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CONSTITUTION OF THE

CALDERDALE AND HUDDERSFIELD NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

Version:	2.0 Review and update including: - Expenses clarification - References to Monitor / NHS Improvement - Typographical amends 2.1 Addition of partner governor May 2019 3.0 - April 2021 14.1.5 An elected governor who completes the maximum 6 year tenure may stand for re-election after a period of 2 years has elapsed since the end of their tenure 14.3 removal of reserve register Annexe 1 - addition of Rest of England constituency 4.0 - 13 January 2022 25.4 Change to NED eligibility criteria 5.0 - July 2022 24.0 Change to the Board of Directors composition to increase the number of Non-Executive Directors to up to 7 and the number of Executive Directors to up to 7. 6.0 - April 2023 Amendments to reflect the Health and Care Act 2022, the NHS England Code of Governance for Provider Trusts (October 2022), application for membership and nomination as a governor, voting for removal of a governor. Version 7 – March 2024 Re-ordering of Annexes and removal of Standing Orders for Council of Governors and Board of Directors, non-material changes. Post meetings re-insertion of points 16.1.9, 16.1.10 and 16.1.11 re governor disqualification and removal due to version control issues. Version 8 – May 2024 An amendment to section 18.3 of the Constitution to align with the Code of Governance for NHS Provider

	Trusts which means that any governor is eligible to be lead or deputy lead governor. Version 9 – May 2025 An amendment to Appendix 2, Composition of the Council of Governors (section 1.4) to confirm the partnership organisations are identified as three governors appointed from partner organisations from the community, education, voluntary services and charity sectors and remove reference to Locala, Healthwatch and an Integrated Care System partner. The existing partner organisations will continue to be named: University of Huddersfield, South West Yorkshire Partnership NHS Foundation Trust and CHS. Version 10 – February 2026 Amended wording to confirm deputy Chair shall be appointed by Council of Governors, not Board of Directors. Other minor amendments following well-led development review
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CONSTITUTION FOR THE CALDERDALE AND HUDDERSFIELD NHS FOUNDATION TRUST

1. Definitions

1.1. Unless otherwise stated words or expressions contained in this constitution bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022.

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 one gender shall include all genders; words importing the singular shall include the plural and vice-versa.

1.5. In this constitution:

The Accounting Officer	is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
The 2006 Act	means the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
The 2012 Act	is the Health and Social Care Act 2012.
The 2022 Act	means the Health and Care Act 2022
Annual Members' Meeting	is defined in paragraph 10 of the constitution.
Appointed Governor Member	means those Governors appointed by the Appointing Organisations;
Appointing Organisations	means those organisations named in this constitution who are entitled to appoint Governors;
Areas of the Trust	the areas specified in Annexe 1;
Authorisation	means an authorisation given by NHS England

Board of Directors	means the Board of Directors as constituted in accordance with this constitution;
Code of Governance	means the NHS England Code of Governance for NHS Provider Trusts (October 2022)
Council of Governors	means the Council of Governors as constituted by this constitution and referred to as the Board of Governors/ Council of Governors in the 2006 Act;
Director	means a member of the Board of Directors
Elected Governor	means those Governors 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;
Integrated Care Board	An Integrated Care Board is a statutory organisation that brings NHS and care organisations together locally to improve population health and establish shared strategic priorities within the NHS
Integrated Care Partnership	An Integrated Care Partnership is a formal partnership of organisations working together to improve the health and care of the whole population they serve
Integrated Care System	An Integrated Care System (ICS) is a statutory partnership of organisations who plan, buy and provide health and care services in their geographical area. The organisations involved include the NHS, local authorities, voluntary and charity groups and independent care providers.
Local Authority Governor	means a Member of the Council of Governors appointed by one or more Local Authorities whose area includes the whole or part of the area of the Trust;

Member	means a Member of the Trust;
NHS England	The Health and Care Act 2022 has merged Monitor and the Trust Development Authority into NHS England and is now the Trust's regulator
Non-Executive Directors	means the Chair and Non-Executives on the Board of Directors;
NHS Trust	means Calderdale and Huddersfield NHS Foundation Trust;
Other Partnership Governor	means a Member of the Council of Governors 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;
Public Governor	means a Member of the Council of Governors elected by the Members of the public constituency;
Secretary	means the Board 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 Governor	means a Member of the Council of Governors appointed by the Members of one of the classes of the constituency of the staff membership;
The Trust	means Calderdale & Huddersfield NHS Foundation Trust.

2. Name and status

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

3. Head Office and Website

3.1. The Trust’s head office for the purpose of this Constitution is at Trust Offices, Acre Mills, Huddersfield Royal Infirmary, Acre Street, Lindley, Huddersfield, HD3 3EB..

3.2. The Trust will maintain a website, the address of which is www.cht.nhs.uk.

4. Purpose

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

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

4.3. The Trust may provide goods and services for any purposes related to:-

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

4.3.2. the promotion and protection of public health.

4.4. The Trust may also carry out activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry out its principal purpose.

4.5. The Trust should be led by an effective and diverse Board that is innovative and flexible and whose role it is to promote the long term sustainability of the Trust as part of the ICS and wider healthcare system in England, generating value for members, patients and the public.

5. Powers

5.1. The powers of the Trust are set out in the 2006 Act.

5.2. All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

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

5.4. The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.

5.5. In particular it may:

5.5.1. acquire and dispose of property;
5.5.2. enter into contracts;
5.5.3. 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);
5.5.4. employ staff.

5.6. 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).

5.7. The Trust may borrow money for the purposes of or in connection with its functions, subject to the limit published by NHS England from time to time.

5.8. 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:
5.8.1. forming, or participating in forming bodies corporate;
5.8.2. otherwise acquiring membership of bodies corporate.

5.9. 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. Membership and Constituencies

6.1. The Trust shall have members, each of whom shall be a member of one of the following constituencies:
6.1.1. A public constituency
6.1.2. A staff constituency

7. Members

7.1. 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.

7.2. Subject to this Constitution, Membership is open to any individual who:
7.2.1. is over 16 years of age;
7.2.2. is entitled under this Constitution to be a Member of the public constituencies, or staff constituency; and
7.2.3. completes or has completed a membership application form in whatever form the Council of Governors approves or specifies.

Public Membership

7.3. There are eight public constituencies corresponding to the areas served by the Trust as set out in Annexe 1. Members of each constituency are to be individuals:
- 7.3.1. who live in the relevant area of the Trust;
- 7.3.2. who are not eligible to be Members of the staff constituency; and
- 7.3.3. who are not Members of another public constituency.

7.4. The minimum number of members of each of the public constituencies is to be 50.

Staff Membership

7.5. There is one staff constituency for staff membership. It is to divide into four classes as follows with five seats:
- 7.5.1. doctors or dentists (x1);
- 7.5.2. Allied Health Professionals, Health Care Scientists or Pharmacists (x1);
- 7.5.3. Management, administration and clerical (x1);
- 7.5.4. Nurses and midwives (x2)
- 7.5.5. Ancillary staff (x1).

7.6. Members of the staff constituency are to be individuals:
- 7.6.1. who are employed under a contract of employment by the Trust and who either:
  - 7.6.1.1. 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
  - 7.6.1.2. who have been continuously employed by the Trust for at least 12 months; or
- 7.6.2. who are not so employed but who nevertheless exercise functions for the purposes of the Trust and have exercised the functions for the purposes of the Trust for at least 12 months.

7.7. Individuals entitled to be Members of the staff constituency are not eligible to be Members of the public constituency.

7.8. The Secretary is to decide to which class a staff member belongs.

7.9. The minimum number of members in each class of the staff membership is to be 20.

Automatic membership by default – Staff

7.10. An individual who is:
- 7.10.1. Eligible to become a member of the Staff Constituency, and
- 7.10.2. Invited by the Trust to become a member of the Staff Constituency,

Shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he / she informs the Trust that he / she does not wish to do so.

8. Disqualification from membership

8.1 When applying to be a member, an online literature review will be undertaken to check that there are no known concerns regarding an individual that would suggest the person would act in a manner detrimental to the interests of the Trust. This decision as to whether an individual is likely to act in a way detrimental to the interests of the Trust will be made by the Council of Governors (as per section 8.2 of the Trust Constitution).

8.2 A person may not be a member of the Trust if, in the opinion of the Council of Governors, there are reasonable grounds to believe that they are likely to act in a way detrimental to the interests of the Trust.

9. Termination of membership

9.1. A Member shall cease to be a Member if:

9.1.1. they resign by notice to the Company Secretary;
9.1.2. they die;
9.1.3. they are disqualified from Membership by paragraph 7 and 8;
9.1.4. they cease to be entitled under this Constitution to be a Member of any of the public constituencies or the staff constituency.

9.2. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annexe 3 – Further Provisions.

10. Annual Members' Meetings

10.1. The Trust is to hold an annual meeting of its members. The Annual Members Meeting shall be open to members of the public.

10.2. Further provisions about the Annual Members' Meeting are set out in Annexe 4 – Annual Members' Meeting.

11. Council of Governors - composition

11.1. The Trust is to have a Council of Governors which shall comprise both elected and appointed governors.

11.2. The composition of the Council of Governors is specified in Appendix 2 – Composition of the Council of Governors.

11.3. The composition of the Council of Governors, subject to the 2006 Act, shall seek to ensure that:

11.3.1. the interests of the community served by the Trust are appropriately represented;

11.3.2. 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.

12. Council of Governors – elections of Governors

12.1. Public Governors are to be elected by Members of the public constituencies, and Staff Governors by Members of the staff constituency.

12.2. 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, set out in Annexe 2 – Election Rules.

13. Council of Governors - appointed Governors

13.1. Local Authority Governors

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.

13.2. Partnership Governors

The Company Secretary, having consulted each partnership organisation is to adopt a process for agreeing the appointment of Partnership Governors with those partnership organisations.

14. Council of Governors - tenure for Governors

14.1. Elected Governors:

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

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

14.1.3. may not hold office for more than six consecutive years or two terms;

14.1.4. 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.

14.2. An elected governor who completes the maximum 6 year tenure may not stand for re-election to ensure that they retain the objectivity and independence required to fulfil their roles.

Appointed Governors:

14.2.1. shall hold office for a period of 3 years commencing immediately after the annual members meeting at which their appointment is announced;
14.2.2. subject to the next sub-paragraph are eligible for re-appointment after the end of that period;
14.2.3. may not hold office for longer than 6 consecutive years;
14.2.4. shall cease to hold office if the Appointing Organisation terminates their appointment.
14.2.5. 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.

15. Council of Governors - vacancies amongst Governors

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

15.2. Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.

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

15.3.1. to call an election within three months to fill the seat for the remainder of that term of office, or
15.3.2. where a vacancy arises within 6 months to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office to fill the seat until the next annual election, at which time the seat will become vacant and subject to election for any unexpired period of the term of office.
15.3.3. If the vacancy arises during the last 6 months of office, the office will remain vacant until it is filled at the next scheduled election term.

16. Council of Governors – disqualification and removal

16.1. A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
16.1.1. they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
16.1.2. they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
16.1.3. they have within the preceding five years, been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them.

16.1.4. they are a Director or Company Secretary of this Trust, a Director of another NHS Trust or a Governor or Non-Executive Director of another NHS Foundation Trust;
16.1.5. they are under 16 years of age;
16.1.6. they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
16.1.7. their behaviour does not meet the Nolan principles / Standards of Public Life
16.1.8. they are a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
16.1.9. They have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part 11 of that Act, and have not subsequently had their name included in such a list:
16.1.10. They resign;
16.1.11. They die.

17. Council of Governors - termination of office and removal of Governors

17.1. A person holding office as a Governor shall immediately cease to do so if:
17.1.1. they resign by notice in writing to the Secretary;
17.1.2. they fail to attend two meetings in any 12 month period, unless the other Governors are satisfied that:
17.1.3. the absences were due to reasonable causes; and
17.1.4. they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
17.1.5. in the case of an elected Governor, they cease to be a member of the constituency by whom they were elected;
17.1.6. in the case of an appointed Governor, the appointing organisation terminates the appointment;
17.1.7. they have failed to undertake any training which the Council of Governors requires all Governors to undertake;
17.1.8. they have failed to sign and deliver to the Secretary a statement in the form required by the Council of Governors confirming acceptance of the code of conduct for Governors;
17.1.9. they refuse to sign a declaration in the form specified by the Council of Governors that they are a member of a specific public constituency and are not prevented from being a member of the Council of Governors. This does not apply to staff members;
17.1.10. they are removed from the Council of Governors under the following provisions.

17.2. A Governor may be removed from the Council of Governors by a resolution approved by a 66% of the remaining Governors Members

present and voting at a general meeting of the Council of Governors on the grounds that:

17.2.1. they have committed a serious breach of the code of conduct; or

17.2.2. they have acted in a manner detrimental to the interests of the Trust; and

17.2.3. the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.

Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties should be asked to consider the evidence and determine whether or not the proposed removal is reasonable.

18. Council of Governors – duties of Governors

18.1. The general duties of the Council of Governors are:

18.1.1. to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors;

18.1.2. to represent the interests of the members of the Trust as a whole and the interests of the public

18.1.3. to form a rounded view of the interests of the "public at large" to support collaboration and system working; this includes the population of the West Yorkshire ICS ;

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

18.3. The Council of Governors shall appoint at a general meeting one of its governors to be Lead Governor of the Council of Governors.

18.4. The specific roles and responsibilities of the Council of Governors are set out in Annexe 5 – Roles and Responsibilities.

19. Council of Governors – meetings of the Council of Governors

19.1. The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed with the provisions of paragraph 26 below) or, in the Chair's absence the Deputy Chair (appointed in accordance with the provisions of paragraph 26 below), shall preside at meetings of the Council of Governors.

19.2. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

19.3. For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties, the Council of Governors may require one or more of the Directors to attend a meeting.

20. Council of Governors – standing orders

20.1 The Council of Governors shall adopt standing orders for the practice and procedure of the Council of Governors. which set out detailed operational provisions, including quoracy for meetings, and shall be read in conjunction with this Constitution.

20.1. The Standing Orders shall specify the arrangements for excluding governors from discussion or consideration of any contract, proposed contract or other matter as appropriate.

21. Council of Governors – conflicts of interest

21.1. If a Council of Governors has a pecuniary, personal or family interest, whether that interest is actual or potential, or whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the councillor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it.

21.2. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or the consideration of the matter in respect of which an interest has been disclosed. This should be in line with the NHS England guidance on Conflicts of Interest.

21.3. The Standing Orders for the Council of Governors are available on the Trust website.

22. Council of Governors - expenses

22.1. The Trust may pay travelling and other expenses to Governors at such rates as it decides. These are set out in the Standing Orders for the Council of Governors at Annexe 7 and are to be disclosed in the annual report.

22.2. Expenses claims must be submitted in line with the Trust's expenses policy.

22.3. Governors are not to receive remuneration.

23. Board of Directors – general duty

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

23.2. 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.

23.3. The Trust will comply with the statutory requirements of the Code of Governance for NHS Provider Trusts issued by NHS England. Section A of this code details the principles and provisions relating to Board leadership and purpose.

24. Board of Directors – composition

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

24.2. The Board of Directors is to comprise:
- 24.2.1. a Non-Executive Chair;
- 24.2.2. up to 7 other Non-Executive Directors;
- 24.2.3. up to 7 Executive Directors.

24.3. One of the Executive Directors shall be the Chief Executive who shall be the Accounting Officer.

24.4. One of the Executive Directors shall be the Finance Director.

24.5. One of the Executive Directors is to be a registered medical practitioner.

24.6. One of the Executive Directors is to be a registered nurse or a registered midwife.

25. Board of Directors – appointment and removal of the Chair, Deputy Chair and other Non-Executive Directors

25.1. The Council of Governors shall appoint a Chair of the Trust.

25.2. The Council of Governors will appoint one Non-Executive Director to be Deputy Chair of the Trust. This individual may, through agreement with the Chair, take on the role of Senior Independent Non-Executive Director (SINED), however these can be separate appointments (one NED as Deputy Chair and a different NED as the SINED). Standing Orders of the Council of Governors state that the Council of Governors shall ratify these appointments, at a general meeting.

25.3. The Chair and Deputy Chair will be the Chair and Deputy Chair of both the Council of Governors and the Board of Directors.

25.4. To be eligible for appointment as a Non-Executive Director of the Trust the candidate must demonstrate a commitment to the Trust are and the communities it serves and live within reasonable travelling distance.

25.5. The Council of Governors at a general meeting shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.

25.6. Non-Executive Directors are to be appointed by the Council of Governors using the following procedure:

25.6.1. The Board of Directors will work with the external organisations recognised as expert in non-executive appointments to identify the skills and experience required

25.6.2. Appropriate candidates will be identified by the Board of Directors who meet the skills and experience required

25.6.3. A sub-committee of the Council of Governors (not exceeding four persons) including the Chair, will interview a short list of candidates and recommend a candidate for appointment by the Council of Governors.

25.7. Removal of the Chair or other Non-Executive Director shall require the approval of three-quarters of the Council of Governors.

26. Board of Directors – Senior Independent Director

26.1. The Board of Directors will appoint one Non-Executive Director to be the Senior Independent Director.

26.2. The Trust has a detailed job description for the Senior Independent Director. The main duties include:

26.2.1. Being available to members of the Foundation Trust and to the Council of Governors if they have concerns that contact through the usual channels of Chair, Chief Executive, Finance Director and Company Secretary has failed to resolve or where it would be inappropriate to use such channels. In addition to the duties described here the Senior Independent Director has the same duties as the other Non-Executive Directors.

26.2.2. A key role in supporting the Chair in leading the Board of Directors and acting as a sounding board and source of advice for the Chair. The Senior Independent Director also has a role in supporting the Chair as Chair of the Council of Governors.

26.2.3. While the Council of Governors determines the process for the annual appraisal of the chair, the senior independent director is responsible for carrying out the appraisal of the chair on its behalf.

26.2.4. The Senior Independent Director should maintain regular contact with the Governors and attend meetings of the Council of Governors to obtain a clear understanding of Council of Governors views on the key strategic performance issues facing the Foundation Trust. The Senior Independent Director should also be available to Governors as a source of advice and guidance in circumstances where it would not be appropriate to

involve the chair; chair's appraisal or setting the chair's objectives for example.

26.2.5. In rare cases where there are concerns about the performance of the chair the Senior Independent Director should provide support and guidance to the Council of Governors in seeking to resolve concerns or in the absence of a resolution in taking formal action. Where the foundation Trust has appointed a lead Governor the Senior Independent Director should liaise with the Lead Governor in such circumstances.

26.2.6. In circumstances where the Board is undergoing a period of stress the Senior Independent Director has a vital role in intervening to resolve issues of concern. These might include unresolved concerns on the part of the Council of Governors regarding the chair's performance; where the relationship between the chair and the chief executive is either too close or not sufficiently harmonious, where the Foundation Trust's strategy is not supported by the whole Board or where key decisions are being made without reference to the Board or where succession planning is being ignored.

26.2.7. In the circumstances outlined above, the Senior Independent Director will work with the chair, other directors and/or Governors, to resolve significant issues.

27. Board of Directors – tenure of Non-Executive Directors

27.1. The Chair and the Non-Executive Directors are to be appointed for a period of three years.

27.2. The Chair and the Non-Executive Directors will serve for a maximum of two terms.

27.3. In exceptional circumstances a Non-Executive Director (including the Chair) may serve longer than six years (two three-year terms). Any subsequent appointment will be subject to annual re-appointment. Reviews will take into account the need to progressively refresh the Board whilst ensuring its stability. Provisions regarding the independence of the Non-Executive Director will be strictly observed.

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

28.1. The Non-Executive Directors shall appoint or remove the Chief Executive.

28.2. The appointment of the Chief Executive requires the approval of the Council of Governors.

28.3. A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

29. Board of Directors – disqualification

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

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

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

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

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

29.1.5. they are a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

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

29.1.7. in the case of a Non-Executive Director they have failed to fulfil any training requirement established by the Board of Directors; or

29.1.8. 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 and fit and proper persons test

30. Board of Directors - meetings

30.1. 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 Chair 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.

30.2. Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.

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

31. Board of Directors – standing orders

31.1. The Board of Directors shall adopt standing orders for the practice and procedure of the Board of Directors which set out detailed operational provisions, including quoracy for meetings, and shall be read in conjunction with this Constitution.

31.2. The Standing Orders shall specify the arrangements for excluding Directors from discussion or consideration of any contract, proposed contract or other matter, as appropriate.

32. Board of Directors – conflicts of interest of directors

32.1. The duties that a director of the Trust has by virtue of being a director include in particular –

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

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

32.2. The duty referred to in sub-paragraph 31.1.1 is not infringed if –

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

32.2.2. The matter has been authorized in accordance with the constitution.

32.3. The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

32.4. In sub-paragraph 31.1.2, “third party” means a person other than –

32.4.1. The Trust, or

32.4.2. A person acting on its behalf.

32.5. If a director of the Trust has in any way a direct of indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.

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

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

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

32.9. A director need not declare an interest –

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

32.9.2. If, or to the extent that, the directors are already aware of it;
32.9.3. If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
32.9.3.1. By a meeting of the Board of Directors, or
32.9.3.2. By a committee of the directors appointed for the purpose under the constitution.

32.10. Any Director who has a material interest in a matter as defined below shall declare such interest to the Board of Directors and it shall be recorded in a register of interests and the Director in question:
32.10.1. shall not be present except with the permission of the Board of Directors in any discussion of the matter, and
32.10.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

32.11. 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.

32.12. 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.

32.13. The exceptions which shall not be treated as material interests are as follows:
32.13.1. shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange.

33. Board of Directors – remuneration and expenses

33.1. 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.

33.2. The remuneration and allowances, and the other terms and conditions of office, of the Chair and Non-Executive Directors shall be decided by the Council of Governors at a general meeting. The Council of Governors may take advice from independent pay advisors whose Terms of Reference will be established and ratified by the Board of Directors and the Council of Governors.

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

34. Secretary

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

- 34.1.1. acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
- 34.1.2. summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
- 34.1.3. keeping the register of members and other registers and books required by this Constitution to be kept;
- 34.1.4. having charge of the Trust's seal;
- 34.1.5. publishing to members in an appropriate form information which they should have about the Trust's affairs;
- 34.1.6. preparing and sending to NHS England and any other statutory body all returns which are required to be made;
- 34.1.7. providing support to the Council of Governors and the Non-Executive Directors;
- 34.1.8. overseeing elections conducted under this Constitution;
- 34.1.9. offering advice to the Council of Governors and the Board of Directors on issues of governance and corporate responsibility.

34.2. Minutes of every members meeting, of every meeting of the Council of Governors 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.

35. Registers

35.1. The Trust is to have:

- 35.1.1. a Register of Members showing, in respect of each Member, the name of the member, the constituency to which they belong and, (where the Council of Governors 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;
- 35.1.2. a Register of Members of the Council of Governors;
- 35.1.3. a Register of Directors;
- 35.1.4. a Register of Interests of Governors
- 35.1.5. a Register of Interests of the Directors.

35.2. 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.

36. Documents available for public inspection

36.1. 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.

36.1.1. a copy of the current Constitution;
36.1.2. a copy of the current Authorisation;
36.1.3. a copy of the latest annual accounts and of any report of the auditor on them;
36.1.4. a copy of the report of any other auditor of the Trust's affairs appointed by the Council of Governors;
36.1.5. a copy of the latest annual report;
36.1.6. a copy of the latest information as to its forward planning;
36.1.7. a copy of the Trust's Membership Strategy;
36.1.8. a copy of any notice given under section 52 of the 2006 Act (NHS England's notice to failing NHS Foundation Trust).
36.1.9. The register of Members shall be made available for inspection by members of the public. 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.

37. Auditors

37.1. The Trust is to have an auditor and is to provide the auditor.

37.2. The Council of Governors at a general meeting shall appoint or remove the Trust's auditors.

37.3. 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 NHS England standards, procedures and techniques to be adopted.

38. Audit and Risk Committee

38.1. The Trust shall establish a committee of Non-Executive Directors as an Audit and Risk Committee to perform such monitoring, reviewing and other functions as are appropriate.

39. Accounts

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

39.2. NHS England may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.

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

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

39.5. The following documents will be made available to the Auditor General for examination at their request:
39.5.1. the accounts;
39.5.2. any records relating to them; and
39.5.3. any report of the auditor on them.

39.6. The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a General Meeting.

39.7. The Trust shall:
39.7.1. lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
39.7.2. once it has done so, send copies of those documents to NHS England.

40. Annual report, forward plans and non-NHS work

40.1. The Trust is to prepare an Annual Report and send it to NHS England.

40.2. The Trust is to give information as to its forward planning in respect of each financial year to NHS England. 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 Council of Governors.

40.3. Each forward plan must include information about:-
40.3.1. the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
40.3.2. the income it expects to receive from doing so.

40.4. Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 39.3.1 the Council of Governors must:-
40.4.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions and
40.4.2. notify the directors of the Trust of its determination.

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

41. Indemnity

41.1. Members of the Council of Governors 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 Council of Governors and Board of Directors and the Secretary.

42. Seal

42.1. The Trust shall have a seal.

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

43. Dispute Resolution Procedures

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

43.1.1. a Member; or

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

43.1.3. any person bringing a claim under this Constitution; or

43.1.4. 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.

44. Amendment of the constitution

44.1. The Trust may make amendments of its Constitution only if:-

44.1.1. More than half of the members of the Council of Governors of the Trust voting approve the amendments; and

44.1.2. More than half of the members of the Board of Directors with voting rights approve the amendments.

44.2. Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

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

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

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

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

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

45. Mergers etc. and significant transactions

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

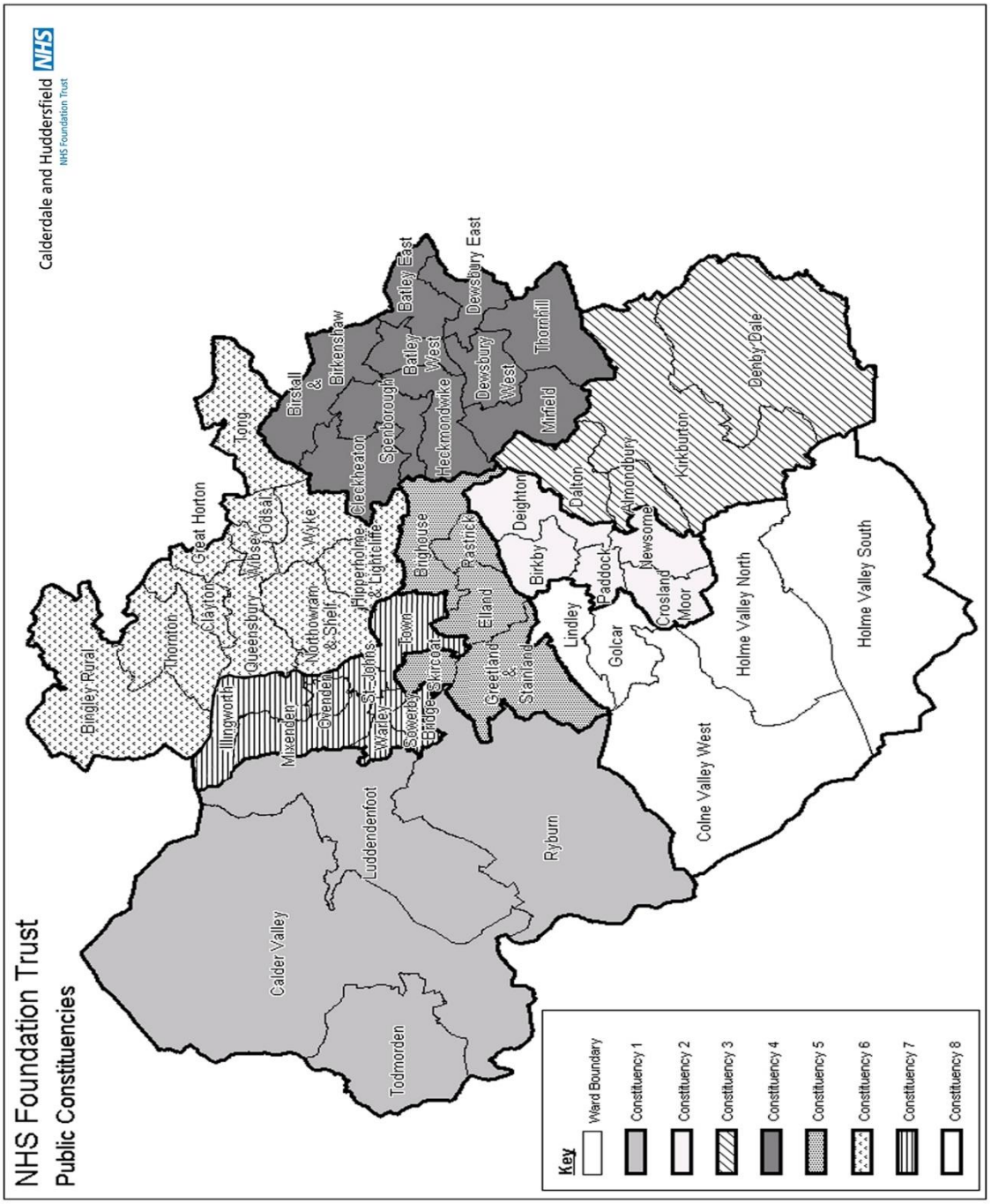
45.2. The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

45.3. The constitution does not contain any descriptions of the term ‘significant transaction’ for the purposes of section 51A of the 2006 Act (Significant Transactions).

46. Dissolution of the Trust

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

APPENDIX 1 **PUBLIC CONSTITUENCIES** (See Map below and Rest of England)



Constituency	Wards	Population	Number of Governors to be elected
1	Todmorden	37,487	2
	Calder Valley		
	Luddendenfoot		

Constituency	Wards	Population	Number of Governors to be elected
	Ryburn		
2	Birkby	62,501	2
	Deighton		
	Paddock		
	Crosland Moor		
	Newsome		
3	Dalton	56,161	2
	Almondbury		
	Kirkburton		
	Denby-Dale		
4	Cleckheaton	144,794	2
	Birstall & Birkenshaw		
	Spenborough		
	Heckmondwike		
	Batley West		
	Batley East		
	Mirfield		
	Dewsbury West		
	Dewsbury East		
	Thornhill		
5	Skircoat	47,727	2
	Greetland & Stainland		
	Elland		
	Rastrick		
	Brighouse		
6	Northowram & Shelf	150,326	2
	Hipperholme & Lightcliffe		
	Bingley Rural		

Constituency	Wards	Population	Number of Governors to be elected
	Thornton		
	Clayton		
	Queensbury		
	Great Horton		
	Wibsey		
	Odsall		
	Wyke		
	Tong		
7	Illingworth & Mixenden	63,407	2
	Ovenden		
	Warley		
	Sowerby Bridge		
	St Johns		
	Town		
8	Lindley	73,412	2
	Golcar		
	Colne Valley West		
	Holme Valley North		
	Holme Valley South		
9	**Rest of England** - any other electoral area in England with the exception of the above		**2**

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.

APPENDIX 2 COMPOSITION OF THE COUNCIL OF GOVERNORS

(from paragraph 12.2)

1. The Council of Governors of the Trust is to comprise:
   1.1. up to 18 Public Governors from 9 public constituencies (2 members from each constituency) set out in Annexe 1

   1.2. up to six Staff Governors from 1 Staff Constituency from the following classes:
      1.2.1. doctors and dentists (1 member);
      1.2.2. Allied Health Professionals, Health Care Scientists and Pharmacists (1 member);
      1.2.3. Management, Administration and Clerical (1 Member);
      1.2.4. Ancillary Staff (1 Member);
      1.2.5. Nurses and Midwives (up to 2 members);

   1.3. Two Local Authority Governors, one to be appointed by each of: Calderdale Metropolitan Borough Council and Kirklees Metropolitan Council;

   1.4. Up to six Governors appointed by partnership organisations. The partnership organisations shall appoint a governor to represent their organisation on the Council of Governors. The partnership organisations are identified as:
      - Huddersfield University,
      - South West Yorkshire Partnership NHS Foundation Trust
      - Calderdale Huddersfield Solutions (CHS) Limited
      - Three governors appointed by partner organisations from the community, education, voluntary services and charity sectors.

APPENDIX 3 ROLES AND RESPONSIBILITIES OF GOVERNORS

(from Your Statutory Duties – A reference guide for NHS foundation trust governors / Addendum to your statutory duties 2022)) NHS England » Addendum to your statutory duties – reference guide for NHS foundation trust governors

1. The roles and responsibilities of the Governors are:
   - 1.1. at a general meeting, to appoint or remove the Chair and the other Non-Executive Directors;
   - 1.2. at a general meeting, to approve an appointment (by the Non-Executive Directors) of the Chief Executive;
   - 1.3. at a general meeting, to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
   - 1.4. at a general meeting, to appoint or remove the Trust's auditor;
   - 1.5. at a general meeting, to be presented with the annual accounts, any report of the auditor on them and the annual report;
   - 1.6. 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;
   - 1.7. hold Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors;
   - 1.8. represent the interests of the members of the Trust as a whole and the interests of the public at large.
   - 1.9. 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;
   - 1.10. to approve "significant transactions";
   - 1.11. to approve an application by the Trust to enter into a merger, acquisition, separation or dissolution;
   - 1.12. to respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;
   - 1.13. to approve amendments to the Trust's Constitution
   - 1.14. Decide whether the Trust's non-NHS work would significantly interfere with its principal purpose, which is to provide goods and services for the health service in England, or performing its other functions;
   - 1.15. to undertake such functions as the Board of Directors shall from time to time request;
   - 1.16. to prepare and from time to time to review the Trust's Membership Strategy, its policy for the composition of the Council of Governors and of the Non-Executive Directors.

2. If governors are acting outside of the context of a Council of Governors meeting they do so solely as individuals, i.e. outside their statutory role as a governor.

3. 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 Council of Governors are appointed or any vacancy on the Council of Governors.

APPENDIX 4 FURTHER PROVISIONS – MEMBERSHIP

(From paragraph 9.2 of the Constitution)

Disqualification or Removal from membership

An individual may not become or continue as a member of the Trust (and the register will be amended accordingly) if in the last five years that person has perpetrated a serious incident of violence towards any facilities of the Trust or against any of the Trust's employees or registered volunteers, staff contracted to provide a service for the Trust , in association with their employment with the Trust or the Trust's patients or visitors as defined in the Trust Policy " Management and Prevention of Violence and Aggression Behaviour Policy" for the care of Individuals who are Violent or Aggressive" or any successor policy. Notwithstanding anything contained in this Constitution, no person who ceases to be a member of the Trust shall be re-admitted to membership except by a decision of the Board of Directors.

Termination of Membership

1. A Member may be expelled by a resolution approved by not less than 66% of the full Council of Governors present and voting at a meeting of the Council of Governors – this may be either a public or an extra ordinary meeting as appropriate to the timeframe. The following procedure is to be adopted.

2. Any Member may complain to the Company Secretary that another Member has acted in a way detrimental to the interests of the Trust.

3. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each Member's point of view is heard and may either:

   3.1. dismiss the complaint and take no further action; or
   3.2. arrange for a resolution to expel the Member complained of to be considered at either a public or extra-ordinary meeting of the Council of Governors.

4. If a resolution to expel a Member is to be considered at either a public or extra-ordinary meeting of the Council of Governors, details of the complaint must be sent to the Member complained of not less than one week before the meeting with an invitation to answer the complaint and attend the meeting.

5. At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.

6. If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

7. A person expelled from Membership will cease to be a Member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.

8. No person who has been expelled from Membership is to be re-admitted except by a resolution carried by the votes of 66% of the Council of Governors present and voting at a general meeting.

APPENDIX 5 ANNUAL MEMBERS' MEETING

(From paragraph 10.2)

1. All Members meetings, other than annual meetings, are called special members meetings.

2. Members' meetings are open to all members of the Trust, members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors, but not to members of the public. The Council of Governors 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.

3. All Members meetings are to be convened by the Secretary by order of the Chair of the Council of Governors or upon a resolution of the Board of Directors.

4. The Council of Governors may decide where a members' meeting is to be held and may also for the benefit of Members:

   4.1. arrange for the annual members' meeting to be held in different venues each year;
   4.2. make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors 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.

5. At the Annual Members' Meeting the Council of Governors shall present to the Members:
   5.1. the annual accounts;
   5.2. any report of the auditor;
   5.3. any report of any other auditor of the Trust's affairs;
   5.4. forward planning information for the next financial year;
   5.5. 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;
   5.6. the progress of the Membership Strategy;
   5.7. any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors.
   5.8. the results of the election and appointment of Council of Governors Members will be announced.

6. Notice of a Members' meeting is to be given:
   6.1. by notice on the Trust's website at least 14 clear days before the date of the meeting
   6.2. by notice emailed to all those members for whom we hold an email address
   6.3. included within the Trust's members newsletter
   6.4. be given to the Council of Governors and the Board of Directors, and to the auditors;

7. The notice of the member's meeting must:
   7.1. state whether the meeting is an annual or special members' meeting;
   7.2. give the time, date and place of the meeting; and
   7.3. indicate the business to be dealt with at the meeting.

8. It is the responsibility of the Council of Governors, the Company Chair of the meeting and the Secretary to ensure that at any members meeting:
   8.1. the issues to be decided are clearly explained;
   8.2. sufficient information is provided to members to enable rational discussion to take place;
   8.3. where appropriate, experts in relevant fields or representatives of special interest groups are invited to address the meeting.

9. The Chair of the Trust or, in their absence, the Deputy-Chair or, in their absence, the Lead Governor is to chair Council of Governor meetings.

10. 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. 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 Council of Governors, and every member is to have one vote. In case of an equality of votes the Chair shall decide the outcome.

12. Unless a poll is demanded, the result of any vote will be declared by the Chair and recorded in the minutes. The minutes will be conclusive evidence of the result of the vote.

13. A poll may be directed by the Chair 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.

ANNEX 6 ELECTION RULES

Part 1 Interpretation
1. Interpretation

Part 2 Timetable
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
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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination 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

Action to be taken before the poll
21. List of eligible voters
22. Notice of poll
23. Issue of voting information by returning officer
24. The covering envelope
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The poll
26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost voting information
30. Issue of replacement voting information
31. Procedure for remote voting by internet
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Part 1 Interpretation

1. Interpretation

1.1 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 vacancy among one or more posts on the council of governors;
"the regulator" means the Independent Regulator for NHS foundation Trusts; and
"the 2006 Act" means the National Health Service Act 2006
"e-voting" means voting using either the internet, telephone or text message;
"internet voting system" means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;
"method of polling" means voting either by post, internet, text message or telephone
"the telephone voting system" means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;
"the text message voting system" means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;
"voter ID number" means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting.

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

Part 2 Timetable

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

Proceeding	Time
Publication of notice of election	**Not later than the fortieth day before the day of the close of the poll.**
Final day for delivery of nomination 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 the 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.**

Computation of time

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

(c) a day appointed for public thanksgiving or mourning,
shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

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

Part 3 Returning Officer

4.1 Subject to rule 66, the returning officer for an election is to be appointed by the corporation.
4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff
5.1 Subject to rule 66, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure
6.1 The corporation is to pay the returning officer:
(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
(b) such remuneration and other expenses as the corporation may determine.

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

Part 4 Stages

8. Notice of election
8.1 The returning officer is to publish a notice of the election stating:
(a) the constituency, or class within a constituency, for which the election is being held,
(b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
(c) the details of any nomination committee that has been established by the corporation,
(d) the address and times at which nomination 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
(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates
9.1 Each candidate must nominate themselves on a single nomination paper.

9.2 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 and it can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 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

11.1 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

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

13. Signature of candidate

13.1 The nomination paper must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
(a) they wish to stand as a candidate,
(b) their declaration of interests as required under rule 11, is true and correct, and
(c) their declaration of eligibility, as required under rule 12, is true and correct.

14. Decisions as to the validity of nomination

14.1 Any member who chooses to nominate themselves for the role of governor must meet the Standards of Public Life (Nolan Principles) and sign a declaration at the point of nomination to confirm that they meet these principles of public life.

An online literature review will be undertaken of all members who wish to nominate themselves as a governor. Where this identifies any issues in relation to an individual meeting the standards of public life and / or acting in a way that is detrimental to the interests of the Trust, these concerns regarding a potential nomination will be notified to the Chair, Company Secretary and lead governor. If a recommendation is made that a nomination should not proceed then an extra-ordinary meeting of the Council of Governors should take place to consider the recommendation. The individual/member will be notified of the outcome of the Council of Governors. Consideration should also be given to formal removal of the member in question – see section 8.

14.2 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.

14.3 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.

14.4 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.

14.5 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.

14.6 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

15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

15.2 The statement must show:
(a) the name, contact address, 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.

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

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

16.1 The corporation is to make the statement of the candidates and the nomination papers supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
16.2 If a person requests a copy or extract of the statement of candidates or their nomination papers, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

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

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

Part 5 Contested elections

19. Poll to be taken by ballot

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

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

19.3 The corporation may decide if eligible voters, within a constituency, or class within a constituency, may, subject to rule 19.4, cast their vote by any combination of the methods of polling.

19.4 The corporation may decide if eligible voters, within a constituency or class within a constituency, for whom an e-mail mailing address is included in the list of eligible voters may only cast their votes by, one or more, e-voting methods of polling.

19.5 If the corporation decides to use an e-voting method of polling then they and the returning officer must satisfy themselves that:
(a) if internet voting is being used, the internet voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the internet voting record of any voter who chooses to cast their vote using the internet voting system.
(b) if telephone voting is being used, the telephone voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the telephone voting record of any voter who choose to cast their vote using the telephone voting system.
(c) if text message voting is being used, the text message voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the text voting record of any voter who choose to cast their vote using the text message voting system.

20. The ballot paper

20.1 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.

20.2 Every ballot paper must specify:
(a) the name of the corporation,
(b) the constituency, or class within a constituency, for which the election is being held,
(c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

(d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
(e) instructions on how to vote by all available methods of polling, including the relevant voters and voter ID number if e-voting is a method of polling,
(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
(g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

Action to be taken before the poll

21. List of eligible voters
21.1 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.

21.2 The list is to include, for each member, a postal mailing address and if available an e-mail address, where their voting information may be sent.

21.3 The corporation may decide if the voting information is to be sent only by e-mail to those members, in a particular constituency or class within a constituency, for whom an e-mail address is included in the list of eligible voters.

22. Notice of poll
22.1 The returning officer is to publish a notice of the poll stating:
(a) the name of the corporation,
(b) the constituency, or class within a constituency, for which the election is being held,
(c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
(d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
(e) the methods of polling by which votes may be cast at the election by a constituency or class within a constituency as determined by the corporation in rule 19 (3).
(f) the address for return of the ballot papers, and the date and time of the close of the poll,
(g) the uniform resource locator (url) where, if internet voting is being used, the polling website is located.
(h) the telephone number where, if telephone voting is being used, the telephone voting facility is located,
(i) the telephone number or telephone short code where, if text message voting is being used, the text message voting facility is located,
(j) the address and final dates for applications for replacement voting information, and
(k) the contact details of the returning officer.

23. Issue of voting information by returning officer
23.1 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 voting information:

(a) by post to each member of the corporation named in the list of eligible voters and on the basis of rule 21 able to cast their vote by post:
(i) a ballot paper
(ii) information about each candidate standing for election, pursuant to rule 61 of these rules,
(iii) a covering envelope

(b) by e-mail or by post, to each member of the corporation named in the list of eligible voters and on the basis of rule 19.4 able to cast their vote only by an e-voting method of polling:
(i) instructions on how to vote
(ii) the eligible voters voter ID number
(iii) information about each candidate standing for election, pursuant to rule 61 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate.
(iv) contact details of the returning officer.

23.2 The documents are to be sent to the mailing address or e-mail address for each member, as specified in the list of eligible voters.

24. The covering envelope
24.1 The covering envelope is to have:
(a) the address for return of the ballot paper printed on it, and
(b) pre-paid postage for return to that address.

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

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

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

25.4 The provision of the polling website and internet voting system, will:
(a) require a voter, to be permitted to vote, to enter his voter ID number;

(b) specify:
(i) the name of the corporation,
(ii) the constituency, or class within a constituency, for which the election is being held
(iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
(iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
(v) instructions on how to vote.

(c) prevent a voter voting for more candidates than he is entitled to at the election;

(d) create a record ("the internet voting record") that is stored in the internet voting system in respect of each vote cast using the internet of-
(i) the voter ID number used by the voter;

(ii) the candidate or candidates for whom he has voted; and
(iii) the date and time of his vote, and

(e) if their vote has been cast and recorded, provide the voter with confirmation

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

25.5 The provision of a telephone voting facility and telephone voting system, will:
(a) require a voter to be permitted to vote, to enter his voter ID number;

(b) specify:
(i) the name of the corporation,
(ii) the constituency, or class within a constituency, for which the election is being held
(iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
(iv) instructions on how to vote.

(c) prevent a voter voting for more candidates than he is entitled to at the election;

(d) create a record ("the telephone voting record") that is stored in the telephone voting system in respect of each vote cast by telephone of-
(i) the voter ID number used by the voter;
(ii) the candidate or candidates for whom he has voted; and
(iii) the date and time of his vote

(e) if their vote has been cast and recorded, provide the voter with confirmation;

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

25.6 The provision of a text message voting facility and text messaging voting system, will:
(a) require a voter to be permitted to vote, to provide his voter ID number;

(b) prevent a voter voting for more candidates than he is entitled to at the election;

d) create a record ("the text voting record") that is stored in the text messaging voting system in respect of each vote cast by text message of:
(i) the voter ID number used by the voter;
(ii) the candidate or candidates for whom he has voted; and
(iii) the date and time of his vote

(e) if their vote has been cast and recorded, provide the voter with confirmation;

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

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

27.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

27.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as they consider necessary to enable that voter to vote.

28. Spoilt ballot papers

28.1 If a voter has dealt with their ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.

28.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.

28.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless satisfied as to the voter's identity.

28.4 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) is satisfied as to the voter's identity, 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 spoilt ballot paper.

29. Lost voting information

29.1 Where a voter has not received their voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

29.2 The returning officer may not issue replacement voting information for lost voting information unless they:
(a) are satisfied as to the voter's identity,
(b) have no reason to doubt that the voter did not receive the original voting information.

29.3 After issuing replacement voting information, the returning officer shall enter in a list ("the list of lost ballots"):
(a) the name of the voter
(b) the details of the unique identifier of the replacement ballot paper, and
(c) if applicable, the voter ID number of the voter.

30. Issue of replacement voting information

30.1 If a person applies for replacement voting information under rule 28 or 29, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 28.3 or 29.2, they are also satisfied that that person has not already voted in the election.

Polling by internet, telephone or text

31. Procedure for remote voting by internet

31.1 To cast their vote using the internet the voter must gain access to the polling website by keying in the url of the polling website provided in the voting information,

31.2 When prompted to do so, the voter must enter their voter ID number.

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

31.4 To cast their vote the voter may then key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote.

31.5 The voter must not be able to access the internet voting facility for an election once their vote at that election has been cast.

32. Voting procedure for remote voting by telephone

32.1 To cast their vote by telephone the voter must gain access to the telephone voting facility by calling the designated telephone number provided on the voter information using a telephone with a touch-tone keypad.

32.2 When prompted to do so, the voter must enter their voter ID number using the keypad.

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

32.4 When prompted to do so the voter may then cast his vote by keying in the code of the candidate or candidates, allocated in accordance with rule 61 of these rules, for whom they wish to vote.

32.5 The voter must not be able to access the telephone voting facility for an election once their vote at that election has been cast.

33. Voting procedure for remote voting by text message

33.1 To cast their vote by text the voter must gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided on the voter information.

33.2 The text message sent by the voter must contain their voter ID number and the code for the candidate or candidates, allocated in accordance with rule 61 of these rules, for whom they wish to vote.

33.3 The text message sent by the voter must be structured in accordance with the instructions on how to vote contained in the voter information.

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

34. Receipt of voting documents

34.1 Where the returning officer receives a:
(a) covering envelope, or
(b) any other envelope containing a ballot paper,
before the close of the poll, that officer is to open it as soon as is practicable; and rules 35 and 36 are to apply.

34.2 The returning officer may open any covering envelope for the purposes of rules 35 and 36, 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.

34.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers.

35. Validity of votes

35.1 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.

35.2 Where the returning officer is satisfied that rule 35.1 has been fulfilled, the ballot paper is to be put aside for counting after the close of the poll.

35.3 Where the returning officer is not satisfied that rule 35.1 has been fulfilled, they should:
(a) mark the ballot paper "disqualified",
(b) record the unique identifier on the ballot paper in a list (the "list of disqualified documents"); and
(c) place the document or documents in a separate packet.

35.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet, telephone or text voting record has been received by the returning officer before the close of the poll.

36. De-duplication of votes

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

36.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in an election they shall:
(a) only accept as duly returned the first vote received that contained the duplicated voter ID number
(b) mark as "disqualified" all other votes containing the duplicated voter ID number

36.3 Where a ballot paper is "disqualified" under this rule the returning officer shall:
(a) mark the ballot paper "disqualified",
(b) record the unique identifier and voter id number on the ballot paper in a list (the "list of disqualified documents"); and
(c) place the ballot paper in a separate packet.

36.4 Where an internet, telephone or text voting record is "disqualified" under this rule the returning officer shall:
(a) mark the record as "disqualified",
(b) record the voter ID number on the record in a list (the "list of disqualified documents".
(c) disregard the record when counting the votes in accordance with these Rules.

37. Sealing of packets

37.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 35 and 36, the returning officer is to seal the packets containing:
(a) the disqualified documents, together with the list of disqualified documents inside it,
(b) the list of spoilt ballot papers,
(c) the list of lost ballots
(d) the list of eligible voters, and

(e) complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

Part 6 Counting the votes

Note: the following rules describe how the votes are to be counted manually but it is expected that appropriately audited vote counting software will be used to count votes where a combination of methods of polling is being used and votes are contained as electronic e-voting records and ballot papers.

STV38. Interpretation of Part 6

STV38.1In Part 6 of these rules:

"ballot" means a ballot paper, internet voting record, telephone voting record or text voting record.

"continuing candidate" means any candidate not deemed to be elected, and not excluded,

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

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

"mark" means a figure, an identifiable written word, or a mark such as "X",

"non-transferable vote" means a ballot:

(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 STV46,

"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 STV43,

"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 ballots from the candidate who has the surplus,

"stage of the count" means:

(a) the determination of the first preference vote of each candidate,

(b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

"transferable vote" means a ballot 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 on which a second or subsequent preference is recorded for the candidate to whom that ballot has been transferred, and

"transfer value" means the value of a transferred vote calculated in accordance with rules STV44.4 or STV44.7.

39. Arrangements for counting of the votes

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

40. The count

40.1 The returning officer is to:
(a) count and record the number of votes that have been returned, and
(b) count the votes according to the provisions in this Part of the rules.

40.2 The returning officer, while counting and recording the number of votes and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or a voter's voter ID number.

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

STV41. Rejected ballot papers

STV41.1 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.

STV41.2The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

STV41.3 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 rule STV41.1

FPP41. Rejected ballot papers

FPP41.1 Any ballot paper:
(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
(b) on which votes are given for more candidates than the voter is entitled to vote,
(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
(d) which is unmarked or rejected because of uncertainty,
shall, subject to rules FPP41.2 and FPP41.3, be rejected and not counted.

FPP41.2 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.

FPP41.3 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.

FPP41.4 The returning officer is to:
(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
(b) in the case of a ballot paper on which any vote is counted under rules FPP41.2 and FPP 41.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP41.5 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.

STV42. First stage
STV42.1 The returning officer is to sort the ballots into parcels according to the candidates for whom the first preference votes are given.

STV42.2 The returning officer is to then count the number of first preference votes given on ballots for each candidate, and is to record those numbers.

STV42.3 The returning officer is to also ascertain and record the number of valid ballots.

STV43. The quota
STV43.1 The returning officer is to divide the number of valid ballots by a number exceeding by one the number of members to be elected.

STV43.2 The result, increased by one, of the division under rule STV43.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV43.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV44.1 to STV44.3 has been complied with.

STV44. Transfer of votes
STV44.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballots 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 ballots for any continuing candidate, or
(b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV44.2 The returning officer is to count the number of ballots in each parcel referred to in rule

STV44.3 The returning officer is, in accordance with this rule and rule STV45, to transfer each sub-parcel of ballots referred to in rule STV44.1(a) to the candidate for whom the next available preference is given on those papers.

STV44.4 The vote on each ballot transferred under rule STV44.3 shall be at a value ("the transfer value") which:
(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
(b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballots on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV44.5 Where at the end of any stage of the count involving the transfer of ballots, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballots 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 ballots for any continuing candidate, or
(b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV44.6 The returning officer is, in accordance with this rule and rule STV45, to transfer each sub-parcel of ballots referred to in rule STV44.5(a) to the candidate for whom the next available preference is given on those ballots.

STV44.7 The vote on each ballot transferred under rule STV44.6 shall be at:
(a) a transfer value calculated as set out in rule STV44.4(b), or
(b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.

STV44.8 Each transfer of a surplus constitutes a stage in the count.

STV44.9 Subject to rule STV44.10, the returning officer shall proceed to transfer transferable ballots until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV44.10 Transferable ballots 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.

STV44.11 This rule does not apply at an election where there is only one vacancy.

STV45. Supplementary provisions on transfer

STV45.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballots 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 ballots 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 ballots of the candidate on whom the lot falls shall be transferred first.

STV45.2 The returning officer shall, on each transfer of transferable ballots under rule STV44:
(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.

STV45.3 All ballots transferred under rule STV44 or STV45 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot or, as the case may be, all the ballots in that sub-parcel.

STV45.4 Where a ballot is so marked that it is unclear to the returning officer at any stage of the count under rule STV44 or STV45 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot as a non-transferable vote; and votes on a ballot 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.

STV46. Exclusion of candidates
STV46.1 If:
(a) all transferable ballots which under the provisions of rule STV44 (including that rule as applied by rule STV46.11 and this rule are required to be transferred, have been transferred, and
(b) subject to rule STV47, one or more vacancies remain to be filled,
the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV46.12 applies, the candidates with the then lowest votes).

STV46.2 The returning officer shall sort all the ballots on which first preference votes are given for the candidate or candidates excluded under rule STV46.1 into two sub-parcels so that they are grouped as:
(a) ballots on which a next available preference is given, and
(b) ballots on which no such preference is given (thereby including ballots on which preferences are given only for candidates who are deemed to be elected or are excluded).

STV46.3 The returning officer shall, in accordance with this rule and rule STV45, transfer each sub-parcel of ballots referred to in rule STV46.2 to the candidate for whom the next available preference is given on those ballots.

STV46.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV46.5 If, subject to rule STV47, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballots, if any, which had been transferred to

any candidate excluded under rule STV46.1 into sub- parcels according to their transfer value.

STV46.6 The returning officer shall transfer those ballots in the sub-parcel of transferable ballots with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballots (thereby passing over candidates who are deemed to be elected or are excluded).

STV46.7 The vote on each transferable ballot transferred under rule STV46.6 shall be at the value at which that vote was received by the candidate excluded under rule STV46.1.

STV46.8 Any ballots on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV46.9 After the returning officer has completed the transfer of the ballots in the sub-parcel of ballots with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballots with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV46.1.

STV46.10 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.

STV46.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV44.5 to STV44.10 and rule STV45.

STV46.12 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.

STV46.13 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.

STV47. Filling of last vacancies

STV47.1 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.

STV47.2 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.

STV47.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV48. Order of election of candidates
STV48.1 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 STV44.10.

STV48.2 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.

STV48.3 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.

STV48.4 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.

FPP48. Equality of votes
FPP48.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 Final proceedings in contested and uncontested elections

FPP49. Declaration of result for contested elections
FPP49.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each candidate who they have declared elected:
(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
(ii) in any other case, to the Chair of the corporation; and
(c) give public notice of the name of each candidate whom they have declared elected.

FPP49.2 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 FPP41.5,
available on request.

STV49. Declaration of result for contested elections
STV49.1 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 they have declared elected –
(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
(ii) in any other case, to the Chair of the corporation, and
(c) give public notice of the name of each candidate who they have declared elected.

STV49.2 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 STV41.1, available on request.

50. Declaration of result for uncontested elections
50.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:
(a) declare the candidate or candidates remaining validly nominated to be elected,
(b) give notice of the name of each candidate who they have declared elected to the Chair of the corporation, and
(c) give public notice of the name of each candidate who they have declared elected.

Part 8 Disposal of documents

51. Sealing up of documents relating to the poll
51.1 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.
(e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

51.2 The returning officer must not open the sealed packets of:
(a) the disqualified documents, with the list of disqualified documents inside it,
(b) the list of spoilt ballot papers,
(c) the list of lost ballots,
(d) the list of eligible voters, and
(e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

51.3 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.

52. Delivery of documents

52.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 51, the returning officer is to forward them to the chair of the corporation.

53. Forwarding of documents received after close of the poll

53.1 Where:
(a) any voting documents are received by the returning officer after the close of the poll, or
(b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
(c) any applications for replacement voter information is 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 Chair of the corporation.

54. Retention and public inspection of documents

54.1 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.

54.2 With the exception of the documents listed in rule 55.1, 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.

54.3 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

55. Application for inspection of certain documents relating to an election

55.1 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, or
(d) the list of eligible voters,
(e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage by any person without the consent of the Regulator.

55.2 A person may apply to the Regulator to inspect any of the documents listed in rule 55.1, 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.

55.3 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.

55.4 On an application to inspect any of the documents listed in rule 55.1:
(a) in giving its consent, the regulator, and
(b) 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 their 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

FPP56. Countermand or abandonment of poll on death of candidate
FPP56.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
(a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

FPP56.2 Where a new election is ordered under rule FPP56.1, 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.

FPP56.3 Where a poll is abandoned under rule FPP56.1(a), rules FPP56.4 to FPP56.7 are to apply.

FPP56.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 35 and 36, and is to make up separate sealed packets in accordance with rule 37.

FPP56.5 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.
(c) seal up the electronic copies of records that have been received referred to in rule 25 held in a device suitable for the purpose of storage.

FPP56.6 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.

FPP56.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP56.4 to FPP56.6, the returning officer is to deliver them to the Chair of the corporation, and rules 54 and 55 are to apply.

STV56. Countermand or abandonment of poll on death of candidate

STV56.1 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) ballots 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) ballots 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.

STV56.2 The ballots which have preferences recorded for the candidate who has died are to be sealed with the other counted ballots pursuant to rule 51.1(a).

Part 10 Election expenses and publicity

57. Election expenses

57.1 Any expenses incurred, or payments made, for the purposes of an election which to the regulator under Part 11 of these rules.

58. Expenses and payments by candidates

58.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
(a) personal expenses,
(b) travelling expenses, and expenses incurred while living away from home, and
(c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

59. Election expenses incurred by other persons

59.1 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 their family any money or property (whether 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.

59.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 60 and 61.

Publicity

60. Publicity about election by the corporation

60.1 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.

60.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 61, 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, the expense of the electoral prospects of one or more other candidates.

60.3 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.

61. Information about candidates for inclusion with voting information

61.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 23 of these rules.

61.2 The information must consist of:
(a) a statement submitted by the candidate of no more than 250 words,
(b) if voting by telephone or text message is a polling method, the numerical voting code, allocated by the returning officer, to each candidate, for the purpose of recording votes on the telephone voting facility or the text message voting facility, and
(c) a photograph of the candidate.

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

62.1 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.

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

Part 11Questioning elections and the consequence of irregularities

63. Application to question an election

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

63.2 An application may only be made once the outcome of the election has been declared by the returning officer.

63.3 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.

63.4 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.

63.5 The application must be presented in writing within 21 days of the declaration of the result of the election.

63.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

63.7 The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

63.8 The determination by the person or persons nominated in accordance with rule 63.7 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.

63.9 The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 Miscellaneous

64. Secrecy

64.1 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 voter information or who has or has not voted,
(ii) the unique identifier on any ballot paper,
(iii) the voter ID number allocated to any voter
iv) the candidate(s) for whom any member has voted.

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

64.3 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.

65. Prohibition of disclosure of vote

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

66. Disqualification

66.1 A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:
(a) a member of the corporation,
(b) an employee of the corporation,
(c) a director of the corporation, or
(d) employed by or on behalf of a person who has been nominated for election.

67. Delay in postal service through industrial action or unforeseen event

67.1 If industrial action, or some other unforeseen event, results in a delay in:
(a) the delivery of the documents in rule 23, 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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