

**ROYAL NATIONAL HOSPITAL FOR RHEUMATIC DISEASES NHS FOUNDATION TRUST**  
**(A PUBLIC BENEFIT CORPORATION)**  
**CONSTITUTION**

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Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

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

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

Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 In this constitution:**

“the 2006 Act”	means the National Health Service Act 2006.
“the 2012 Act”	means the Health and Social Care Act 2012.
“the Accounting Officer”	is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
“Annual Members’ Meeting”	is defined in paragraph 7 of this constitution.
“Applicant NHS Trust”	means the Royal National Hospital for Rheumatic Diseases NHS Trust which made the application to become the Trust.
“Appointed Governor”	means a Local Authority Governor, or an Other Partnership Governor.
“Area of the Trust”	means England and Wales.
“Authorisation”	is the granting of an application made by an aspirant NHS foundation trust by Monitor.

“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution and referred to in paragraph 11 of this constitution.
“Carer”	means an individual who provides or was providing a substantial amount of care to 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, and who has attended the Hospital in that capacity since 1 January 1999. For the purposes of this definition a voluntary organisation is a body, other than a public or local authority, the activities of which are not carried on for profit.
“Chairman”	means the chairman appointed in accordance with paragraph 11.5.2
“constitution”	means this constitution and all annexes to it.
“Council of Governors”	means the Council of Governors constituted in accordance with this constitution and referred to in paragraph 8 of this constitution.
"Director"	means a member of the Board of Directors.
“Elected Governor”	means a Patient Governor, a Staff Governor, or a Public Governor.
“Financial Year”	means: <ul style="list-style-type: none"> <li>(a) the period beginning with the date on which the Trust is given Authorisation and ending with the next 31st March; and</li> <li>(b) each successive period of twelve months beginning with 1st April.</li> </ul>

“Governor”	means an Elected Governor or an Appointed Governor (as applicable).
“Health Service Body”	means a health service body as defined by Section 275 of the 2006 Act and Section 138(1) Schedule 4 of the 2012 Act.
“Hospital”	means the Mineral Water Hospital, Bath.
“Independent Regulator”	means <b>Monitor</b> , the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
“Local Authority Governor”	means a member of the Council of Governors appointed pursuant to paragraph 8.11.
"Membership Secretary "	Means the person or body corporate appointed to carry out the functions of the membership secretary as set out in this constitution.
“Model Election Rules”	means those election rules as published by the Department of Health from time to time.
“Monitor”	<b>Monitor</b> is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
“NHS”	means the National Health Service.
“Other Partnership Governor”	means a member of the Council of Governors appointed by a partnership organisation identified in accordance with paragraph 8.7.
“Patient”	means an individual who has attended the Hospital for treatment at any time since 1 January 1999.
“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 Trust or any other person or body corporate appointed to perform the duties of the Secretary of the Trust, including a joint, assistant or deputy Secretary.
“Staff Governor”	means a member of the Council of Governors elected by the members of the staff constituency.
“the Trust”	means the Royal National Hospital for Rheumatic Diseases NHS Foundation Trust.
“Trust Provider”	means a contractor to the Trust or other scheme under which individuals exercise functions on behalf of the Trust and which is listed in the register maintained by the Secretary pursuant to paragraph 6.3.5.

## **2 NAME**

- 2.1** The name of the foundation trust is to be "Royal National Hospital for Rheumatic Diseases NHS Foundation Trust" ('the Trust').

## **3 PRINCIPAL PURPOSE**

- 3.1** The Trust's principal purpose is the provision of goods and services for the purposes of the health service in England.
- 3.2** The Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3** The Trust may provide goods and services for any purposes related to—
- 3.3.1** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
- 3.3.2** the promotion and protection of public health.
- 3.4** The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.
- 3.5** The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 3.6** The Trust may also carry on activities other than those mentioned above subject to any restrictions in its Authorisation. These activities must be for the purpose of making additional income available in order to carry on the Trust's principal purpose better.
- 3.7** Income not derived from the principal purpose: foundation trusts now have an obligation to ensure that the total income derived from their principal purpose is greater than their total income from the provision of goods and services for "any other purposes" including the provision of private healthcare. Subject to the detail

below, this means that the former "private patient cap" has been removed by Parliament under the 2012 Act.

## **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.

**4.4** In the exercise of its powers the Trust shall have regard to the core principles of the NHS and the Trust as set out in paragraph 5 below.

## **5 CORE PRINCIPLES**

**5.1** NHS Core Principles

**5.1.1** the NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services. The NHS will shape its services around the needs and preferences of individual Patients, their families and their Carers;

**5.1.2** the NHS will respond to different needs of different populations;

**5.1.3** the NHS will work continuously to improve quality services and to minimise errors;

**5.1.4** the NHS will support and value its staff; public funds for healthcare will be devoted solely to NHS Patients;

**5.1.5** the NHS will work together with others to ensure a seamless service for Patients;

**5.1.6** the NHS will help keep people healthy and work to reduce health inequalities; and

5.1.7 the NHS will respect the confidentiality of individual Patients and provide open access to information about services, treatment and performance.

## **6 MEMBERS AND CONSTITUENCIES**

6.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:

6.1.1 a public constituency;

6.1.2 a staff constituency; and

6.1.3 a patient constituency.

### **6.2 Public Constituency**

6.2.1 Subject to paragraph 6.5 individuals are eligible to become members of the public constituency if:

6.2.1.1 they live in England or Wales;

6.2.1.2 they are not eligible to become a member of the staff constituency; and

6.2.1.3 they are not a member of the patient constituency.

6.2.2 An individual who is eligible will become a member if they apply to the Membership Secretary to become a member and are entered in the register of members.

6.2.3 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Membership Secretary shall cause the applicant's name to be entered in the Trust's register of members.

6.2.4 The minimum number of members of the public constituency is to be 400.

### **6.3 Staff Constituency**

6.3.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided;

6.3.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or



**6.3.1.2** they have been continuously employed by the Trust under a contract of employment for at least 12 months.

**6.3.2** Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least twelve months.

**6.3.2.1** Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the staff constituency.

**6.3.3** An individual who is eligible will become a member if:

**6.3.3.1** they apply to the Membership Secretary to become a member; or

**6.3.3.2** they have been invited to become a member of the staff constituency and have not informed the Membership Secretary within 14 days of the issue of the invitation that they do not wish to do so;

and are entered in the register of members.

**6.3.4** On receipt of an application for membership or on the expiry of 14 days after the issue of an invitation, and subject to being satisfied that the applicant is eligible the Membership Secretary shall cause the applicant's name to be entered in the Trust's register of members.

**6.3.5** The Membership Secretary shall maintain a register of Trust Providers comprising subcontractors designated by the Trust for the purposes of membership of the Trust and volunteer schemes designated for the purposes of membership of the Trust.

**6.3.6** The minimum number of members of the staff constituency is to be 100.

## **6.4 Patient Constituency**

**6.4.1** Subject to paragraph 6.5 individuals are eligible to become members of the patient constituency if:

- 6.4.1.1 they are a Patient or Carer;
- 6.4.1.2 they are not eligible to become a member of the staff constituency;  
and
- 6.4.1.3 they are not a member of the public constituency.

**6.4.2** An individual who is eligible to become a member of the patients' constituency will become a member if they apply to the Membership Secretary to become a member and are entered in the register of members.

**6.4.3** An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patient Constituency.

**6.4.4** Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the patient's constituency.

**6.4.5** On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Membership Secretary shall cause the applicant's name to be entered in the Trust's register of members.

**6.4.6** The minimum number of members of the patient constituency shall be 500.

## **6.5 Disqualification for membership**

**6.5.1** A person may not be a member of the Trust if they are under 16 years of age.

**6.5.2** A person may not be a member of the Trust if they have been found to have been in breach of the Trust's procedures for the protection of Patients and staff from abuse and violence.

A person may not become or remain a member of the public or patient constituency if they are eligible to be a member of the staff constituency.

**6.5.4** A person may not become a member of the Trust if they have been removed as a member by resolution of the Board of Directors under paragraph 6.6.1.5 unless their application has the support of the Board of Directors.

A person may not become a member of the Trust they were formerly employed by the Trust or the Applicant NHS Trust and were dismissed for gross misconduct.

## **6.6 Termination of membership**

**6.6.1** A member shall cease to be a member of **any** constituency on:

**6.6.1.1** death;

**6.6.1.2** resignation by notice in writing to the Membership Secretary;

**6.6.1.3** ceasing to fulfil the requirements of paragraph 6.2, 6.3 or 6.4 (as applicable);

**6.6.1.4** they have been found to have been in breach of the Trust's procedures for the protection of Patients and staff from abuse and violence;

**6.6.1.5** a resolution is passed by the Board of Directors that they have acted in such a way as to bring the Trust into disrepute, or that they have used or sought to use their membership of the Trust for commercial or promotional activities without the written permission of the Trust;

**6.6.1.6** they have failed to participate in elections for a period of 6 consecutive years;

**6.6.2** A member of the staff constituency may be suspended by the Trust if they are suspended as an employee pending disciplinary action which could result in his dismissal.

**6.6.3** An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

**6.6.4** All members shall be under a duty to notify the Membership Secretary of any change in their particulars which may affect their entitlement as a member.

#### **6.7 Notice of Disqualification**

Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member they shall give the member 14 days written notice to show cause why his name should not be removed from the register of members. On receipt of any such information supplied by the member the Membership Secretary may, if he considers it appropriate, remove the member from the register of members. In the event of any dispute the Membership Secretary shall refer the matter to the Council of Governors to determine.

#### **6.8 Reinstatement**

An eligible individual who is excluded from membership by virtue of paragraph 6.6.1.2 or 6.6.1.6 above may be reinstated if they make an application in accordance with relevant provision of paragraphs 6.2, 6.3 or 6.4 above.

#### **6.9 Voting at Governor Elections**

A person may not vote at an election for an Elected Governor unless within the specified period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the constituency for which the election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular. The forms and period are specified in Annex 2.

### **7 ANNUAL MEMBERS' MEETING**

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

**7.2** Further provisions about the Annual Members' Meeting are set out in Annex 4 – Annual Members' Meeting.

## **8 COUNCIL OF GOVERNORS**

- 8.1** The Trust is to have a Council of Governors, which shall comprise both elected and Appointed Governors.
- 8.2** The Council of Governors is to be chaired by the Chairman of the Trust and is to consist of Public Governors, Staff Governors, Patient Governors, Local Authority Governors, and Other Partnership Governors.
- 8.3** The composition of the Council of Governors shall comprise:
- 8.3.1** 8 Public Governors;
- 8.3.2** 10 Patient Governors;
- 8.3.3** 4 Staff Governors;
- 8.3.4** 1 Local Authority Governor; and
- 8.3.5** 10 Other Partnership Governors.
- 8.4** The aggregate number of Public and Patient Governors is to be more than half of the total membership of the Council of Governors.
- 8.5** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.
- 8.6** The following are specified as Partnership organisations who may appoint an “Other Partnership Governor”:-
- 8.6.1** The University of Bath; and
- 8.6.2** The organisations selected from those listed in Annex 3 in accordance with paragraph 8.4.5. The Council of Governors shall not less frequently than annually review the list set out in Annex 3 and consider whether organisations should be added to or removed from the list.

**8.6.3** The Board of the Applicant NHS Trust shall select 9 of the organisations listed in Annex 3 to nominate 1 initial Other Partner Governor each. Thereafter on the expiry of the term of office of any such Other Partner Governor, the Council of Governors shall nominate from the list in Annex 3 the Partner organisations entitled to appoint a Governor.

## **8.7 Patient Governors**

There shall be ten Patient Governors.

**8.7.1** Members of the patient constituency may elect any of their number who is eligible to be a Patient Governor.

**8.7.2** A person may not stand for election to the Council of Governors as a Patient Governor unless, within the period specified in Annex 2, he has made a declaration in the form specified in that Part of that Annex of his qualification to vote as a member of 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 10.4 (disqualification).

**8.7.3** Paragraph 6.9 (voting at Governor elections) applies.

## **8.8 Public Governors**

**8.8.1** There shall be eight Public Governors.

**8.8.2** Members of the public constituency may elect any of their number who is eligible to be a Public Governor.

**8.8.3** A person may not stand for election to the Council of Governors as a Public Governor unless, within the period specified in Annex 2, he has made a declaration in the form specified in that Part of that Annex of his qualification to vote as a member of 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 10.4 (disqualification).

**8.8.4** Paragraph 7.9 (voting at Governor elections) applies.

## **8.9 Staff Governors**

**8.9.1** There shall be 4 Staff Governors.

**8.9.2** Members of the staff constituency may elect any of the members who is eligible to be a Staff Governor.

**8.9.3** A person may not stand for election to the Council of Governors as a Staff Governor unless, within the period specified in Annex 2, he has made a declaration in the form specified in that part of that annex that he is a member of the staff constituency and is not prevented from being a member of the board by paragraph 10.4.2 (disqualification).

**8.9.4** Paragraph 6.9 (voting at Governor elections) applies.

## **8.10 Local Authority Governor**

**8.10.1** Bath and North East Somerset Council may appoint one Governor by notice in writing signed by the leader of the Council or a member of the Council executive, and delivered to the Secretary. For the avoidance of doubt the nominee may be an officer or member of the council.

## **8.11 Other Partnership Governors**

**8.11.1** Each other partnership organisation selected pursuant to paragraph 8.7 may appoint one Governor.

**8.11.2** The Trust and the other partnership organisations may agree a process for the selection and approval of the nominee.

## **9 COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS**

**9.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

- 9.2** The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 2.
- 9.3** A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 22 of the constitution (amendment of the constitution).
- 9.4** An election, if contested, shall be by secret ballot.

## **10 COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

- 10.1** The general duties of the Council of Governors are –
- 10.1.1** to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
  - 10.1.2** to represent the interests of the members of the Trust as a whole and the interests of the public.
- 10.2** The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 10.3 Terms of Office**
- 10.3.1** Public and Patient Governors:-
    - 10.3.1.1** may hold office for a period of up to three years;
    - 10.3.1.2** are eligible for re-election at the end of that period;
    - 10.3.1.3** may hold office for a maximum of 9 years;
    - 10.3.1.4** cease to hold office if they cease to be a member of the constituency by which they were elected.



**10.3.1.5** in exceptional circumstances, for example in the case of planned merger, acquisition, separation/ dissolution, when an elected governor is coming to the end of their period of office the continuing governors may, by vote, agree to extend the period of office of such governors for a period of up to 12 months.

**10.3.2** Staff Governors:-

**10.3.2.1** may hold office for a period of up to three years;

**10.3.2.2** are eligible for re-election at the end of that period;

**10.3.2.3** may hold office for a maximum of 9 years;

**10.3.2.4** cease to hold office if they cease to be a member of the constituency by which they were elected.

**10.3.2.5** in exceptional circumstances, for example in the case of planned merger, acquisition, separation/ dissolution, when an elected governor is coming to the end of their period of office the continuing governors may, by vote, agree to extend the period of office of such governors for a period of up to 12 months.

**10.3.3** Appointed Governors:-

**10.3.3.1** may hold office for a period of up to 3 years or up to 2 years in the case of Other Partnership Governors;

**10.3.3.2** are eligible for reappointment at the end of that period or any subsequent period;

**10.3.3.3** cease to hold office if the sponsoring organisation withdraws its sponsorship of them by notice in writing to the Trust.

**10.3.4** Initial Appointed Governors may be appointed for a period of 3 years by agreement with the body appointing them as appropriate.

#### **10.4 Termination of tenure**

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

**10.4.2** If a Governor fails to attend at least 3 consecutive meetings of the Council of Governors, his tenure of office is to be immediately terminated unless the Chairman and non-executive Directors of the Board of Directors (by a simple majority) are satisfied that:

**10.4.2.1** the absence was due to a reasonable cause; and

**10.4.2.2** he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable and their decision has been ratified by the Council of Governors.

**10.4.3** If a Governor is considered to have acted in a manner inconsistent with the core principles as set out in its Authorisation and this constitution and is adjudged to have so acted by a majority of not less than 75% of the Council of Governors then the Governor shall immediately vacate his office.

#### **10.5 Disqualification**

**10.5.1** A person may not become or continue as a Governor of the Trust if-

**10.5.1.1** in the case of an Elected Governor, he ceases to be a member of the constituency he represents;

- 10.5.1.2** in the case of an Appointed Governor, local authority, or other Partnership Organisation withdraw their sponsorship of him;
- 10.5.1.3** he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- 10.5.1.4** he has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
- 10.5.1.5** he has 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 him;
- 10.5.1.6** he is under 16 years of age at the date they are nominated for election or appointed;
- 10.5.1.7** he has within the preceding two years been dismissed, otherwise than by reason of redundancy or capability including ill health, from any paid employment with a Health Service Body;
- 10.5.1.8** he is a person whose tenure of office as the Chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

**10.5.1.9** he is an executive or non-executive Director of the Trust, or a Governor, non-executive Director, Chairman, Chief Executive officer of another NHS Foundation Trust; and/or

**10.5.1.10** he has been dismissed from any NHS Foundation Trust Council of Governors.

**10.5.2** Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 10.4.2, he shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Secretary at the time of his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor.

Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 10.4.2 in the constitution or the provisions of the 2006 Act and the Trust's Terms of Authorisation, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of the first becoming aware of those matters which render him disqualified. The Secretary shall forthwith remove him from the Register of members of the Council of Governors.

If it comes to the notice of the Secretary that the Governor is disqualified pursuant to the Standing Orders whether at the time of the Governor's appointment or (as the case may be) election, or later, the Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the Governor shall dispute that he is disqualified the Governor may refer the matter to the dispute resolution procedure set out in section 21 of the constitution within 28 days of the date upon which the notice was given to the Governor.

The Chair shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned from the meeting so that any allegation made against a Governor on the following grounds can be investigated:

- non-compliance with the core principles of the NHS, the Authorisation, the Governors' Code of Conduct, or the Standing Orders; or
- failure to declare an interest as required by the constitution or the Standing Orders or if the Governor in question has spoken or voted at a meeting on a matter in which he has an interest contrary to the constitution or Standing Orders.

Where any grounds within the Standing Orders are alleged, it shall be open to the Council of Governors to decide, by three-quarters of those present and voting, to lay a formal charge of non-compliance or misconduct.

The Governor in question will be notified in writing of the allegations and grounds upon which the charges are made inviting his response within a defined appropriate and reasonable timescale.

The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.

The Governors, by three-quarters majority of those present and voting and a majority of Governors who are members of the Public Constituency of the Trust, can decide whether to uphold the charge.

Should the Governors uphold the charge in accordance with the Standing Orders; the Governors can impose such sanctions as shall be deemed appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and

consequences, to non-payment of expenses and removal of the Governor from office.

Upon disqualification, removal or termination of a Governor's office the Secretary shall cause his name to be removed immediately from the register of members of the Council of Governors.

Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the Dispute Resolution Procedure set out in section 21 within 14 days of the date upon which notice in writing of the Council of Governor's decision is communicated to the Governor concerned.

A Governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which he shall cease to hold office.

A Governor who resigns or whose office is terminated shall not be eligible to stand for re-election to the Council of Governors for a period of five years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is later.

Where a vacancy arises on the Council of Governors, the provisions of section 10.6 shall apply.

## **10.6 Vacancies**

- 10.6.1** In the event of an Elected Governor's seat falling vacant for any reason before the end of the term of office it shall be filled by the second placed candidate in the last held election for that seat. If that individual declines it shall be filled by the third place candidate and so on (the "**Reserve Governor**"). If the vacancy is filled in this way the Reserve Governor shall be eligible to serve two full terms (subject to re-election) from the date the vacancy is filled.

**10.6.2** In the event that a Reserve Governor is not available a by-election shall be held unless an election is due within 9 months in which case the seat shall stand vacant until the following scheduled election

**10.6.3** Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraphs 8.11 and 8.12.

**10.7** The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

**10.8 Roles and responsibilities of Governors**

The roles and responsibilities of the Governors are:

**10.8.1** at a general meeting;

**10.8.1.1** subject to paragraph 11.5, to appoint or remove the Chairman and the other non-executive Directors. The removal of a non-executive Director requires the approval of three-quarters of the members of the Council of Governors;

**10.8.1.2** to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors and review this on an annual basis;

**10.8.1.3** to appoint or remove the Trust's auditor;

**10.8.1.4** to be presented with the annual accounts, any report of the auditor on them and the annual report;

**10.8.1.5** to consider any resolution under paragraph 10.4.2 (removal of a Governor).

**10.8.2** at a general meeting or otherwise, to approve (by a majority of the Council of Governors voting) an appointment (by the non-executive Directors) of

the Chief Executive (and Accounting Officer) other than the initial Chief Executive (and Accounting Officer).

- 10.8.3** to give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each Financial Year to be given to the Independent Regulator;
  - 10.8.4** to consider the annual accounts, any report of the auditor on them and the annual report;
  - 10.8.5** to respond as appropriate when consulted by the Directors;
  - 10.8.6** the Governors also have the specific role and function of developing membership and representing the interests of the members and holding the Board of Directors to account in relation to the Trust's performance in accordance with the terms of the Authorisation;
  - 10.8.7** the nomination of Partnership organisations under paragraph 8.7;
  - 10.8.8** such other functions as the Council of Governors or individual Governors may be asked to undertake by the Board of Directors.
- 10.9** For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 10.10 Expenses**
- 10.10.1** The Trust may pay travelling and other expenses to Governors at such rates as it decides.
  - 10.10.2** The remuneration and allowances for non-executive Directors set by the Governors are also to be published in the annual report.



## **10.11 Remuneration**

- 10.11.1** Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer.

## **10.12 Meetings**

- 10.12.1** The Chairman (or in his absence the deputy chair appointed by the chair and being a non-executive Director or Governor either generally or for the specific meeting) is to chair the meetings of the Council of Governors, and the person chairing the meeting shall have a casting vote. Where the Council of Governors is exercising its functions under paragraph 10.1 and 10.8 the Board shall be chaired by either the Chairman or in his absence a Governor appointed by the Council of Governors for the purpose.
- 10.12.2** Meetings of the Council of Governors are to be open to members of the public, but the public may be excluded from all or part of any meeting by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or of the proceedings.
- 10.12.3** The Council of Governors is to meet at least three times per year, including an annual meeting no later than 31 October in each year apart from the first year, when the Council of Governors are to receive and consider the annual accounts, any report of the auditor on them, and the annual report.
- 10.12.4** the Secretary shall call meetings in accordance with paragraph 10.12.3.
- 10.12.5** Not less than 10 Governors may by notice in writing to the Secretary requisition an extraordinary meeting of the Council of Governors and on receipt of such notice the Secretary shall cause such a meeting to be called within 28 days of receipt of the notice.

- 10.12.6** The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 1 Part 1.
- 10.12.7** A Governor elected to the Council of Governors by the public constituency or the staff constituency may not vote at a meeting of the Council of Governors unless, within 7 days prior to the commencement of the meeting he has made a declaration in the form specified that he is a member of the public constituency which elected him or the staff constituency as the case may be and is not prevented from being a member of the Council of Governors by Schedule 7 of the 2006 Act or under this constitution.
- 10.12.8** The form referred to in paragraph 10.12.7 is set out in Annex 1 Part 1.
- 10.12.9** Upon giving notice of a meeting of the Council of Governors, the Chairman may give notice that the Governors may submit a postal vote (and specify therein any arrangements for postal voting having consulted with the Lead Governor on those issues), and specify at the time of notice of the meeting the particulars of the postal vote. Where a postal vote has been declared in the notice of the meeting, and such votes have been delivered on or in advance of the meeting, such votes shall be deemed to constitute a valid vote by that person for the purposes of the meeting (such postal vote to be recorded in the minutes) and the vote of the Council of Governors to which the postal vote relates.

### **10.13 Committees and sub-committees**

- 10.13.1** The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 10.13.2** The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 10.13.3** These committees or sub-committees may call upon outside advisers to help them in their tasks.

**10.13.4** The Council of Governors shall appoint an nominations committee to oversee the functions set out in paragraph 10.8.1.1, provided that the decisions to appoint must be reserved to the Council of Governors.

**10.14 Council of Governors - Conflicts of interests**

If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the rest of the members of the Council of Governors as soon as he is aware of it. The Council of Governors shall adopt Standing Orders specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter, as appropriate. In determining the materiality of any interest the Trust shall comply with any guidance given by the Independent Regulator.

**11 BOARD OF DIRECTORS**

**11.1** The Trust is to have a Board of Directors. It is to consist of the Chairman, executive and non-executive Directors.

**11.2** The board is to include:

**11.2.1** the following non-executive Directors:

**11.2.1.1** the Chairman; and

**11.2.1.2** four non-executive Directors.

**11.2.2** the following executive Directors, who must include a Registered medical practitioner or registered Dentist (within the meaning of the Dentists Act 1984), and a registered nurse or midwife.

**11.2.2.1** a Chief Executive who shall be the Accounting Officer;

**11.2.2.2** a Finance Director; and

**11.2.2.3** two other executive Directors.

**11.2.3** The post of an executive Director may be held by 2 individuals on a job-share basis (the executive positions of doctor and nurse cannot be shared between the two professions), but where such an arrangement is in force, the 2 individuals may only exercise 1 vote between them at any meeting of the Board of Directors.

**11.3** Only a member of a public constituency or the patient constituency is eligible for appointment as a non-executive Director save that this shall not apply to the Chairman and non-executive Directors appointed under 11.5.1 below.

**11.4 Board of Directors – General Duty**

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

**11.5 Appointment of Chairman and non - executive Directors**

**11.5.1** The Council of Governors shall appoint as the first Chairman and non-executive Directors of the Trust, the Chairman and the non-executive Directors of the Applicant NHS Trust for the unexpired period of their respective terms of office as Chairman or non-executive Director of the Applicant NHS Trust, or twelve months whichever is the longer unless they notify the Council of Governors that they do not wish to be appointed.

**11.5.2** The Council of Governors shall adopt a procedure for appointing and removing non-executive Directors including the Chairman, which shall provide for the process to be open fair and in accordance with such guidance as may be issued by the Independent Regulator.

**11.5.3** In making any appointment of a non-executive the Council of Governors shall have regard to the requirements of the role of non-executive Directors and the balance of skills available to the existing board and the needs of Board of Directors going forward. In identifying those needs the Council of

Governors shall consult the Board of Directors and any other individual or group it considers appropriate.

**11.5.4** The Board of Directors shall appoint one of the non-executive Directors as deputy Chairman and one of the non-executive Directors as Senior Independent Director. The Senior Independent Director shall be available to Governors in those situations where Governors have concerns which contact through the normal channels of Chairman, Chief Executive and Finance Director has failed to resolve or for which such contact was inappropriate.

**11.6** The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any Director.

**11.7 Terms of office**

**11.7.1** The Chairman 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. Any proposal for removal of the Chairman or other non-executive Directors must be proposed by a member of the Council of Governors and seconded by at least ten Governors, including at least two elected Members and two appointed Members. Written reasons for the proposal shall be provided to the non-executive Director who shall be given the opportunity to respond to such reasons.

**11.7.2** The Chief Executive (and Accounting Officer) and the Finance Director shall hold offices for a period in accordance with the terms and conditions of office decided by the relevant committee of non-executive Directors and pending the establishment of such a committee as determined by the Remuneration committee of the Applicant Trust.

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

## **11.8 Disqualification**

**11.8.1** A person may not be a Director of the Trust if:

- 11.8.1.1** he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- 11.8.1.2** he has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
- 11.8.1.3** he has 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 him;
- 11.8.1.4** in the case of a non-executive Director, he no longer satisfies paragraph 11.3.
- 11.8.1.5** he is a person whose tenure of office as a Chairman or as a member or Director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 11.8.1.6** he has had his name removed, by a direction under section 151 of the 2006 Act from any list prepared under that Act, and has not subsequently had his name included on such a list;

**11.8.1.7** he has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body.

**11.8.1.8** he is an executive or non-executive Director of another NHS Trust, or a Governor, non-executive Director, Chairman, chief executive officer of another NHS body.

## **11.9 Roles and responsibilities**

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

**11.9.2** Any of those powers may be delegated to a committee consisting of Directors or to an executive Director.

**11.9.3** A committee of non-executive Directors is established as an Audit Committee to monitor, review and carry out other such functions in relation to the Auditor as appropriate.

**11.9.4** It is for the Chairman and the non-executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and Accounting Officer). The initial Chief Executive (and Accounting Officer) is to be the Chief Executive of the Applicant NHS Trust if he wishes to be appointed.

**11.9.5** It is for a committee consisting of the Chairman, the Chief Executive (and Accounting Officer) and the other non-executive Directors to appoint or remove the other executive Directors.

**11.9.6** The Trust is to establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors, and pending the establishment of such a committee and their decisions these matters are to be decided in

accordance with the remuneration and allowances of the respective officers as employed by the Applicant NHS Trust.

- 11.9.7** The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to the Independent Regulator.
- 11.9.8** The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the auditor on them, and the annual report.
- 11.9.9** The Board of Directors may establish committees to advise the Council of Governors and the Board of Directors on issues relating to specific sub-areas of the Trust's Area.
- 11.9.10** The functions of the Trust under sub-paragraph 17.5 and 17.6 shall be delegated to the chief executive as Accounting Officer.

## **12 MEETINGS OF DIRECTORS**

- 12.1** Meetings of the Board of Directors are to be open to members of the public. Two representatives of the Council of Governors are to be invited to attend the meetings of the Board of Directors, but may be excluded from all or part of any meeting by resolution of the Board of Directors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or of the proceedings.
- 12.2** The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings in accordance with Part 2 of Annex 1. These are to include setting a quorum for meetings, both of executive and non-executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.
- 12.3** 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.

## **13 CONFLICTS OF INTEREST OF DIRECTORS**

**13.1** The duties that a Director of the Trust has by virtue of being a Director include in particular –

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

**13.1.2** 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.

**13.2** The duty referred to in sub-paragraph 13.1.1 is not infringed if –

**13.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

**13.2.2** The matter has been authorised in accordance with the constitution.

**13.3** The duty referred to in sub-paragraph 13.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

**13.4** In sub-paragraph 13.1.2, “third party” means a person other than –

**13.4.1** The Trust; or

**13.4.2** A person acting on its behalf.

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

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

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

**13.8** 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.

**13.9** A Director need not declare an interest –

**13.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

**13.9.2** If, or to the extent that, the Directors are already aware of it;

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

**13.9.3.1** By a meeting of the Board of Directors; or

**13.9.3.2** By a committee of the Directors appointed for the purpose under the constitution.

**13.10** A matter shall have been authorised for the purposes of paragraph 13.2.2 if:

**13.10.1** the Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;

**13.10.2** the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

**13.10.3** the Director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

## **14 REGISTERS**

**14.1** The Trust is to have:

- 14.1.1** a register of Members showing, in respect of each Member, the constituency to which he belongs;
  - 14.1.2** a register of members of the Council of Governors;
  - 14.1.3** a register of Directors;
  - 14.1.4** a register of interests of the Directors;
  - 14.1.5** a register of interests of the members of the Council of Governors; and
  - 14.1.6** a register of designated Trust Providers.
- 14.2** The Membership Secretary shall be responsible for keeping the Register of Members and the Register of designated Trust Providers. The Secretary shall be responsible for keeping the other registers up to date from information received by him, and the registers may be kept in either paper or electronic form. The register of members shall include, as a minimum, the name and constituency of each member.
- 14.3** The Trust is to send to the Independent Regulator a list of the persons who are first elected or appointed as:
- 14.3.1** the members of the Council of Governors,
  - 14.3.2** the Board of Directors.
  - 14.3.3** the registers mentioned in paragraph 14.1 above are also to be made available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
  - 14.3.4** The Trust shall not make any part of its registers available for inspection by members of the public which shows details of-
    - 14.3.4.1** Any member of the Patients' Constituency; or
    - 14.3.4.2** Any other member of the Trust, if he so requests.

## **15 PUBLIC DOCUMENTS**

**15.1** The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

**15.1.1** a copy of the current constitution;

**15.1.2** a copy of the latest annual accounts and of any report of the auditor on them; and

**15.1.3** a copy of the latest annual report.

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

**15.2.1** a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

**15.2.2** a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;

**15.2.3** a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;

**15.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

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

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

- 15.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 15.2.8** a copy of any final report published under section 65I (administrator's final report);
- 15.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and/or
- 15.2.10** a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

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

**15.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

## **16 AUDITOR**

**16.1** The Trust shall have an auditor.

**16.2** A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(3) of Schedule 7 to the 2006 Act.

**16.3** Appointment of the Auditor by the Council of Governors is covered in paragraph 8.15.1.3, and monitoring of the auditor's functions by a committee of non-executive Directors is covered in paragraph 11.9.3.

**16.4** An officer of the Audit Commission may be appointed as Auditor with the agreement of the Commission. If such an appointment is made the Audit Commission shall charge fees for the services of the officer so appointed.

**16.5** The Auditor is to carry out his duties in accordance with Schedule 7 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

## **17 ACCOUNTS**

- 17.1** The Trust must keep proper accounts and proper records in relation to the accounts.
- 17.2** Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 17.3** The accounts are to be audited by the Trust's auditor.
- 17.4** The following documents will be made available to the Comptroller and Auditor General for examination at his request:
- 17.4.1** the accounts;
  - 17.4.2** any records relating to them; and
  - 17.4.3** any report of the auditor on them.
- 17.5** The Trust (through its chief executive and Accounting Officer) is to prepare in respect of each Financial Year annual accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.
- 17.6** In preparing its annual accounts, the Trust is to comply with any directions given by the Independent Regulator with the approval of the Secretary of State as to:
- 17.6.1** the methods and principles according to which the accounts are to be prepared; and
  - 17.6.2** the content and form of the accounts.
- 17.7** The Trust must –
- 17.7.1** lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

**17.7.2** once it has done so, send copies of those documents to the Independent Regulator within such a period as the Independent Regulator directs.

## **18 ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK**

**18.1** The Trust is to prepare annual reports and send them to Monitor.

**18.2** The reports are to give:-

**18.2.1** information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency and the patient constituency is representative of those eligible for such membership; and

**18.2.2** any other information the Independent Regulator requires.

**18.3** The Trust is to comply with any decision the Independent Regulator makes as to:

**18.3.1** the form of the reports;

**18.3.2** when the reports are to be sent to it; and

**18.3.3** the periods to which the reports are to relate.

**18.4** The Trust is to give information as to its forward planning in respect of each Financial Year to the Independent Regulator. This information is to be prepared by the Directors, who must have regard to the views of the Council of Governors.

**18.5** Each forward plan must include information about –

**18.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and

**18.5.2** the income it expects to receive from doing so.

**18.6** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 18.5.1 the Council of Governors must –

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

**18.6.2** notify the Directors of the Trust of its determination.

**18.7** A Trust which proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

## **19 INDEMNITY**

**19.1** Members of the Council of Governors and Board of 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 Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

**19.2** The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors and officers liability.

## **20 INSTRUMENTS ETC**

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

**20.2** The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

## **21 DISPUTE RESOLUTION PROCEDURES**

**21.1** In the event of any dispute about the entitlement to membership the dispute shall be referred to the Membership Secretary who shall make a determination on the point in issue. If the member is aggrieved at the decision of the Membership



Secretary he may appeal in writing within 14 days of the Membership Secretary's decision to the Council of Governors whose decision shall be final.

**21.2** In the event of dispute between the Council of Governors and the Board of Directors, the following provisions shall apply:

**21.2.1** In the first instance the Chairman on advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute.

**21.2.2** If the Chairman is unable to resolve the dispute he shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board with a view to resolving the dispute.

**21.2.3** If the recommendations ( if any ) of the special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute to an external mediator appointed by the Centre for Effective Dispute Resolution or such other organisation as he considers appropriate.

## **22 AMENDMENT OF THE CONSTITUTION**

**22.1** The Trust may make amendments of its constitution only if –

**22.1.1** More than half of the members of the Council of Governors of the Trust voting approve the amendments; and

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

**22.2** Amendments made under paragraph 22.1 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.

**22.3** 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) –

**22.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

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

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

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

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

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

“Significant transaction” means a transaction which meets any one of the tests below:

**23.2.1** the fixed asset test; or

**23.2.2** the turnover test; or

**23.2.3** the gross capital test (relating to acquisitions or divestments);

The fixed asset test:

**23.2.4** is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust;

The turnover test:

**23.2.5** is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by more than 25%;

The gross capital test:

- 23.2.6** is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s capital is determined by reference to its balance sheet);
- 23.2.7** for the purposes of calculating the tests in this paragraph 23.2, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

- 23.2.8** includes all agreements (including amendments to agreements) entered into by the Trust;
- 23.2.9** excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);
- 23.2.10** excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

## **24 DISSOLUTION OF THE TRUST**

- 24.1** The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

## **ANNEX 1 PRACTICE AND PROCEDURE FOR MEETINGS**

In accordance with paragraphs 10.12.6 and 10.14 of the constitution the Council of Governors and the Board of Directors must adopt standing orders for the regulation of their procedure in accordance with the minimum terms set out in this annex.

### **Part 1 Council of Governors**

The standing orders for the Council of Governors must provide for:

- 1.** A minimum notice period for meetings and the agenda and supporting papers of not less than 2 clear days.
- 2.** Provision for the conduct of meetings including:-
  - 2.1.** Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions including any special rules relating to motions under 10.3.2 (removal of Governors) save that provision may be made to cover the position where there is a vacancy in the Public or Patient Governors;
  - 2.2.** Voting, which may not provide for voting otherwise than on the basis of one vote for each Governor apart from the Chairman of the meeting;
  - 2.3.** Provision for proxies who must be Governors in their own right;
  - 2.4.** Chairing the meeting in the absence of the Chairman;
  - 2.5.** Powers of the Chairman to determine the conduct of the meeting;
  - 2.6.** Circumstances where persons other than Governors may be allowed to speak at meetings; and
  - 2.7.** Quorum, which must provide for there to be a majority of public and Patient members at any meeting.
- 3.** Provision for a record of attendance and the requirement for minutes of the meetings to be kept

4. Provision for the approval of decisions without meetings where all Governors have been notified of the proposal and a majority of those eligible to vote have approved the resolution in writing within not less than 4 days.
5. Provision for the establishment of Committees, sub-committees and working groups.
6. Provision for the delivery to the Secretary at or immediately before the commencement of the meeting of a declaration in the form;

“To the Secretary of Royal National Hospital for Rheumatic Diseases NHS Foundation Trust “

I hereby declare that I am at the date of this declaration a member of the Public/ Patient/ Staff constituency, and I am not prevented from being a member of the Council of Governors by reason of:

My having been adjudged bankrupt or my estate having been sequestrated and in either case not having been discharged;

My having made a composition or arrangement with, or granted a Trust deed for my creditors and have not been discharged in respect of it;

Within the preceding five years, my being 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 me.

Dated .....

Signed.....

## **Part 2 Board of Directors**

The standing orders for the Board of Directors must provide for:

1. A minimum notice period for meetings and the agenda and supporting papers of not less than 2 clear days, save with the consent of a majority of those entitled to be present and actually present at the meeting.
2. Provision for the conduct of meetings including:-
  - 2.1. Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions;
  - 2.2. Voting, which may not provide for voting otherwise than on the basis of one vote for each Director apart from the Chairman of the meeting;
  - 2.3. Provision for proxies;
  - 2.4. Chairing the meeting in the absence of the Chairman;
  - 2.5. Powers of the Chairman to determine the conduct of the meeting;
  - 2.6. Circumstances where persons other than Directors may be allowed to attend and speak at meetings; and
  - 2.7. Quorum.
3. Provision for a record of attendance and the requirement for minutes of the meetings to be kept.
4. Provision for the approval of decisions without meetings.
5. Provision for meetings to be held using telephone or electronic means.
6. Provision for the establishment of Committees, sub-committees and working groups which must include:

- 6.1.** an Audit Committee comprising non-executive Directors;
  - 6.2.** a Remuneration Committee, comprising the Chief Executive and non-executive Directors; and
  - 6.3.** a Governance Committee.
- 7.** Provision requiring the declarations of interests and providing for the conduct of Directors when an interest is material.
  - 8.** Provision requiring the adherence to the NHS standard for Business conduct as published from time to time.
  - 9.** Provisions governing the procurement of works, goods and services, and tendering and contracting procedures.
  - 10.** Provision regarding the use of the seal of the Trust and the execution of documents.

## **ANNEX 2**

### **THE MODEL RULES FOR ELECTIONS**

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## **Part 1 - Interpretation**

### **1. Interpretation –**

(1) In these rules, unless the context otherwise requires -

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

“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;

“the regulator” means the Independent Regulator for NHS foundation trusts; and

“the 2006 Act” means the NHS Act 2006

(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 election**

### **2. Timetable -**

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

<b>Proceeding</b>	<b>Time</b>
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 papers 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 –**

(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.

- (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 –**

- (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

#### **5. Staff –**

Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

#### **6. Expenditure –**

The corporation is to pay the returning officer –

- (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 –**

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

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

#### **8. Notice of election –**

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 papers may be obtained;
- (e) the address for return of nomination papers 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, and
- (h) the date and time of the close of the poll in the event of a contest.

## **9. Nomination of candidates –**

(1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper 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.

## **10. Candidate's particulars –**

The nomination paper must state the candidate's –

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

## **11. Declaration of interests –**

The nomination paper 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 –**

The nomination paper 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 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 –**

The nomination paper must be signed and dated by the candidate, 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.

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

(1) Where a nomination paper 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 paper 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.

(2) The returning officer is entitled to decide that a nomination paper 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 papers, 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, as required by rule 13.

- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (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 paper.

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

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show –
  - (a) the name, contact 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 paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

#### **16. Inspection of statement of nominated candidates and nomination papers**

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

#### **17. Withdrawal of candidates –**

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

## **18. Method of election –**

- (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.
- (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.
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then –
  - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
  - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

## ***Part 5 – Contested elections***

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

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

### **20. The ballot paper –**

- (1) The ballot of each voter 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.
- (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,



- (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.
- (3) Each ballot paper must have a unique identifier.
- (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) –**

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –
- (a) that the voter is the person to whom the ballot paper was addressed,
  - (b) that the voter has not marked or returned any other voting paper in the election, and
  - (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
  - (b) the address of the voter,
  - (c) the voter's signature, and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

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

**22. List of eligible voters –**

- (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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

### **23. Notice of poll –**

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 address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

### **24. Issue of voting documents by returning officer –**

- (1) 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 documents to each member of the corporation named in the list of eligible voters–
- (a) a ballot paper and ballot paper envelope,
  - (b) a declaration of identity (if required),
  - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
  - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

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

- (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.
- (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.
- (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 declaration of identity if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

### ***The poll***

#### **26. Eligibility to vote –**

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

#### **27. Voting by persons who require assistance –**

- (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- (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.

#### **28. Spoilt ballot papers**

- (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 a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- (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.
- (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 declaration of identity, if required, has not been returned.
- (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. Lost ballot papers –**

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper, and
  - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
  - (a) the name of the voter, and
  - (b) the details of the unique identifier of the replacement ballot paper.

## **30. Issue of replacement ballot paper–**

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(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.
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –
  - (a) the name of the voter, and
  - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

## **31. Declaration of identity for replacement ballot papers (public and patient constituencies) –**

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
  - (b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
  - (b) the address of the voter,
  - (c) the voter's signature, and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

***Procedure for receipt of envelopes***

**32. Receipt of voting documents –**

- (1) Where the returning officer receives a –
- (a) covering envelope, or
  - (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

### **33. Validity of ballot paper –**

- (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 a declaration of identity if required that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –
  - (a) put the declaration of identity if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –
  - (a) mark the ballot paper “disqualified”,
  - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.

### **34. Declaration of identity but no ballot paper (public and patient constituency) –**

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “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 declaration of identity in a separate packet.

### **35. Sealing of packets –**

As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and

- (f) the list of tendered ballot papers.

## **Part 6 - Counting the votes**

### **36. Interpretation of Part 6 –**

In Part 6 of these rules –

“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 paper –

- (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 44(4) below,

“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 41 below,

“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 papers 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 paper” means a ballot paper 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 paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

### **37. Arrangements for counting of the votes –**

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

### **38. The count –**

- (1) The returning officer is to –
  - (a) count and record the number of ballot papers that have been returned, and
  - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers 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.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

### **39. Rejected ballot papers –**

- (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.

- (2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3) 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 paragraph (1).

#### **40. First stage –**

- (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.
- (2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.
- (3) The returning officer is to also ascertain and record the number of valid ballot papers.

#### **41. The quota –**

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (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”).
- (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 paragraphs (1) to (3) of rule 44 has been complied with.

#### **42. Transfer of votes –**

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

- (3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-paragraph of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-paragraph of transferred votes which was last received by that candidate into separate sub-paragraphs so that they are grouped –
  - (a) according to the next available preference given on those papers for any continuing candidate, or
  - (b) where no such preference is given, as the sub-paragraph of non-transferable votes.
- (6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-paragraph of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.
- (7) The vote on each ballot paper transferred under paragraph (6) shall be at –
  - (a) a transfer value calculated as set out in paragraph (4)(b) above, 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.
- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers 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.

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

### **43. Supplementary provisions on transfer –**

(1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule 42 above –

- (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.

(3) All ballot papers transferred under rule 42 or 44 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 paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

#### **44. Exclusion of candidates –**

(1) If—

(a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule 45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

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

(3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

(1) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

(5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

- (9) After the returning officer has completed the transfer of the ballot papers in the sub-  
parcel of ballot papers with the highest transfer value he or she shall proceed to  
transfer in the same way the sub-  
parcel of ballot papers with the next highest value  
and so on until he has dealt with each sub-  
parcel of a candidate excluded under  
paragraph (1) above.
- (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.
- (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 paragraphs (5) to (10) of rule 42  
and rule 43.
- (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.
- (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.

#### **45. Filling of last vacancies –**

- (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.

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

#### **46. Order of election of candidates –**

- (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 42(10) above.
- (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.
- (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.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

### ***Part 7 – Final proceedings in contested and uncontested elections***

#### **47. Declaration of result for contested elections –**

- (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 Royal National Hospital for Rheumatic Diseases NHS Foundation Trust by Schedule 7 of the 2006 Act, to the Chairman of the NHS Trust, or
    - (ii) in any other case, to the Chairman of the corporation, and
  - (c) give public notice of the name of each candidate who he or she has declared elected.
- (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 39(1),
- available on request.

#### **48. Declaration of result for uncontested elections –**

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

- (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***

#### **49. Sealing up of documents relating to the poll –**

- (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,
  - (b) the ballot papers endorsed with “rejected in part”,
  - (c) the rejected ballot papers, and
  - (d) the statement of rejected ballot papers.
- (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 declarations of identity,
  - (c) the list of spoilt ballot papers,
  - (d) the list of lost ballot papers,
  - (e) the list of eligible voters, and
  - (f) the list of tendered ballot papers.

(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.

#### **50. Delivery of documents –**

Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

#### **51. Forwarding of documents received after close of the poll – 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 ballot papers are made too late to enable new ballot papers 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.

#### **52. Retention and public inspection of documents –**

- (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 regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(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.
- (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.

#### **53. Application for inspection of certain documents relating to an election –**

- (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –
  - (a) any rejected ballot papers, including ballot papers rejected in part,
  - (b) any disqualified documents, or the list of disqualified documents,



- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

- (2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator 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.
- (3) The Regulator'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.

- (4) On an application to inspect any of the documents listed in paragraph (1), –
  - (a) in giving its consent, the regulator, and
  - (b) and making the documents available for inspection, the corporation,

must 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 the regulator has declared that the vote was invalid.

### ***Part 9 – Death of a candidate during a contested election***

#### **54. Countermand or abandonment of poll on death of candidate –**

- (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 papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

### ***Part 10 – Election expenses and publicity Election expenses***

#### **55. Election expenses –**

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 to the regulator under Part 11 of these rules.

#### **56 Expenses and payments by candidates –**

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

- (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.

#### **57. Election expenses incurred by other persons –**

(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.

(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 58 and 59.

### ***Publicity***

#### **58. Publicity about election by the corporation –**

(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.

- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.
- (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.

#### **59. Information about candidates for inclusion with voting documents –**

- (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.
- (2) The information must consist of –
  - (a) a statement submitted by the candidate of no more than 250 words,
  - and
  - (b) a photograph of the candidate.

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

- (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.
- (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***

### **61. Application to question an election –**

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator 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.
- (4) The application must –
  - (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
  - (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  - (b) The determination by the person or persons nominated in accordance with Rule 61(7) 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.
  - (c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

## ***Part 12 – Miscellaneous***

### **62. Secrecy –**

- (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 a ballot paper or who has or has not voted,
  - (ii) the unique identifier on any ballot paper,
  - (iii) the candidate(s) for whom any member has voted.
- (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.
- (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.

### **63. Prohibition of disclosure of vote –**

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

### **64. Disqualification –**

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

- (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.

### **65. Delay in postal service through industrial action or unforeseen event –**

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 and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

## **ANNEX 3**

### **PARTNERSHIP ORGANISATIONS**

Action for ME

Age UK

Arthritis Care

Sirona (Social Enterprise)

BIRD

Fibromyalgia Support Group

Friends of RNHRD

Headway Bath & District

Lupus UK

National Ankylosing Spondylitis Society

National Osteoporosis Society

National Rheumatoid Arthritis Society

Raynaud's and Scleroderma Trust

Psoriatic Arthropathy Alliance

UWE

## **ANNEX 4 ANNUAL MEMBERS' MEETING**

### **1. MEMBERS' MEETINGS**

- 1.1.** The Trust shall hold a members' meeting for all members (called the "Annual Members' Meeting") within six months of the end of each financial year of the Trust.
- 1.2.** Any members' meeting other than the Annual Members' Meeting shall be called a "Special Members' Meeting".
- 1.3.** Both Annual Members' Meetings and any Special Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.4.** The Board of Directors may convene an Annual Members' Meeting or a Special Members' Meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5.** The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members' Meeting:
  - 1.5.1.** the annual accounts;
  - 1.5.2.** any report of the auditor on them;
  - 1.5.3.** the annual report.
- 1.6.** The Trust shall give notice of all members' meetings:
  - 1.6.1.** by notice in writing to all members;
  - 1.6.2.** by notice prominently displayed at the Trust's headquarters and at all of the Trust's hospitals;
  - 1.6.3.** by notice on the Trust's website; and
  - 1.6.4.** to the Council of Governors, the Board of Directors, and to the Trust's auditors,

stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).

- 1.7.** An accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 1.8.** The Chair or in his absence the Deputy Chair shall preside at all members' meetings of the Trust. If neither the Chair nor the Deputy Chair is present, the governors present shall elect one of their number to act as Chair and if there is only one governor present and willing to act that person shall be Chair. If no governor is willing to act as Chair or if no governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.9.** The quorum for a members' meeting shall be 8 (eight) members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Board of Directors determine.
- 1.10.** The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.11.** A resolution put to the vote of a members' meeting shall be decided on a show of hands.
- 1.12.** No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.13.** If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.



- 1.14.** In the case of a members' meeting is adjourned or postponed for 14 days or more, at least seven working days' notice shall be given specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.15.** The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.16.** The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.