

12 NOVEMBER 2007

**CONSTITUTION OF THE
CALDERDALE AND HUDDERSFIELD NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

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**CONSTITUTION FOR THE CALDERDALE AND HUDDERSFIELD NHS
FOUNDATION TRUST**

1 Definitions

- 1.1. Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the National Health Service Act 2006.
- 1.2. References in this constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3. Headings are for ease of reference only and are not to affect interpretation.
- 1.4. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.5. In this constitution:
- | | |
|----------------------------|---|
| “The 2006 Act” | means the National Health Service Act 2006 |
| “Appointed Council Member” | means those Council Members appointed by the Appointing Organisations; |
| “Appointing Organisations” | means those organisations named in this constitution who are entitled to appoint Council Members; |
| “Areas of the Trust” | the areas specified in Annexe 1; |
| “Authorisation” | means an authorisation given by Monitor |
| “Board of Directors” | means the Board of Directors as constituted in accordance with this constitution; |
| “Director” | means a member of the Board of Directors; |

“Non-Executive Directors”	means the Chairman and Non-Executives on the Board of Directors;
“Elected Council Member”	means those Council Members elected by the public constituency and the staff constituency;
“Financial year”	means: (a) a period beginning with the date on which the Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April;
“Monitor”	means the Regulator for the purposes of the 2006 Act;
“Local Authority Council Member”	means a Member of the Membership Council appointed by one or more Local Authorities whose area includes the whole or part of the area of the Trust;
“Member”	means a Member of the Trust;
“Membership Council”	means the Membership Council as constituted by this constitution and referred to as the Board of Governors in the 2006 Act;
“The NHS Trust”	means the NHS Trust which made the application to become the Trust;
“Other Partnership Council Member”	means a Member of the Membership Council appointed by a Partnership Organisation other than a Primary Care Trust or Local Authority;
“Public Constituency”	means those individuals who live in an area specified as an area for any public constituency are referred to

	collectively as the Public Constituency;
“PCT Council Member”	means a Member of the Membership Council appointed by a Primary Care Trust under this constitution;
“Public Council Member”	means a Member of the Membership Council elected by the Members of the public constituency;
“Secretary”	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary;
“Staff Constituency”	means those individuals who are eligible for trust membership by reason of 8.5-8.9 of this Constitution are referred to collectively as the Staff Constituency;
“Staff Council Member”	means a Member of the Membership Council appointed by the Members of one of the classes of the constituency of the staff membership;
“the Trust”	means the Calderdale & Huddersfield NHS Foundation Trust.

2 Name and status

2.1. The name of this Trust is to be “Calderdale and Huddersfield NHS Foundation Trust”.

3 Purpose

3.1. The Trust’s purpose is to serve the community by the provision of goods and services for the purpose of the health service in England.

4 Functions

4.1. The function of the Trust is to provide goods and services, including education and training, research, accommodation and other facilities, for purposes related to the provision of health services.

- 4.2. The Trust may also carry on other functions provided any additional resources generated are used to carry on the Trust's principal purpose better.
- 4.3. The profits or surpluses of the Trust are not to be distributed either directly or indirectly in any way at all among members of the Trust.

5 **Powers**

- 5.1. The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 5.2. In particular it may:
 - 5.2.1. acquire and dispose of property;
 - 5.2.2. enter into contracts;
 - 5.2.3. accept gifts of property (including property to be held on Trust for the purposes of the Trust or for any purposes relating to the health service);
 - 5.2.4. employ staff.
- 5.3. Any power of the Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing, or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 5.4. The Trust may borrow money for the purposes of or in connection with its functions, subject to the limit published by Monitor from time to time.
- 5.5. The Trust may invest money (other than money held by it as Trustee) for the purposes of or in connection with its functions. The investment may include investment by:
 - 5.5.1. forming, or participating in forming bodies corporate;
 - 5.5.2. otherwise acquiring membership of bodies corporate.
- 5.6. The Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its function.

6 **Commitments**

- 6.1 The Trust shall exercise its functions effectively, efficiently and economically.

Representative membership

- 6.2 The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership.
- 6.3 The Trust shall at all times have in place and pursue a Membership Strategy which shall be approved by the Membership Council, and shall be reviewed by them from time to time, and at least every 3 years.

Co-operation with other bodies

- 6.4 In exercising its functions the Trust shall co-operate with Local Authorities, Special Health Authorities, Strategic Health Authorities, Primary Care Trusts, NHS Trusts, NHS Foundation Trusts and other public bodies serving the community served by the Trust.

Respect for rights of people

- 6.5 In conducting its affairs, the Trust shall respect the rights of members of the community it serves, its employees and people dealing with the Trust as set out in the Charter of Fundamental Rights of the European Union.

Openness

- 6.6 In conducting its affairs, the Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

7. Framework

- 7.1 The affairs of the Trust are to be conducted by the Board of Directors, the Membership Council and the Members in accordance with this Constitution. The Board of Directors, Membership Council and Members, are to have the roles and responsibilities set out in this Constitution.

7.2 Membership and Constituencies

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

- 7.2.1 A public constituency
- 7.2.2 A staff constituency

Board of Directors

- 7.3 The business of the Trust is to be managed by the Board of Directors, who (subject to this Constitution) shall exercise all the powers of the Trust.
- 7.4 A third party dealing in good faith with the Trust shall not be affected by any defect in the process by which Directors are appointed or any vacancy on the Board of Directors.

Membership Council

- 7.5 The roles and responsibilities of the Membership Council are:
- 7.5.1 at a general meeting, to appoint or remove the Chairman and the other Non-Executive Directors;
 - 7.5.2 at a general meeting, to approve an appointment (by the non-executive Directors) of the Chief Executive;
 - 7.5.3 at a general meeting, to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
 - 7.5.4 at a general meeting, to appoint or remove the Trust's auditor;
 - 7.5.5 at a general meeting, to be presented with the annual accounts, any report of the auditor on them and the annual report;
 - 7.5.6 at a general meeting, to appoint or remove any auditor appointed to review and publish a report on any other aspect of the Trust's affairs;
 - 7.5.7 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning in respect of each financial year;
 - 7.5.8 to respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;
 - 7.5.9 to undertake such functions as the Board of Directors shall from time to time request;
 - 7.5.10 to prepare and from time to time to review the Trust's Membership Strategy, its policy for the composition of the Membership Council and of the Non-Executive Directors.

- 7.6 A third party dealing in good faith with the Trust shall not be affected by any defect in the process by which Members of the Membership Council are appointed or any vacancy on the Membership Council.

8 **Members**

- 8.1. The Members of the Trust are those individuals whose names are entered in the register of members. Every Member is either a Member of one of the public constituencies or a Member of the staff constituency.
- 8.2. Subject to this Constitution, Membership is open to any individual who:
- 8.2.1. is over 16 years of age,
 - 8.2.2. is entitled under this Constitution to be a Member of the public constituencies, or staff constituency, and
 - 8.2.3. completes or has completed a membership application form in whatever form the Membership Council approves or specifies.

Public Membership

- 8.3 There are eight public constituencies corresponding to the areas set out in Annex 1 serviced by the Trust. Members of each constituency are to be individuals:
- 8.3.1 who live in the relevant area of the Trust;
 - 8.3.2 who are not eligible to be Members of the staff constituency; and
 - 8.3.3 who are not Members of another public constituency.
- 8.4 The minimum number of members of each of the public constituencies is to be 50.

Staff Membership

- 8.5 There is 1 Staff Constituency for staff Membership. It is to be divided into five classes as follows:
- 8.5.1 doctors or dentists;
 - 8.5.2 Allied Health Professionals, Health Care Scientists and Pharmacists;
 - 8.5.3 Management, administration and clerical;

- 8.5.4 Ancillary staff;
- 8.5.5 Nurses and midwives.
- 8.6 Members of the staff constituency are to be individuals:
 - 8.6.1 who are employed under a contract of employment by the Trust and who either:
 - 8.6.1.1 are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
 - 8.6.1.2 who have been continuously employed by the Trust or the NHS Trust for at least 12 months; or
 - 8.6.2 who are not so employed but who nevertheless exercise functions for the purposes of the Trust, including registered volunteers; and who have exercised the functions for the purposes of the Trust for at least 12 months.
- 8.7 Individuals entitled to be Members of the staff constituency are not eligible to be Members of the public constituency.
- 8.8 The Secretary is to decide to which class a staff member belongs.
- 8.9 The minimum number of members in each class of the staff membership is to be 20.
- 9 **Disqualification from membership**
 - 9.1 A person may not be a member of the Trust if, in the opinion of the Membership Council, there are reasonable grounds to believe that they are likely to act in a way detrimental to the interests of the Trust.
- 10 **Termination of membership**
 - 10.1 A Member shall cease to be a Member if:
 - 10.1.1 they resign by notice to the Secretary;
 - 10.1.2 they die;
 - 10.1.3 they are disqualified from Membership by paragraph 9;
 - 10.1.4 they cease to be entitled under this Constitution to be a Member of any of the public constituencies or the staff constituency.

- 10.2 A Member may be expelled by a resolution approved by not less than three quarters of the full Membership Council present and voting at a general meeting. The following procedure is to be adopted.
- 10.2.1 Any Member may complain to the Secretary that another Member has acted in a way detrimental to the interests of the Trust.
- 10.2.2 If a complaint is made, the Membership Council may itself consider the complaint having taken such steps as it considers appropriate to ensure that each Member's point of view is heard and may either:
- 10.2.2.1 dismiss the complaint and take no further action; or
- 10.2.2.2 arrange for a resolution to expel the Member complained of to be considered at the next general meeting of the Membership Council.
- 10.2.3 If a resolution to expel a Member is to be considered at a general meeting of the Membership Council, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 10.2.4 At the meeting the Membership Council will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
- 10.2.5 If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 10.3 A person expelled from Membership will cease to be a Member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 10.4 No person who has been expelled from Membership is to be re-admitted except by a resolution carried by the votes of three quarters of the Membership Council present and voting at a general meeting.

11 **Members Meetings**

- 11.1 The Trust is to hold a Members meeting (called the annual members meeting) within six months of the end of each financial year.

- 11.2 All Members meetings other than annual meetings are called special members meetings.
- 11.3 Members meetings are open to all members of the Trust, members of the Membership Council and the Board of Directors, representatives of the Trust's financial auditors, but not to members of the public. The Membership Council 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 a members meeting.
- 11.4 All Members meetings are to be convened by the Secretary by order of the Chair of the Membership Council or upon a resolution of the Board of Directors.
- 11.5 The Membership Council may decide where a Members meeting is to be held and may also for the benefit of Members:
- 11.5.1 arrange for the annual members meeting to be held in different venues each year;
 - 11.5.2 make provisions for a Members meeting to be held at different venues simultaneously or at different times. In making such provision the Membership Council shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 11.6 At the annual members meeting:
- 11.6.1 the Membership Council shall present to the Members:
 - 11.6.1.1 the annual accounts;
 - 11.6.1.2 any report of the auditor;
 - 11.6.1.3 any report of any other auditor of the Trust's affairs;
 - 11.6.1.4 forward planning information for the next financial year;
 - 11.6.1.5 a report on steps taken to secure that (taken as a whole) the actual membership of its constituencies is representative of those eligible for such membership;
 - 11.6.1.6 the progress of the Membership Strategy;

- 11.6.1.7 any proposed changes to the policy for the composition of the Membership Council and of the Non-Executive Directors.
 - 11.6.2 the results of the election and appointment of Membership Council Members will be announced.
- 11.7 Notice of a Members meeting is to be given:
 - 11.7.1 by notice sent by prepaid second class post to all members;
 - 11.7.2 by notice prominently displayed at the registered office and at all of the Trust's places of business; and
 - 11.7.3 by notice on the Trust's website
 - at least 14 clear days before the date of the meeting. The notice must:
 - 11.7.4 be given to the Membership Council and the Board of Directors, and to the auditors;
 - 11.7.5 state whether the meeting is an annual or special members meeting;
 - 11.7.6 give the time, date and place of the meeting; and
 - 11.7.7 indicate the business to be dealt with at the meeting.
- 11.8 Before a members meeting can do business there must be a quorum present. Except where these Rules say otherwise a quorum is 30 members entitled to vote at the meeting.
- 11.9 It is the responsibility of the Membership Council, the Chairman of the meeting and the Secretary to ensure that at any members meeting:
 - 11.9.1 the issues to be decided are clearly explained;
 - 11.9.2 sufficient information is provided to members to enable rational discussion to take place;
 - 11.9.3 where appropriate, experts in relevant fields or representatives of special interest groups are invited to address the meeting.
- 11.10 The Chairman of the Trust or, in his absence, the Vice-Chairman or, in his absence, the deputy chairman is to chair members meetings.

- 11.11 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Membership Council determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 11.12 Subject to this Constitution, a resolution put to the vote at a members meeting shall, except where a poll is demanded or directed, be decided upon by a show of hands.
- 11.13 On a show of hands or on a poll, every member present is to have one vote. On a poll, votes may be given either personally or by proxy under arrangements laid down by the Membership Council, and every member is to have one vote. In case of an equality of votes the Chairman shall decide the outcome.
- 11.14 Unless a poll is demanded, the result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.
- 11.15 A poll may be directed by the Chairman or demanded either before or immediately after a vote by show of hands by not less than one-tenth of the members present at the meeting. A poll shall be taken immediately.

12. **Membership Council**

- 12.1. The Trust is to have Membership Council. It is to consist of Public Council Members, Staff Council Members, PCT Council Members, Local Authority Council Members and other Partnership Council Members.
- 12.2. The composition of the Membership Council, subject to the 2006 Act, shall seek to ensure that:
- 12.2.1. the interests of the community served by the Trust are appropriately represented;
 - 12.2.2. the level of representation of the public constituencies, the staff constituency and the Partnership Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs;
- and to this end, the Membership Council:
- 12.2.3. shall at all times maintain a policy for the composition of the Membership Council which takes account of

the Membership Strategy and which specifies the allocation of Public Council Members to particular geographical regions and the allocation of Staff Council Members to particular classes of staff;

- 12.2.4. shall from time to time and not less than every three years review the policy for the composition of the Membership Council;
 - 12.2.5. shall undertake other tasks as allocated by the Board of Directors;
 - 12.2.6. when appropriate shall propose amendments to this Constitution.
- 12.3. The Membership Council of the Trust is to comprise:
- 12.3.1. up to 16 Public Council Members from 8 public constituencies (2 members from each constituency) set out in Annex 1
 - 12.3.2. up to 6 Staff Council Members from 1 Staff Constituency from the following classes:
 - 12.3.2.1. doctors and dentists (1 member);
 - 12.3.2.2. Allied Health Professionals, Health Care Scientists and Pharmacists (1 member);
 - 12.3.2.3. Management, Administration and Clerical (1 Member);
 - 12.3.2.4. Ancillary Staff (1 Member);
 - 12.3.2.5. Nurses and Midwives (up to 2 members);
 - 12.3.3. 2 PCT Council Members, currently one to be appointed from each of Calderdale PCT and Kirklees PCT;
 - 12.3.4. 2 Local Authority Council Members, one to be appointed by each of: Calderdale Metropolitan Borough Council and Kirklees Metropolitan Council;
 - 12.3.5. Up to 2 Council Members appointed by Partnership Organisations. The Partnership Organisations shall appoint a Council Member to represent their organisation on the Membership Council. The

Partnership Organisations are identified as Huddersfield University and South West Yorkshire Mental Health Trust.

Elected Council Member

- 12.4. Public Council Members are to be elected by Members of the public constituencies, and Staff Council Members by Members of the staff constituency.
- 12.5. If contested, the elections must be by secret ballot.
- 12.6. The Election procedures including the arrangements governing nominations, the advertisement of candidates, rules regarding canvassing voting, and the election of reserves to fill casual vacancies are to be determined by the election rules (annexe 2).
- 12.7. A Member may not vote at an election for an elected Council Member unless within 21 days before they vote they have made a declaration in the form specified by the Membership Council as to the basis upon which they are entitled to vote as a Member. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular. This provision does not apply to staff Members.

Appointed Council Members

Primary Care Trust Council Members

- 12.8. The Secretary, having consulted with the two Primary Care Trusts for which the Trust provides goods and services, is to adopt a process for agreeing the appointment of Primary Care Trust Council Members with those Primary Care Trusts.

Local Authority Council Members

- 12.9. The Secretary, having consulted each Local Authority whose areas includes the whole or part of the area of the Trust is to adopt a process for agreeing the appointment of Local Authority Councils Member with those Local Authorities.

Partnership Council Members

- 12.10. The Secretary, having consulted each Partnership Organisation is to adopt a process for agreeing the appointment of partnership Council Members with those Partnership Organisations.

Appointment of Chairman, Vice-Chair and Deputy-Chair

12.11 The Membership Council shall appoint a Chairman of the Trust. The Board of Directors will appoint one NED to be Vice-Chairman of the Trust. This individual may, through agreement with the Chair take on the role of SINED (Senior Independent Non-Executive Director). The Membership Council shall ratify the appointment of the Vice-Chairman at a General Meeting.

12.11.1 The Chairman and Vice Chair will be the Chair and Vice Chair of both the Membership Council and the Board of Directors. The Membership Council shall appoint at a general meeting one of its public Members to be Deputy Chairman of the Membership Council.

Terms of office for Membership Council Members

12.12 Elected Council Members:

12.12.1 shall hold office for a period of three years commencing immediately after the annual members meeting at which their election is announced;

12.12.2 subject to the next sub-paragraph are eligible for re-election after the end of that period;

12.12.3 may not hold office for more than six consecutive years and shall not be eligible for re-election if they have already held office for more than three consecutive years;

12.12.4 cease to hold office if they cease to be a Member of the constituency by which they were elected, or if they are disqualified for any of the reasons set out in this Constitution.

12.13 Appointed Council Members:

12.13.1 shall hold office for a period of 3 years commencing immediately after the annual members meeting at which their appointment is announced;

12.13.2 subject to the next sub-paragraph are eligible for re-appointment after the end of that period;

12.13.3 may not hold office for longer than 6 consecutive years;

12.13.4 shall cease to hold office if the Appointing Organisation terminates their appointment.

- 12.13.5 cease to hold office if they cease to be a Member of the constituency by which they were elected, or if they are disqualified for any of the reasons set out in this Constitution.

Eligibility to be a Council Member

- 12.14 A person may not become a Council Member of the Trust, and if already holding such office will immediately cease to do so if:
- 12.14.1 they are a Director or Company Secretary of this Trust, a Director of another NHS Trust or a Council Member or Non Executive Director of another NHS Foundation Trust;
 - 12.14.2 they are under 18 years of age;
 - 12.14.3 being a Member of a public constituency, they were entitled to be a Member of the staff constituency until less than one years ago;
 - 12.14.4 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - 12.14.5 they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
 - 12.14.6 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
 - 12.14.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
 - 12.14.8 they are 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 their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 12.14.9 they are a member of the Trusts Patient Forum – *in accordance with Statutory Instrument 2003 No. 2123*;

Termination of office and removal of Council Member

- 12.15 A person holding office as a Council Member shall immediately cease to do so if:
- 12.15.1 they resign by notice in writing to the Secretary;
 - 12.15.2 they fail to attend two meetings in any Financial Year, unless the other Council Members are satisfied that:
 - 12.15.2.1 the absences were due to reasonable causes; and
 - 12.15.2.2 they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
 - 12.15.3 in the case of an elected Council Member, they cease to be a Member of the constituency by whom they were elected;
 - 12.15.4 in the case of an Appointed Council Member, the Appointing Organisation terminates the appointment;
 - 12.15.5 they have failed to undertake any training which the Membership Council requires all Council Members to undertake;
 - 12.15.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Membership Council confirming acceptance of the code of conduct for Council Members;
 - 12.15.7 they refuse to sign a declaration in the form specified by the Membership Council that they are a Member of a specific public constituency and are not prevented from being a Member of the Membership Council. This does not apply to Staff members;
 - 12.15.8 they are removed from the Membership Council under the following provisions.
- 12.16 A Council Member may be removed from the Membership Council by a resolution approved by not less than three-quarters of the remaining Council Members present and voting at a general meeting of the Membership Council on the grounds that:

- 12.16.1 they have committed a serious breach of the code of conduct; or
- 12.16.2 they have acted in a manner detrimental to the interests of the Trust; and
- 12.16.3 the Membership Council consider that it is not in the best interests of the Trust for them to continue as a Council Member.

Vacancies amongst Council Members

- 12.17 Where a vacancy arises on the Membership Council for any reason other than expiry of term of office, the following provisions will apply.
- 12.18 Where the vacancy arises amongst the Appointed Council Members, the Secretary shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.
- 12.19 Where the vacancy arises amongst the elected Council Member, the Membership Council shall be at liberty either:
 - 12.19.1 to call an election within three months to fill the seat for the remainder of that term of office, or
 - 12.19.2 to invite any elected reserve Council Members or the next highest polling candidate for that seat at the most recent election, who is willing to take office to fill the seat until the next annual election, at which time the seat will become vacant and subject to election for any unexpired period of the term of office.

Expenses and remuneration of Council Member

- 12.20 The Trust may pay travelling and other expenses to Council Members at such rates as it decides. These are to be disclosed in the annual report.
- 12.21 Council Members are not to receive remuneration.

Meetings of the Membership Council

- 12.22 The Membership council is to meet at least three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Membership Council to all Council Members. Notice will also be published in local media and on the Trust's website.

- 12.23 Meetings of the Membership Council may be called by the Secretary, by the Chairman, by the Board of Directors or by eight Council Members including two Appointed Council Members who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Council Members as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Council Members, whichever is the case, shall call such a meeting.
- 12.24 All meetings of the Membership Council are to be general meetings open to Members of the public unless the Membership Council decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Membership Council if they are interfering with or preventing the proper conduct of the meeting.
- 12.25 Sixteen Membership Council members (including not less than nine Public Council Members, not less than three Staff Council Members and not less than four Appointed Council Members) present in person or by proxy under arrangements approved by the Membership Council shall form a quorum.
- 12.26 The Chairman of the Trust or, in his absence, the Vice-Chairman, or in his absence a Deputy Chairman will chair meetings of the Membership Council.
- 12.27 The Deputy Chairman will be appointed from the public membership at a general meeting. He will act as Chairman of the meeting should the Chairman and the Vice Chairman be in conflict. The Deputy Chairman will hold the casting vote when he is acting as Chairman.
- 12.28 The Membership Council may invite the Chief Executive or through the Chief Executive any other member or members of the Board of Directors, or a representative of the Trust's auditors or other advisors to attend a meeting of the Membership Council. The Chief Executive and any Executive of the Trust nominated by the Chief Executive shall have the right to attend any meeting of the Membership Council provided that they shall not be present for any discussion of their individual relationship with the Trust.
- 12.29 The Membership Council may agree that its Members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

- 12.30 Subject to this Constitution including the following provisions of this paragraph, questions arising at a meeting of the Membership Council requiring a formal decision shall be decided by a majority of votes.
- 12.30.1 In case of an equality of votes the Chairman shall decide the outcome.
- 12.30.2 No resolution of the Membership Council shall be passed if it is unanimously opposed by all of the Public Council Members.
- 12.31 All decisions taken in good faith at a meeting of the Membership Council or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Council Members attending the meeting.

Disclosure of interests

- 12.32 Any Council member who has a material interest in a matter as defined below and in Annex 3 shall declare such interest to the Membership Council and it shall be recorded in a register of interests and the Council Member in question:
- 12.32.1 shall not be present except with the permission of the Membership Council in any discussion of the matter, and
- 12.32.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 12.33 Any Council Member who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Council Members.
- 12.34 A material interest in a matter is any interest (save for the exceptions referred to below) held by a Council Member, or their spouse or partner, in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust. The exceptions which shall not be treated as material interests are as follows:
- 12.34.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
- 12.34.2 an employment contract held by staff Council Members;

- 12.34.3 a contract with their PCT held by a PCT Council Members;
 - 12.34.4 an employment contract with a Local Authority held by a Local Authority Council Members;
 - 12.34.5 an employment contract with any organisation listed at paragraph 12.3.5 of this Constitution.
- 12.35 The Membership Council is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.
- 12.36 Meetings of the Membership Council are to follow an approach that encourages involvement and discussion and may be of a workshop or open space format.
- 12.37 An Elected Council Member may not vote at a meeting of the Membership Council unless, before attending the meeting, they have made a declaration in the form specified by the Membership Council as to the basis upon which they are entitled to vote as a Member Annex 3 provides guidance. An Elected Council Member shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Membership Council, and every agenda for meetings of the Membership Council will draw this to the attention of elected Council Members.

13 **Board of Directors**

- 13.1 The Trust is to have a Board of Directors. It is to consist of Executive and Non-Executive Directors.
- 13.2 The Constitution is to provide for all the powers of the corporation to be exercisable by the Board of Directors.
- 13.3 The board is to include:
- 13.3.1 the following Non-Executive Directors:
 - 13.3.1.1 a Chairman;
 - 13.3.1.2 up to 5 other Non-Executive Directors.
 - 13.3.1.3 It is for the Membership Council at a general meeting to appoint or remove the Chairman and the other Non-Executive Directors. Appointments will be made using the procedure set out in sub-paragraph 13.5.5
 - 13.3.1.4 Removal of a Non-Executive Director requires the approval of three quarters of the full Council Member.

13.3.2 the following Executive Directors:

13.3.2.1 a Chief Executive who shall also be the accounting officer responsible for the submission of the accounts of the Trust to Parliament and any report of the auditor on them. Once laid before Parliament copies will be sent of the documents will be sent to Monitor. It is for the Non-Executive Directors, including the Chairman, to appoint or remove the Chief Executive. Appointment of the Chief Executive requires the approval of the Membership Council;

13.3.2.2 a Finance Director. It is for a committee consisting of the Chief Executive and the Non-Executive Directors, including the Chairman, to appoint the Finance Director;

13.3.2.3 up to 4 other Executive Directors, one of whom is to be a registered member of a medical or a registered dentist (within the meaning of the Dentists Act 1984 (c.24)) and one of whom is to be a registered nurse or midwife (unless this requirement is met by reason of qualifications held by the Chief Executive or Finance Director). It is for a committee consisting of the Chief Executive and a Chairman and the other Non-Executive Directors, to appoint or remove all the Executive Directors.

13.3.2.4 It is for the Board of Directors to appoint one Non-Executive Director to be Vice-Chair of the Trust.

- 13.4 Only a Member of one of the public constituencies is eligible for appointment as a Non-Executive Director.
- 13.5 Non-Executive Directors are to be appointed by the Membership Council using the following procedure.
- 13.5.1 The Membership Council will maintain a policy for the composition of the Non-Executive Directors which takes account of the Membership Strategy, and which they shall review from time to time and not less than every three years.
- 13.5.2 The Board of Directors will work with the external organisations recognised as expert at appointments to

identify the skills and experience required for Non-Executive Directors.

13.5.3 Appropriate candidates will be identified by the Board of Directors taking into account the policy maintained by the Membership Council and the skills and experience required.

13.5.4 Only those candidates meeting the skills and experience identified by the Board of Directors will be eligible for appointment.

13.5.5 A sub-committee of the Membership Council (not exceeding 4 persons) including the Chair will interview a short list of candidates and recommend a candidate for appointment by the Membership Council.

Terms of Office

13.6 The Chairman and the Non-Executive Directors are to be appointed for a period of three years. The Chair and the Non-Executive Directors will serve for a maximum of two terms.

Disqualification

13.7 A person may not become or continue as a Director of the Trust if:

13.7.1 they are a member of the Membership Council;

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

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

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

13.7.5 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

13.7.6 in the case of a Non-Executive Director, they are no longer a member of the relevant constituency;

13.7.7 they are 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 their appointment is not in

the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;

- 13.7.8 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 13.7.9 in the case of a Non-Executive Director they have failed to fulfil any training requirement established by the Board of Directors; or
- 13.7.10 they have failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors; or
- 13.7.11 in the case of a Non Executive Director the Membership Council resolves by approval of three quarters of the full Council members, following a recommendation from the Board of Directors supported by evidence, that they have failed to make an appropriate contribution to the work of the Board of Directors.

Committees and delegation

- 13.8 The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director.
- 13.9 The Board of Directors shall appoint a committee of Non-Executive Directors to monitor the exercise of the auditor's functions and perform such monitoring, reviewing and other functions as the Board of Directors shall consider appropriate.
- 13.10 The Board of Directors shall appoint an executive remuneration committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and Executive Directors.
- 13.11 The remuneration and allowances, and the other terms and conditions of office, of the Chairman and Non-Executive Directors shall be decided by the Membership Council at a general meeting. The Membership Council may take advice from independent pay advisors whose Terms of Reference will be established and ratified by the Board of Directors and the Membership Council.

Meeting of Directors

- 13.12 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least 14 days written notice of the date and place of every meeting of the Board of Directors to all Directors. Notice will also be published in local media and on the Trust's website.
- 13.13 Meetings of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 13.14 Meetings of the Board of Directors are called by the Secretary, or by the Chairman, or by four Directors including two Executive Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.
- 13.15 Seven Directors including not less than four Executive, and not less than three Non-Executive Directors shall form a quorum.
- 13.16 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 13.17 The Chairman of the Trust or, in their absence, the Vice-Chair, and in their absence one of the other Non-Executive Directors in attendance is to chair meetings of the Board of Directors.
- 13.18 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors requiring a formal decision shall be decided by a majority of votes.
- 13.18.1 In case of an equality of votes the Chairman shall have a second and casting vote.
- 13.18.2 No resolution of the Board of Directors shall be passed by a majority composed only of Executive Directors or Non-Executive Directors

- 13.19 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

Conflicts of Interest of Directors

- 13.20 Any Director who has a material interest in a matter as defined below and in Annex 3 shall declare such interest to the Board of Directors and it shall be recorded in a register of interests and the Director in question:

13.20.1 shall not be present except with the permission of the Board of Directors in any discussion of the matter, and

13.20.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

- 13.21 Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors.

- 13.22 A material interest in a matter is any interest (save for the exceptions referred to below) held by a Director or their spouse or partner in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust, including private healthcare organisations and other foundation trusts as described in Annex 3. The exceptions which shall not be treated as material interests are as follows:

13.22.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange.

Expenses

- 13.23 The remuneration and allowances for Directors are to be disclosed in the annual report.

14 Secretary

- 14.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Council Member, or the Chief Executive or the Finance Director. The Secretary shall be accountable to the Chief Executive and their functions shall include:

14.1.1 acting as Secretary to the Membership Council and the Board of Directors, and any committees;

- 14.1.2 summoning and attending all members meetings, meetings of the Membership Council and the Board of Directors, and keeping the minutes of those meetings;
 - 14.1.3 keeping the register of members and other registers and books required by this Constitution to be kept;
 - 14.1.4 having charge of the Trust's seal;
 - 14.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
 - 14.1.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made;
 - 14.1.7 providing support to the Membership Council and the Non-Executive Directors;
 - 14.1.8 overseeing elections conducted under this Constitution;
 - 14.1.9 offering advice to the Membership Council and the Board of Directors on issues of governance and corporate responsibility.
- 14.2 Minutes of every members meeting, of every meeting of the Membership Council and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be included on the agenda of the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

15 **Registers**

- 15.1 The Trust is to have:
- 15.1.1 a Register of Members showing, in respect of each Member:
 - 15.1.1.1 Name of Member
 - 15.1.1.2 the constituency to which they belong and (where the Membership Council has decided that the Membership of the Public, or Staff constituencies shall be sub-divided for election purposes) any sub-division of that constituency to which they belong;
 - 15.1.1.3 any address which they have authorised the Trust to use for the purposes of any communications.

15.1.2 a Register of Members of the Membership Council;

15.1.3 a Register of Directors;

15.1.4 a Register of Interests of Council Members;

15.1.5 a Register of Interests of the Directors.

15.2 The Secretary shall add to the Register of Members any individual who becomes a Member of the Trust or remove from the Register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution.

16 Public Documents

16.1 The following documents of the Trust are to be available for inspection by Members of the public. If the person requesting a copy or extract under this paragraph is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

16.1.1 a copy of the current Constitution;

16.1.2 a copy of the current Authorisation;

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

16.1.4 a copy of the report of any other auditor of the Trust's affairs appointed by the Membership Council;

16.1.5 a copy of the latest annual report;

16.1.6 a copy of the latest information as to its forward planning;

16.1.7 a copy of the Trust's Membership Strategy;

16.1.8 a copy of the Trust's policy for the composition of the Membership Council and the Non-Executive Directors;

16.1.9 a copy of any notice given under section 52 of the 2006 Act (Monitor's notice to failing NHS Foundation Trust).

16.2 The Register of Members shall be made available for inspection by members of the public, and will be available free of charge at all reasonable times. Article 2(b) of the Public Benefit Corporation (Register of Members) Regulations 2004 allows for members to request their details are not published as part of the Register of Members.

16.3 Any Member who requests a copy or extract from any of the above documents and registers will be provided with them free of charge.

17 **Auditors**

- 17.1 The Trust is to have an auditor and is to provide the auditor with every facility and all information, which he may reasonably require for the purposes of his functions under paragraph 23 of schedule 7 to the 2006 Act.
- 17.2 The Board of Directors shall nominate an auditor to be appointed by the Membership Council and may resolve that an auditor be appointed to review and publish a report on any other aspect of the Trust's performance. Any such auditor is to be appointed by the Membership Council.
- 17.3 A person may only be appointed as an auditor if he (or in the case of a firm of each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act. An officer of the Audit Commission may be appointed with the agreement of the Commission.
- 17.4 The Membership Council at a general meeting shall appoint or remove the Trust's auditors.
- 17.5 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 Monitor standards, procedures and techniques to be adopted.

18 **Audit Committee**

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

19 **Accounts**

- 19.1 The Trust is to keep accounts in such form as Monitor may with the approval of the Treasury direct.
- 19.2 The accounts are to be audited by the Trust's auditor.
- 19.3 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
 - 19.3.1 the accounts;
 - 19.3.2 any records relating to them; and
 - 19.3.3 any report of the auditor on them.

- 19.4 The Trust is to prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Treasury direct.
- 19.5 In preparing its annual accounts, the Trust is to comply with any directions given by Monitor with the approval of the Treasury as to:
 - 19.5.1 the methods and principles according to which the accounts are to be prepared;
 - 19.5.2 the information to be given in the accounts;
- 19.6 The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Membership council at a General Meeting.
- 19.7 The Trust shall:
 - 19.7.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
 - 19.7.2 once it has done so, send copies of those documents to Monitor.

20 **Annual reports and forward plans**

- 20.1 The Trust is to prepare annual reports and send them to Monitor.
- 20.2 The reports are to give:
 - 20.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its constituencies is representative of those eligible for such membership; and
 - 20.2.2 any other information that Monitor requires.
- 20.3 The Trust is to comply with any decision Monitor makes as to:
 - 20.3.1 the form of the reports;
 - 20.3.2 when the reports are to be sent to him;
 - 20.3.3 the periods to which the reports are to relate.
- 20.4 The Trust is to give information as to its forward planning in respect of each financial year to Monitor. The document containing this information is to be prepared by the Directors, and in preparing the document the Board of Directors shall have regard to the views of the Membership Council.

21 **Indemnity**

21.1 Members of the Membership Council and the Board of Directors and the Secretary 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 functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability for its own benefit and the benefit of members of the Membership Council and Board of Directors and the Secretary.

22 Execution of documents

22.1 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.

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

23 Dispute Resolution Procedures

23.1 Every unresolved dispute which arises out of this Constitution between the Trust and:

23.1.1 a Member; or

23.1.2 any person aggrieved who has ceased to be a Member within the six months prior to the date of the dispute; or

23.1.3 any person bringing a claim under this Constitution; or

23.1.4 an office-holder of the Trust;

is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties.

24 Amendment Of The Constitution

24.1 No amendment shall be made to this Constitution unless:

24.1.1.1 it has been approved by the Membership Council; or

24.1.2 a sub-group of the Membership Council, consisting of at least three Council Members (including at least two Elected Council Members), has judged the amendment to be minor, and the amendment has been approved by the Board of Directors; and

24.1.3 it has been approved by Monitor.

25 Mergers

25.1 The Trust may in accordance with section 56 of the 2006 Act apply to Monitor jointly with another NHS Foundation Trust or an NHS Trust for authorisation of the dissolution of the Trusts and the transfer of some or all of their property and liabilities to a new NHS Foundation Trust established under that section. Such application shall only be made after consultation with the Membership Council of the Trust by the Board of Directors. The final decision will be taken by the Board of Directors.

26 Dissolution Of The Trust

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

27. Head Office and Website

~~27.1~~ The Trust's head office for the purpose of this Constitution is at Trust Offices, Huddersfield Royal Infirmary, Acre Street, Lindley, Huddersfield, HD3 3EA, or any other address decided by the Membership Council.

~~27.2~~ The Trust will maintain a website, the address of which is www.cht.nhs.uk or any other address decided by the Membership Council.

~~27.3~~ The Trust will display its name and website on the outside of its head office and every other place at which it carries on business, and on its business letters, notices, advertisements, other publications.

28. Notices

~~28.1~~ Any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

~~28.2~~ Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

Transition Schedule

29. Membership Council

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- 29.1 If the total Membership is over 3000 on the commencement of the election process and there are over 100 members in each of the public constituencies, the Membership Council shall be elected in accordance with this Constitution save that:
- 29.1.1 Seven of the first Council Members shall hold office for 3 years; eight of the first Council Members shall hold office for 2 years; seven of the first Council Members shall hold office for 1 year.
 - 29.1.2 Election results shall be used to determine which Council Members stand for 1, 2 and 3 years.
- 29.2 If any of the public constituencies have less than 100 members, the Trust may choose not to elect Public Council Members to that constituency in the first instance. A bi-election shall be held for that constituency once membership numbers are above 100.
- 29.3 The PCT and Local Authority Council Members will be appointed on Authorisation.
- 29.4 The Partner Organisation Council Members will be appointed on Authorisation.
- 29.5 The process for elections to be held under this Transition Schedule shall be decided by the Board of Directors of the Trust in consultation with Electoral Reform Services and subject to any guidance issued by the Department of Health and any Regulations made by the Secretary of State for Health.

30 Board of Directors

- 30.1 The Chairman holding office on Authorisation will be entitled to serve out the term of office for which they were appointed or one year from that date (whichever is longer) as Chairman of the former NHS Trust, if he wishes to be appointed.
- 30.2 The Non-Executive Directors holding office on Authorisation will be entitled to serve out the term of office for which they were appointed or one year from that date (whichever is longer) as Non-Executive Directors of the former NHS Trust, if he wishes to be appointed.
- 30.3 The Chief Executive holding office on Authorisation will be entitled to serve out the term of office for which he was appointed as Chief Executive of the former NHS Trust.
- 30.4 The Executives holding office on Authorisation will be entitled to serve out the term for which they were appointed as Directors of the NHS Trust. These are:

29.4.1 The Director of Finance;

29.4.2 The Director of Service Development;

29.4.3 The Director of Personnel and Development;

29.4.4 The Director of Nursing;

29.4.5 The Medical Director;

31 Approval of Membership Strategy etc.

31.1 The first Membership Council will consider and adopt the Membership Strategy, a policy for the composition of the Membership Council, of the Non-Executive Directors, and the Trust's codes of conduct

31.2 These will be reviewed in 2007.

Constituency	Wards	Population
1	Todmorden	44,784
	Calder Valley	
	Luddendenfoot	
	Ryburn	
2	Birkby	72,502
	Deighton	
	Paddock	
	Crosland Moor	
	Newsome	
3	Dalton	63,551
	Almondbury	
	Kirkburton	
	Denby-Dale	
4	Cleckheaton	172,556
	Birstall & Birkenshaw	
	Spenborough	
	Heckmondwike	
	Batley West	
	Batley East	
	Mirfield	
	Dewsbury West	
	Dewsbury East	
	Thornhill	
5	Skircoat	53,860
	Greetland & Stainland	
	Elland	
	Rastrick	
	Brighouse	
6	Illingworth	165,481
	Nothowram & Shelf	
	Hipperholme & Lightcliffe	
	Bingley Rural	
	Thorton	
	Clayton	
	Queensbury	
	Great Horton	
	Wibsey	
	Oddsall	
	Wyke	
	Tong	
7	Mixenden	64,086
	Ovenden	
	Warley	
	Sowerby Bridge	
	St. Johns	
	Town	

8	Lindley	79,957
	Golcar	
	Colne Valley West	
	Holme Valley North	
	Holme Valley South	

Note on Constituencies

Population data and indices of deprivation have been used to formulate the eight constituencies. Constituencies are as close as possible to one eighth of the population of Calderdale and Kirklees, though attempts to reflect Local Authority boundaries and areas of similar deprivation levels mean there is some variation. Constituencies 4 and 6 are noticeably larger because persons in these constituencies mostly use services provided by other NHS Trusts. Each Constituency comprises of several electoral areas for local government elections.

/KB/CONSTITUTION-MARCH 2006

UPDATED 13.6.06

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UPDATED 20.6.06

UPDATED 31.7.06

UPDATED 12.11.07

REVIEW DATE: September 2008

Calderdale & Huddersfield NHS Foundation Trusts Election Rules

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

32. Receipt of voting documents
33. Validity of ballot paper
34. Declaration of identity but no ballot paper
35. Sealing of packets

Part 6 - Counting the votes

- stv36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates
- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- fpp54. Countermand or abandonment of poll on death of candidate

stv54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
- 59. Information about candidates for inclusion with voting documents
- 60. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64. Disqualification
- 65. Delay in postal service through industrial action or unforeseen event

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 board of governors;

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

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 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.

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination 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 board 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 – (1) 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 board of governors by paragraph 8 of Schedule 1 of the 2003 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 board 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 board 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 board 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 board 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 board 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

stv36. 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 stv44(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 stv41 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 stv42 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.

Stv39. 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).

fpp39. 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 votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

(3) A ballot paper on which a vote is marked –

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

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

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

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

- (d) unmarked or rejected because of uncertainty,

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

stv40. 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.

stv41. 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 stv44 has been complied with.

stv42. 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 stv43 below, to transfer each sub-parcel 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-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped –

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

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel 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.

stv43. 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 stv42 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 stv42 or stv44 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 stv42 or stv44 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.

stv44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule stv42 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 stv45 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 stv43 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.

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

(5) If, subject to rule stv45 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 stv42 and rule stv43.

(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.

stv45. 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.

stv46. 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 stv42(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.

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. 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 candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the board of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected–
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or

- (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

stv47. 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 [insert name] NHS Trust by section 4(4) of the 2003 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 stv39(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

fpp54. 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) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

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

(6) The returning officer is to endorse on each packet a description of –

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

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. 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.

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