the External Auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.

12.3 Appointment of the External Auditor by the Council of Governors is covered in paragraph 6.13.2, and monitoring of the External Auditor's functions by a Committee of Non-Executive Directors is covered in paragraph 7.4.3.

12.4 The External Auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and comply with any directions from NHSE on standards, procedures and techniques.

13 ACCOUNTS

13.1 The Foundation Trust must keep proper Accounts and proper records in relation to the Accounts.

13.2 The Foundation Trust is to keep Accounts in such form as NHSE may with the approval of the Secretary of State direct.

13.3 The Accounts are to be audited by the Foundation Trust's External Auditor.

13.4 The following documents will be made available to the Comptroller and Auditor General for examination at their request–

(a) The Accounts;

(b) any records relating to them; and

(c) any report of the External Auditor on them.

13.5 The Foundation Trust is to prepare in respect of each financial year Annual accounts in such form as NHSE may with the approval of the Secretary of State direct.

13.6 In preparing its Annual Accounts, the Foundation Trust is to comply with

any directions given by NHSE with the approval of the Secretary of State as to –

(a) the methods and principles according to which the Accounts are to be prepared; and

(b) the information to be given in the Accounts.

13.7 The Foundation Trust must –

(a) lay a copy of the Annual Accounts, and any report of the External Auditor on them, before Parliament; and

(b) once it has done so, send copies of those documents to NHSE.

13.8 The functions of the Foundation Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

14 ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK

14.1 The Foundation Trust is to prepare Annual Reports and send them to NHSE.

14.2 The Reports are to give:

a) information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual Membership of its Public Constituency is representative of those eligible for such membership; and

b) information on any occasion in the period to which the report relates on which the Council of Governors exercised its power under paragraph 6.17.9;

c) information on the Foundation Trust's policy on pay and on the work of the Committee established under paragraph 7.4.7 and such other procedures as the Foundation Trust has on pay;

d) information on the remuneration of the Directors and on the expenses of the Governors and the Directors; and

e) any other information NHSE requires.

14.3 The Foundation Trust is to comply with any decision NHSE makes as to -

a) the form of the Reports;

b) when the Reports are to be sent to it; and

c) the periods to which the Reports are to relate.

14.4 The Foundation Trust is to give information as to its Forward Planning in respect of each financial year to the ICB and NHSE. This information is to be prepared by the Board of Directors, having regard to the views of the Council of Governors.

14.5 Each Forward Plan must contain information about-

14.5.1 the activities other than the provision of goods and services for the provision of the health service in England that the Foundation Trust proposes to carry on, and

14.5.2 the income it expects to receive from doing so.

14.6 Where a Forward Plan contains a proposal that the Foundation Trust carry on an activity of the kind mentioned in sub-paragraph 14.5.1 the Council of Governors must –

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

14.6.2 notify the Directors of the Foundation Trust of its determination.

14.7 If the Foundation Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the Health Service in England, it may implement the proposal only if more than half of the Members of the Council of Governors of the Foundation Trust voting approve its implementation.

15 INDEMNITY

15.1 Governors and Directors who act honestly and in good faith 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 Foundation Trust functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust.

16 INSTRUMENTS

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

16.2 The Foundation Trust has a seal, but this is not to be affixed except in accordance with Standing Orders (adopted under Paragraph 8.1 of this Constitution).

17 DISPUTE RESOLUTIONS PROCEDURES

17.1 The Foundation Trust will establish appropriate dispute resolution procedures with its contractors.

17.2 In the case of a dispute between the Board of Directors and the Council of Governors both parties shall first use their best endeavours to resolve the dispute through a joint meeting of the Council and the Board. Should such a joint meeting fail to resolve the dispute the parties shall seek mediation through the appointment of mutually agreed mediators, who shall not be members of the Foundation Trust. Should such mediation fail the dispute will be determined through reference to arbitration under the terms of the Arbitration Act 1996.

18 AMENDMENT OF THE CONSTITUTION

18.1 The Foundation Trust may make amendments of its Constitution only if –

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

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

18.2 Amendments made under paragraph 18.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

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

18.3.1 at least one member of the Council of Governors must attend the next Annual Members Meeting and present the amendment, and

18.3.2 the Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.

18.4 If more than half of the members voting under paragraph 18.3.2 approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.

18.5 Amendments by the Foundation Trust of its Constitution are to be notified to NHSE. For the avoidance of doubt, NHSE's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

19 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

19.1 The Foundation 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.

19.2 The Foundation 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.

19.3 “Significant Transaction” means:

19.3.1 the acquisition of, or an agreement to acquire, assets the value of which is more than 25% of the value of the Foundation Trust's gross assets before the acquisition; or

19.3.2 the disposal of, or an agreement to dispose of, assets of the Foundation Trust the value of which is more than 25% of the value of the Foundation Trust's gross assets before the disposal; or

19.3.3 a transaction that has or is likely to have the effect of the Foundation Trust acquiring rights or interests or incurring obligations or liabilities, the value of which is more than 25% of the value of the Foundation Trust's gross assets before the transaction.

19.4 For the purpose of this paragraph "gross assets" means the total of the Foundation Trust’s fixed assets and current assets

19.5 Where the Foundation Trust has a single requirement for goods, services or works, and a number of transactions are to be entered into to fulfil that requirement, the value of the transaction for the purpose of paragraph 19.3 is the aggregate of the value of each of those transactions.

ANNEX 1: PUBLIC CONSTITUENCIES OF THE FOUNDATION TRUST

Name of Constituency	Area	Minimum number of members	Number of Governors
Keighley	Craven, Ilkley, Keighley Central, Keighley East, Keighley West, Worth Valley	100	2
Shipley	Baildon, Bingley, Bingley Rural, Shipley, Wharfedale, Windhill and Wrose	100	2
Bradford East	Bolton and Undercliffe, Bowling and Barkerend, Bradford Moor, Eccleshill, Idle and Thackley Little Horton,	100	2
Bradford South	Great Horton, Queensbury, Royds, Tong, Wibsey, Wyke	100	2
Bradford West	City, Clayton and Fairweather, Heaton, Manningham, Thornton and Allerton, Toller	100	2
Rest of England and Wales	Remaining electoral wards that do not form part the BMDC area	100	1

Area means the electoral wards as listed.

ANNEX 2: STAFF CONSTITUENCIES OF THE FOUNDATION TRUST

Name of Constituency	Minimum Number of Members	Number of Governors
Medical and Dental Practitioners class	100	1
Nurses and Midwives class	100	2
Allied Health Professionals and Scientists class	100	1
All Other Staff class	100	2

ANNEX 3: LOCAL AUTHORITY, UNIVERSITY AND PARTNER GOVERNORS OF THE FOUNDATION TRUST

Organsation	Number of Governors
Bradford Metropolitan District Council	1
University of Bradford	1
University of Leeds	1
Healthwatch Bradford and District	1
Mental Health, Learning Disabilities and Autism representative organisation (to be determined by the Trust)	1

ANNEX 4: MODEL ELECTION RULES 2014

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

PART 5: CONTESTED ELECTIONS

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

Action to be taken before the poll

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

The poll

27. Eligibility to vote

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

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

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

PART 6: COUNTING THE VOTES

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections
STV52. Declaration of result for contested elections
53. Declaration of result for uncontested elections

PART 8: DISPOSAL OF DOCUMENTS

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of Candidate
STV59. Countermand or abandonment of poll on death of Candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

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

Publicity

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

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

66. Application to question an election

PART 12: MISCELLANEOUS

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

PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires: "*2006 Act*" means the National Health Service Act 2006;

"*Corporation*" means the Public Benefit Corporation subject to this Constitution;

"*council of governors*" means the Council of Governors of the Corporation;

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

"*election*" means an election by a Constituency, or by a Class within a Constituency, to fill a vacancy among one or more posts on the Council of Governors;

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

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

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

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

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

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

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

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

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

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

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

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

"*telephone voting facility*" has the meaning set out in rule 26.2; "*telephone voting record*" has the meaning set out in rule 26.5 (d); "*text message voting facility*" has the meaning set out in rule 26.3; "*text voting record*" has the meaning set out in rule 26.6 (d);

"*the telephone voting system*" means such telephone voting facility as may be provided by the Returning Officer for the purpose of enabling voters to cast their votes by telephone;

"*the text message voting system*" means such text messaging voting facility as may be provided by the Returning Officer for the purpose of enabling voters to cast their votes by text message;

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

"*voting information*" means postal voting information and/or e-voting information

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated Candidates	Not later than the twenty seventh day before the day of the close of the poll.

Final day for delivery of notices of withdrawals by Candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

3. Computation of time

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

(a) a Saturday or Sunday;

(b) Christmas day, Good Friday, or a bank holiday, or

(c) a day appointed for public thanksgiving or mourning,

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

4.1 Subject to rule 69, the Returning Officer for an election is to be appointed by the Corporation.

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

5. Staff

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

6. Expenditure

6.1 The Corporation is to pay the Returning Officer:

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

(b) such remuneration and other expenses as the Corporation may determine.

7. Duty of co-operation

7.1 The Corporation is to co-operate with the Returning Officer in the exercise of his or her functions under these rules.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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8. Notice of election

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

(a) the Constituency, or Class within a Constituency, for which the election is being held,

(b) the number of members of the Council of Governors to be elected from that Constituency, or Class within that Constituency,

(c) the details of any nomination Committee that has been established by the Corporation,

(d) the address and times at which nomination forms may be obtained;

(e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the Returning Officer,

(f) the date and time by which any notice of withdrawal must be received by the Returning Officer

(g) the contact details of the Returning Officer

(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of Candidates

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

9.2 The Returning Officer:

(a) is to supply any member of the Corporation with a nomination form, and

(b) is to prepare a nomination form for signature at the request of any member of the Corporation,

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

10. Candidate's particulars

10.1 The nomination form must state the Candidate's:

(a) full name,

(b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and

(c) Constituency, or Class within a Constituency, of which the Candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

(a) any financial interest that the Candidate has in the Corporation, and

(b) whether the Candidate is a member of a political party, and if so, which party,

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

12. Declaration of eligibility

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

(a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and,

(b) for a member of the Public or Patient Constituency, of the particulars of his or her qualification to vote as a member of that Constituency, or Class within that Constituency, for which the election is being held.

13. Signature of Candidate

13.1 The nomination form must be signed and dated by the Candidate, in a manner prescribed by the Returning Officer, indicating that:

(a) they wish to stand as a Candidate,

(b) their declaration of interests as required under rule 11, is true and correct, and

(c) their declaration of eligibility, as required under rule 12, is true and correct.

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

14. Decisions as to the validity of nomination

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

(a) decides that the Candidate is not eligible to stand,

(b) decides that the nomination form is invalid,

(c) receives satisfactory proof that the Candidate has died, or

(d) receives a written request by the Candidate of their withdrawal from candidacy.

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

(a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,

(b) that the paper does not contain the Candidate's particulars, as required by rule 10;

(c) that the paper does not contain a declaration of the interests of the Candidate, as required by rule 11,

(d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) that the paper is not signed and dated by the Candidate, if required by rule 13.

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

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

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

15. Publication of statement of Candidates

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

15.2 The statement must show:

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

(b) the declared interests of each Candidate standing, as given in their nomination form.

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

15.4 The Returning Officer must send a copy of the statement of Candidates and copies of the nomination forms to the Corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated Candidates and nomination forms

16.1 The Corporation is to make the statement of the Candidates and the nomination forms supplied by the Returning Officer under rule 15.4 available for inspection by members of the Corporation free of charge at all reasonable times.

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

17. Withdrawal of Candidates

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

18. Method of election

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

18.2 If the number of Candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those Candidates are to be declared elected in accordance with Part 7 of these rules.

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

(a) the Candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the Returning Officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the Corporation.

PART 5: CONTESTED ELECTIONS

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19. Poll to be taken by ballot

19.1 The votes at the poll must be given by secret ballot.

19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

19.3 The Corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the Corporation may determine.

19.4 The Corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the Corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the Corporation must satisfy itself that:

(a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;

(b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;

(c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

(a) the name of the Corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

(d) the names and other particulars of the Candidates standing for election, with the details and order being the same as in the

statement of nominated Candidates,

(e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,

(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and

(g) the contact details of the Returning Officer.

20.3 Each ballot paper must have a unique identifier.

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

21. The declaration of identity (Public and Patient Constituencies)

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

(a) that the voter is the person:

(i) to whom the ballot paper was addressed, and/or
(ii) to whom the voter ID number contained within the e-voting information was allocated,

(b) that he or she has not marked or returned any other voting information in the election, and

(c) the particulars of his or her qualification to vote as a member of the Constituency or Class within the Constituency for which the election is being held,("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member's e-mail address, if this has been provided to which his or her voting information may, subject to rule 22.3, be sent.

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

23. Notice of poll

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

(a) the name of the Corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

(d) the names, contact addresses, and other particulars of the Candidates standing for election, with the details and order being the same as in the statement of nominated Candidates,

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the Corporation in accordance with rule 19.3,

(g) the address for return of the ballot papers,

(h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

(j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,

(k) the date and time of the close of the poll,

(l) the address and final dates for applications for replacement voting information, and

(m) the contact details of the Returning Officer.

24. Issue of voting information by Returning Officer

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

(a) a ballot paper and ballot paper envelope,

(b) the ID declaration form (if required),

(c) information about each Candidate standing for election, pursuant to rule 61 of these rules, and

(d) a covering envelope; ("postal voting information").

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

(a) instructions on how to vote and how to make a declaration of identity (if required),

(b) the voter's voter ID number,

(c) information about each Candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,

(d) contact details of the Returning Officer, ("e-

voting information").

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

(a) only be sent postal voting information; or

(b) only be sent e-voting information; or

(c) be sent both postal voting information and e-voting information; for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

(a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

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

(a) the completed ID declaration form if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

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

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

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

26.4 The Returning Officer shall ensure that the polling website and internet voting system provided will:

(a) require a voter to:

(i) enter his or her voter ID number; and
(ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

(b) specify:

(i) the name of the Corporation,
(ii) the constituency, or class within a constituency, for which the election is being held,
(iii) constituency,
(iii) 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,
(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 ("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 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,
(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
(iv) the contact details of the Returning Officer;

(c) prevent a voter from voting for more Candidates than he or she is entitled to at the election;

(d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:

(i) the voter's voter ID number;
(ii) the voter's declaration of identity (where required);
(iii) the Candidate or Candidates for whom the voter has voted; and
(iv) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

(f) prevent any voter from voting after the close of poll.

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

(a) require a voter to:

(i) provide his or her voter ID number; and
(ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

(b) prevent a voter from voting for more Candidates than he or she is entitled to at the election;

(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);

(ii) 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.

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

(a) is satisfied as to the voter's identity; and

(b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the Returning Officer shall enter in a list ("the list of spoilt ballot papers"):

(a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

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

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

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

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the Returning Officer shall enter in a list ("the list of spoilt text message votes"):

(a) the name of the voter, and

(b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and

(c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

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

(a) is satisfied as to the voter's identity,

(b) has no reason to doubt that the voter did not receive the original voting information,

(c) has ensured that no declaration of identity, if required, has been returned.

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

(a) the name of the voter

(b) the details of the unique identifier of the replacement ballot paper, if applicable, and

(c) the voter ID number of the voter.

31. Issue of replacement voting information

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

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

(a) the name of the voter,

(b) the unique identifier of any replacement ballot paper issued under this rule;

(c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

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

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

33.4 To cast his or her vote, the voter will need to key in a mark on the screen

opposite the particulars of the Candidate or Candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

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

34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the Candidate or Candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

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

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the Candidate or Candidates, for whom he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

36.1 Where the Returning Officer receives:

(a) a covering envelope, or

(b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

36.2 The Returning Officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

(a) the Candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

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

37. Validity of votes

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

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

(a) put the ID declaration form if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

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

(a) mark the ballot paper “disqualified”,

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

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

(d) place the document or documents in a separate packet.

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

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

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

(a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified",

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and

(c) place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public and patient constituency)[1]

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

(a) mark the ID declaration form "disqualified",

(b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and

(c) place the ID declaration form in a separate packet.

39. De-duplication of votes

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

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

(a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and

(b) mark as "disqualified" all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the Returning Officer shall:

(a) mark the ballot paper “disqualified”,

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

(c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;

(d) place the document or documents in a separate packet; and

(e) disregard the ballot paper when counting the votes in accordance with these rules.

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

(a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;

(c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and

(d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

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

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

(b) the ID declaration forms, if required,

(c) the list of 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.

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

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

(a) elsewhere than in the proper place,

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

(c) by more than one mark,

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

FPP44.4 The Returning Officer is to:

(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and

(b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

(a) does not bear proper features that have been incorporated into the ballot paper,

(b) voting for more Candidates than the voter is entitled to,

(c) writing or mark by which voter could be identified, and

(d) unmarked or rejected because of uncertainty,

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

FPP44.6 Any text voting record:

(a) on which votes are given for more Candidates than the voter is entitled to vote,

(b) on which anything is written or marked by which the voter can be identified except the voter ID number, or

(c) which is unmarked or rejected because of uncertainty,

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

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

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

(a) otherwise than by means of a clear mark,

(b) by more than one mark,

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

FPP44.9 The Returning Officer is to:

(a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and

(b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

(a) voting for more Candidates than the voter is entitled to,

(b) writing or mark by which voter could be identified, and

(c) unmarked or rejected because of uncertainty,

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

STV45. First stage

STV45.1 The Returning Officer is to sort the ballot documents into parcels according to the Candidates for whom the first preference votes are given.

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

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

STV46. The quota

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

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to

secure the election of a Candidate (in these rules referred to as "the quota").

STV46.3 At any stage of the count a Candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a Candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

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

(a) according to next available preference given on those ballot documents for any continuing Candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

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

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

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

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

(b) is calculated by dividing the surplus of the Candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

(a) according to the next available preference given on those ballot documents for any continuing Candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

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

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

(a) a transfer value calculated as set out in rule STV47.4(b), or

(b) at the value at which that vote was received by the Candidate from whom it is now being transferred,

whichever is the less.

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

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

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

(a) less than the difference between the total vote then credited to the continuing Candidate with the lowest recorded vote and the vote of the Candidate with the next lowest recorded vote, or

(b) less than the difference between the total votes of the two or more continuing Candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the Candidate next above such Candidates.

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

STV48. Supplementary provisions on transfer

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

(a) The surpluses determined in respect of two or more Candidates are equal, the transferable ballot documents of the Candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more Candidates were equal at all stages of the count, the Returning Officer shall decide between those Candidates by lot, and the transferable ballot documents of the Candidate on whom the lot falls shall be transferred first.

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

(a) record the total value of the votes transferred to each Candidate,

(b) add that value to the previous total of votes recorded for each Candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non- transferable votes, and

(d) compare:

(i) the total number of votes then recorded for all of the Candidates, together with the total number of non- transferable votes, with
(ii) the recorded total of valid first preference votes.

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

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

STV49. Exclusion of Candidates

STV49.1 If:

(a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV50, one or more vacancies remain to be filled,

the Returning Officer shall exclude from the election at that stage the

Candidate with the then lowest vote (or, where rule STV49.12 applies, the Candidates with the then lowest votes).

STV49.2 The Returning Officer shall sort all the ballot documents on which first preference votes are given for the Candidate or Candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

(a) ballot documents on which a next available preference is given, and

(b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for Candidates who are deemed to be elected or are excluded).

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

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

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

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

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

STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

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

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

(a) record:

(i) the total value of votes, or
(ii) the total transfer value of votes transferred to each Candidate,

(b) add that total to the previous total of votes recorded for each Candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare:

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

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

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

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

(a) regard shall be had to the total number of votes credited to those Candidates at the earliest stage of the count at which they had an unequal number of votes and the Candidate with the lowest number of votes at that stage shall be excluded, and

(b) where the number of votes credited to those Candidates was equal at all stages, the Returning Officer shall decide between the Candidates by lot and the Candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of Candidates

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

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

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

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

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

(a) declare the Candidate or Candidates whom more votes have been given than for the other Candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each Candidate who he or she has declared elected:

(i) where the election is held under a proposed Constitution pursuant to powers conferred on the [insert name] NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chairman of the NHS Foundation 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 Foundation Trust by section 33(4) of the 2006 Act, to the Chairman of the NHS Foundation Trust, or
(ii) in any other case, to the Chairman of the Corporation, and

(c) give public notice of the name of each Candidate who he or she has declared elected.

STV52.2 The Returning Officer is to make:

(a) the number of first preference votes for each Candidate whether elected or not,

(b) any transfer of votes,

(c) the total number of votes for each Candidate at each stage of the count at which such transfer took place,

(d) the order in which the successful Candidates were elected, and

(e) the number of rejected ballot papers under each of the headings in rule STV44.1,

(f) the number of rejected text voting records under each of the headings in rule STV44.3, available on request.

53. Declaration of result for uncontested elections

53.1 In an uncontested election, the Returning Officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by Candidates from the election:

(a) declare the Candidate or Candidates remaining validly nominated to be elected,

(b) give notice of the name of each Candidate who he or she has declared elected to the Chairman of the Corporation, and

(c) give public notice of the name of each Candidate who he or she has declared elected.

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

(a) the counted ballot papers, internet voting records, telephone voting records and text voting records,

(b) the ballot papers and text voting records endorsed with “rejected in part”,

(c) the rejected ballot papers and text voting records, and

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

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

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

(b) the list of 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

(i) any rejected ballot papers, including ballot papers rejected in part,
(ii) any rejected text voting records, including text voting records rejected in part,
(iii) any disqualified documents, or the list of disqualified documents,
(iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
(v) the list of eligible voters, or

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

by any person without the consent of the board of directors of the Corporation.

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

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

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the Corporation must:

(a) in giving its consent, and

(b) in making the documents available for inspection

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of Candidate

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

(a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and

(b) order a new election, on a date to be appointed by him or her in consultation with the Corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

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

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

FPP59.5 The Returning Officer is to:

(a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,

(b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

FPP59.6 The Returning Officer is to endorse on each packet a description of:

(a) its contents,

(b) the date of the publication of notice of the election,

(c) the name of the Corporation to which the election relates, and

(d) the constituency, or class within a constituency, to which the election relates.

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the Returning Officer is to deliver them to the Chairman of the Corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of Candidate

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

(a) publish a notice stating that the Candidate has died, and

(b) proceed with the counting of the votes as if that Candidate had been excluded from the count so that –

(i) ballot documents which only have a first preference recorded for the Candidate that has died, and no preferences for any

other Candidates, are not to be counted, and

(ii) ballot documents which have preferences recorded for other Candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the Candidate who has died.

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by Candidates

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

(a) personal expenses,

(b) travelling expenses, and expenses incurred while living away from home, and

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

62. Election expenses incurred by other persons

62.1 No person may:

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a Candidate's election, whether on that Candidate's behalf or otherwise, or

(b) give a Candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the Candidate for the purposes of an election.

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

Publicity

63. Publicity about election by the Corporation

63.1 The Corporation may:

(a) compile and distribute such information about the Candidates, and
(b) organise and hold such meetings to enable the Candidates to speak and respond to questions, as it considers necessary.

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

(a) objective, balanced and fair,
(b) equivalent in size and content for all Candidates,
(c) compiled and distributed in consultation with all of the Candidates standing for election, and
(d) must not seek to promote or procure the election of a specific Candidate or Candidates, at the expense of the electoral prospects of one or more other Candidates.

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

64. Information about Candidates for inclusion with voting information

64.1 The Corporation must compile information about the Candidates standing for election, to be distributed by the Returning Officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

(a) a statement submitted by the Candidate of no more than 250 words,

(b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the Returning Officer to each Candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility ("numerical voting code"), and

(c) a photograph of the Candidate.

65. Meaning of "for the purposes of an election"

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

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66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

66.2 An application may only be made once the outcome of the election has been declared by the Returning Officer.

66.3 An application may only be made to Monitor by:

(a) a person who voted at the election or who claimed to have had the right to vote, or
(b) a Candidate, or a person claiming to have had a right to be elected at the election.

66.4 The application must:

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the independent panel may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.

66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

66.8 The determination by the IEAP shall be binding on and shall be given effect by the Corporation, the applicant and the members of the constituency (or class within a constituency) including all the Candidates for the election to which the application relates.

66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

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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.