



# Constitution

# Humber Teaching NHS Foundation Trust Constitution

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## 1. Interpretation and Definitions

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

Unless expressly provided otherwise, a reference to legislation or legislative provision shall be to that legislation as it is in force, amended or re-enacted from time to time.

The 2006 Act is the National Health Service Act 2006.

The 2012 Act is the Health and Social Care Act 2012.

The 2022 Act is the Health and Care Act 2022.

**Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

**Annual Members' Meeting** is defined in paragraph 11 of the Constitution.

**Appointed Governors** are those Governors appointed by the appointing organisation listed in Annex 4.

**Constitution** means this Constitution and all annexes to it.

**Director** means a member of the Board of Directors.

**Elected Governors** are those Governors elected by the public and staff constituencies.

**Member** means a member of the Trust.

**NHS England (NHSE)** is the statutory entity as provided by section 1H of the 2006 Act that regulates NHS Foundation Trusts.

**Senior Independent Director** means the person appointed by the Board of Directors, in consultation with the Council of Governors, to provide a sounding board for the Chair, to serve as an intermediary for the other Directors when necessary and to be available to Governors if they have concerns that contact through normal channels has failed to resolve.

**Service User and Carer Constituency** means (collectively) the members of the service user and carer constituency which is referred to as the 'patients' constituency' in the 2006 Act.

**Service User and Carer Governor** means a Governor elected by the members of the Service User and Carer Constituency.

**Trust Secretary** means the Secretary of the Trust or any person appointed to perform the duties of the Secretary of the Trust

**Voluntary Organisation** is a body, other than a public or local authority, the activities of which are carried on not for profit.

## **2. Name**

The name of the Foundation Trust is Humber Teaching NHS Foundation Trust (the Trust).

## **3. Principal Purpose**

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

The Trust undertakes both provision and commissioning functions, as the Lead Provider for the Humber Coast and Vale Provider Collaboration in the delivery of Child and Adolescent Mental Health In-Patient, Adult Low and Medium Secure and Adult Eating Disorder Services.

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

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

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

3.3.2 the promotion and protection of public health.

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

3.5 The Trust's vision is to be a leading provider of integrated health services, recognised for the care, compassion, and commitment of our staff and known as a great employer and valued partner.

## **4. Powers**

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

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

The Board has a delegated responsibility from NHSE for the commissioning, contractual and quality and safety oversight of the entirety of the contracts awarded to the Trust as the Lead Provider of the Humber Coast and Vale Provider Collaboration in the delivery of Child and Adolescent Mental Health In-Patient, Adult Low and Medium Secure and Adult Eating Disorder Services.

4.3 The Board of Directors may authorise any three or more persons each of whom is neither:

- 4.3.1 an executive Director of the Trust; nor
- 4.3.2 an employee of the Trust;

To exercise the powers conferred on the Trust by Section 25 of the Mental Health Act (MHA)

4.4 The Trust may enter into arrangements for the carrying out, on such terms as the Trust considers appropriate, of any of its functions jointly with any other person.

4.5 The Trust may arrange for any of the functions exercisable by the Trust to be exercised by or jointly with any one or more of the following:

- 4.5.1 A relevant body;
- 4.5.2 A local authority within the meaning of section 2B of the 2006 Act;
- 4.5.3 A combined authority.

4.6 The Trust may also enter into arrangements to carry out the functions of another relevant body, whether jointly or otherwise.

4.7 Where a function is exercisable by the Trust jointly with one or more of the other organisations mentioned at paragraph 4.6, those organisations and the Trust may:

- 4.7.1 Arrange for the function to be exercised by a joint committee of theirs;
- 4.7.2 Arrange for the Trust, one or more of those other organisations, or a joint committee of them, to establish and maintain a pooled fund

in accordance with section 65Z6 of the 2006 Act.

4.8 The Trust must exercise its functions effectively, efficiency and economically.

4.9 In making a decision about the exercise of its functions, the Trust must have regard to all likely effects of the decision in relation to:

- 4.9.1 The health and well-being of (including inequalities between) the people of England;
- 4.9.2 The quality of services provided to (including inequalities between benefits obtained by) individuals by or in pursuance of arrangements made by relevant bodies for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
- 4.9.3 Efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.

4.10 In the exercise of its functions, the Trust must have regard to its duties under section 63B of the 2006 Act (complying with targets under section 1 of the Climate Change Act 2008 and section 5 of the Environment Act 2021, and to adapt any current or predicted impacts of climate change in the most recent report under section 56 of the Climate Change Act 2008).

4.11 For the purposes of this section, “relevant body” means NHSE, an integrated care board, an NHS trust, a NHS foundation trust (including the Trust) or such other body as may be prescribed under section 65Z5(2). “Relevant bodies” means two or more of these organisations as the context requires.

4.12 The arrangements under this paragraph 4 shall be in accordance with:

- 4.12.1 any applicable requirements imposed by the 2006 Act or regulations made under that Act;
- 4.12.2 any applicable statutory guidance that has been issued and
- 4.12.3 otherwise on such terms as the Trust sees fit.

## **5 Membership and Constituencies**

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

- 5.1 a Public Constituency
- 5.2 a Staff Constituency
- 5.3 a Service User and Carer Constituency

## **6 Application for Membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust.

## **7 Public Constituency**

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

## **8 Staff Constituency**

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

- 8.1.1 He/she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 8.1.2 He/she has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the Trust otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

8.4 The minimum number of members in the Staff Constituency is specified in Annex 2.

### **Automatic Membership by Default –Staff**

8.5 An individual who is:

- 8.5.1 eligible to become a member of the Staff Constituency;
- and
- 8.5.2 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 they do not wish to do so.

## **9. Service User and Carer Constituency**

9.1 An individual who has, within the period specified below, attended any of the Trust's services as either a patient or as the carer of a patient may become a member of the Trust.

9.2 The period referred to above shall be the period of 3 years immediately preceding the date of an application by the patient or carer to become a member of the Trust.

9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Service User and Carer Constituency.

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

9.5 The minimum number of members in the Service User and Carer Constituency is specified in Annex 3.

## **10. Restriction on Membership**

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

10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

10.3 An individual must be at least 14 years old to become a member of the Trust.

10.4 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 Annex 9 – Further Provisions.

## **11. Annual Members' Meeting**

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

## **12 Council of Governors – Composition**

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 4.
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within that constituency, by their class within the constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

## **13. Council of Governors – Election of Governors**

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. The Model Election Rules are attached at Annex 5.
- 13.3 A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of the Constitution.
- 13.4 An election, if contested, shall be by secret ballot.
- 13.5 Governors must be at least 16 years of age at the closing date for nominations for their election or appointment.

## **14. Council of Governors - Tenure**

- 14.1 An elected Governor may hold office for a period of up to 3 years.
- 14.2 An elected Governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.
- 14.3 An elected Governor shall be eligible for re-election at the end of their term. However, no Governor may stand for re-election having served 3 terms or a maximum of 9 years.
  - 14.3.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:
  - 14.3.2 where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for a three year term;
  - 14.3.3 where the vacancy arises amongst the Elected Governors, the next highest polling candidate for that seat at the most recent election (who is willing to

take office) will be invited to fill the seat for the remainder of the current term.

14.4 Appointed Governors may hold office for a period of up to 3 years.

14.4.1 Appointed Governors shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.

14.4.2 An Appointed Governor shall be eligible for re-appointment at the end of his/her term, but, subject to paragraph 14.4.3 below, shall serve no more than 3 consecutive terms of office or a maximum of 9 years.

14.4.3 Where an appointing organisation considers that an individual who would not otherwise be eligible for appointment as an Appointed Governor because of the restriction in paragraph 14.4.2 above remains the most appropriate person to represent the organisation, it may seek the approval of the Chair and the Chief Executive to appointing the individual to serve a further term or terms of office.

14.5 Any Governor shall cease to hold office if he/she is disqualified for any of the reasons set out in this Constitution.

## **15. Council of Governors – Disqualification and Removal**

15.1 The following may not become or continue as a member of the Council of Governors:

15.1.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

15.1.2 a person who has made a composition or arrangement (including a debt relief order under the Insolvency Act) or granted a Trust deed for, his/her creditors and has not been discharged in respect of it;

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

15.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her;

15.2 Governors must be at least 16 years of age at the closing date for nominations for their election or appointment.

15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors and provision for the removal of Governors in certain circumstances are set out in Annex 6.

## **16. Council of Governors – General Duties**

16.1 The general duties of the Council of Governors are –

16.1.1 to hold the Non-Executive Directors individually and collectively to account for

the performance of the Board of Directors, and

16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public at large.

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

## **17. Council of Governors – Meetings of Governors**

- 17.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26 below) or, in his/her absence the Deputy Chair (appointed in accordance with the provision of paragraph 27 below) or, in their absence, another non-executive director (as the Directors present shall choose), shall preside at meetings of the Council of Governors.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting, or part of a meeting, for special reasons.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

## **18. Council of Governors – Standing Orders**

The standing orders for the practice and procedure of the Council of Governors is attached at Annex 7.

## **19 Council of Governors – Referral to the Panel**

- 19.1 In this paragraph, the "Panel" means a panel of persons appointed by NHS Improvement (NHSI) the organisation that incorporates Monitor, the statutory entity that remains the regulator of NHS foundation trusts to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:-
- 19.1.1 to act in accordance with its Constitution, or
- 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

## **20. Council of Governors - Conflicts of Interest of Governors**

If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the

Governor shall disclose that interest to the members of the Council of Governors as soon as he/she becomes aware of it. The Standing Orders for the Council of Governors (Annex 7) shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

## **21. Council of Governors – Travel Expenses**

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust.

## **22. Council of Governors – Further Provisions**

Further provisions with respect to the Council of Governors are set out in Annex 6.

## **23. Board of Directors – Composition**

23.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

23.2 The Board of Directors is to comprise:

23.2.1 a Non-Executive Chair

23.2.2 up to 6 other Non-Executive Directors;

23.2.3 up to 6 Executive Directors

23.3 One of the Executive Directors shall be the Chief Executive.

23.4 The Chief Executive shall be the Accounting Officer.

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

The Executive Director of Finance shall also be the executive lead for the Trust's commissioning responsibilities through Provider Collaboratives and other contractual mechanisms.

23.6 One of the Executive Directors is to be a Registered Medical Practitioner

23.7 One of the Executive Directors is to be a Registered Nurse

23.8 The operation of 23.2 above shall be such that, at all times, at least half of the Board of Directors, excluding the Chair, shall be Non-Executive Directors

23.9 The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors to be their Senior Independent Director, using the procedure set out in the Constitution.

## **24. Board of Directors – General Duty**

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

## **25. Board of Directors – Qualification for Appointment as a Non-Executive Director**

A person may be appointed as a Non-Executive Director only if –

- 25.1 he/she is a member of the Public Constituency, or
- 25.2 he/she is a member of the Service User and Carer Constituency
- 25.3 he/she is not disqualified by virtue of paragraph 29 below
- 25.4 he/she is not disqualified by virtue of the further provisions as set out in Annex 9

## **26. Board of Directors – Appointment and Removal of Chair and other Non-Executive Directors**

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.
- 26.2 Removal of the Chair or another Non-Executive Director shall require the approval of three quarters of the members of the Council of Governors.

## **27. Board of Directors – Appointment of Deputy Chair**

The Council of Governors at a general meeting of the Council of Governors may appoint one of the Non-Executive Directors as a Deputy Chair.

## **28. Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors**

- 28.1 Non-Executive Directors shall appoint or remove the Chief Executive.
- 28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors as per the Council's Standing Orders, Annex 7.
- 28.3 The Chief Executive is to be appointed in accordance with paragraph 28.2 above.
- 28.4 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**

The following may not become or continue as a member of the Board of Directors:

- 29.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

- 29.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 29.3 a person who has made a composition or arrangement (including a debt relief order under the Insolvency Act) or granted a Trust deed for, his/her creditors and has not been discharged in respect of it;
- 29.4 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her;
- 29.5 he/she is a medical practitioner that has been removed from the professional register by the General Medical Council;
- 29.6 he/she has conducted his or herself in a way that has caused, or is likely to cause, material prejudice, to the best interests of the Trust or the proper conduct of the Board of Directors or otherwise in a manner inconsistent with continued membership of the Board of Directors.

### **30. Board of Directors – Meetings**

- 30.1 Meetings of the Board of Directors shall be held in public and open to members of the public. Members of the public may be excluded from a meeting for special reasons and having regard to the confidential or commercially sensitive nature of the business to be transacted, publicity of which would be prejudicial to the public interest (known as a 'Part II' 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. 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. Board meetings held in public (known as 'Part I' meetings) will be published on the Trust's website.

### **31. Board of Directors – Standing Orders**

The Standing Orders for the practice and procedure of the Board of Directors are attached at Annex 8.

### **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 32.1.1 is not infringed if –

- 32.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 31.2.2 The matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, “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 or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or 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.

### **33. Board of Directors – Remuneration and Terms of Office**

- 33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
- 33.2 The Trust shall establish a Committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

### **34. Registers**

The Trust shall have:

- 34.1 a register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;
- 34.2 a register of members of the Council of Governors;
- 34.3 a register of interests of Governors;
- 34.4 a register of Directors; and
- 34.5 a register of interests of the Directors.

### **35 Admission to and Removal from the Registers**

- 35.1 The Trust Secretary shall add to the confidential register of members the name of any member who is accepted under the provisions of this Constitution
- 35.2 The Trust Secretary shall remove from the register the name of any member who ceases to be entitled to be a member under the provisions of this Constitution

### **36. Registers – Inspection and Copies**

- 36.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 36.3 So far as the registers are required to be made available:
  - 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **37. Documents Available for Public Inspection**

- 37.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 37.1.1 a copy of the current Constitution,
  - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
  - 37.1.3 a copy of the latest annual report.

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

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

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

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

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

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

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

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

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

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

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

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

37.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## **38. Auditor**

38.1 The Trust shall have an auditor.

38.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

38.3 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006

Act and in accordance with any directions given by NHSE, the statutory entity that remains the regulator of NHS foundation trusts.

### **39. Audit Committee**

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

### **40. Accounts**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 NHSE may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the Trust's auditor.
- 40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHSE ) may with the approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

### **41. Annual Report and Forward Plans and Non NHS Work**

- 41.1 The Trust shall prepare an Annual Report and send it to NHSE .
- 41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHSE (NHSE).
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 41.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about –
  - 41.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must
  - 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
  - 41.6.2 notify the Directors of the Trust of its determination.
- 41.7 The Trust, if it proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, may implement the

proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

## **42. Presentation of the Annual Accounts and Reports to the Governors and Members**

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts
  - 42.1.2 any report of the auditor on them
  - 42.1.3 the annual report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

## **43. Instruments**

- 43.1 The Trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors.

## **44. Amendment of the Constitution**

- 44.1 The Trust may make amendments to 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 of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 44 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
  - 44.3.1 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 NHSE . For the avoidance of doubt, NHSE's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

#### **45 Mergers etc. and Significant Transactions**

45.1 The Trust may only apply for a merger, acquisition, separation or dissolution (in accordance with the provisions of the 2006 Act) 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 A "significant transaction" means a transaction that equates to:

The income attributable to the assets or the contract associated with the transaction is greater than 25% of the current Trust income (i.e for £200m turnover, this would equate to new income above £50m); or

The gross assets subject to the transaction are greater than 25% of the total gross assets of the Trust (i.e for £90m of gross assets, this would equate to new assets valued above £22.5m); or

The gross capital of the company or business being acquired/divested is greater than 25% of the total capital for the Trust (i.e: for £70m total capital, capital for the transaction would exceed £17.5m). Total Capital for a foundation trust relates to taxpayers' and others equity in the statement of financial position within the annual accounts.

## ANNEX 1 – THE PUBLIC CONSTITUENCY

<b>Name of Areas within the Constituency</b>	<b>Area</b>	<b>Minimum Number of Members</b>	<b>Number of Governors</b>
East Riding of Yorkshire	The electoral wards of East Riding of Yorkshire	100	6
Hull	The electoral wards of Hull	100	4
Rest of England	The electoral wards of the rest of England (excluding those electoral wards covered by the other areas of the Public Constituency)	15	1
Whitby, Ryedale and Scarborough	The electoral wards of Whitby, Ryedale and Scarborough and surrounding areas	15	1

## ANNEX 2 – THE STAFF CONSTITUENCY

<b>Name of Constituency</b>	<b>Class of Staff Membership</b>	<b>Minimum number of members</b>	<b>No of Governors</b>
Staff	Clinical	200	2
	Non Clinical		2
	Either Clinical or Non Clinical		1
	Total		5

**ANNEX 3 – THE SERVICE USER AND CARER CONSTITUENCY**

<b>Name of Constituency</b>	<b>Description of individuals eligible to become members</b>	Minimum number of Members	No of Elected Governors
Service User and Carer	An individual who has attended any of the Trust's services as a patient or a carer in the 3 years preceding the date of their application to become a member of the trust.	15	2

## ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

### ELECTED GOVERNORS:

<b>Public Constituency</b>	<b>NUMBER OF GOVERNORS</b>
HULL	4
EAST RIDING OF YORKSHIRE	6
REST OF ENGLAND	1
WHITBY	1
<b>Service User and Carer Constituency</b>	2
<b>Staff Constituency</b>	5
Total Elected	19

### APPOINTED GOVERNORS:

<b>SPONSOR</b>	<b>NUMBER OF GOVERNORS</b>
UNIVERSITY	1
HUMBERSIDE POLICE	1
VOLUNTARY PARTNER	1
HULL LOCAL AUTHORITY	1
EAST RIDING OF YORKSHIRE LOCAL AUTHORITY	1
FIRE & RESCUE	1
Total Appointed	6

## ANNEX 5 - THE MODEL ELECTION RULES

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### MODEL ELECTION RULES 2014

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“*telephone voting facility*” has the meaning set out in rule 26.2;

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. Timetable

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

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

### 3. Computation of time

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

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or
- (c) a day appointed for public thanksgiving or mourning,

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

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

- 4. Returning Officer
  - 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
  - 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.
- 5. Staff
  - 5.1 Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.
- 6. Expenditure
  - 6.1 The corporation is to pay the returning officer:
    - (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
    - (b) such remuneration and other expenses as the corporation may determine.
- 7. Duty of co-operation
  - 7.1 The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

## PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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8. Notice of election
- 8.1 The returning officer is to publish a notice of the election stating:
- (a) the constituency, or class within a constituency, for which the election is being held,
  - (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (c) the details of any nomination committee that has been established by the corporation,
  - (d) the address and times at which nomination forms may be obtained;
  - (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
  - (f) the date and time by which any notice of withdrawal must be received by the returning officer
  - (g) the contact details of the returning officer
  - (h) the date and time of the close of the poll in the event of a contest.
9. Nomination of candidates
- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- (a) is to supply any member of the corporation with a nomination form, and
  - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.
10. Candidate's particulars
- 10.1 The nomination form must state the candidate's:
- (a) full name,
  - (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
  - (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests
- 11.1 The nomination form must state:
- (a) any financial interest that the candidate has in the corporation, and
  - (b) whether the candidate is a member of a political party, and if so, which party,
- and if the candidate has no such interests, the paper must include a statement to that effect.
12. Declaration of eligibility
- 12.1 The nomination form must include a declaration made by the candidate:
- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
  - (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.
13. Signature of candidate
- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
  - (b) their declaration of interests as required under rule 11, is true and correct, and
  - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.
14. Decisions as to the validity of nomination
- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
  - (b) decides that the nomination form is invalid,
  - (c) receives satisfactory proof that the candidate has died, or
  - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination

forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

19. Poll to be taken by ballot
- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
  - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
  - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.
20. The ballot paper
- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- (a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

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

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

*Action to be taken before the poll*

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

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

23. Notice of poll

23.1 The returning officer is to publish a notice of the poll stating:

(a) the name of the corporation,

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

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

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

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

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

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

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

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

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

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

- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

- (a) a ballot paper and ballot paper envelope,
- (b) the ID declaration form (if required),
- (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
- (d) a covering envelope;

("postal voting information").

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

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

("e-voting information").

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

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.
25. Ballot paper envelope and covering envelope
- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.
26. E-voting systems
- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected

- from that constituency, or class within that constituency,
  - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (v) instructions on how to vote and how to make a declaration of identity,
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter's vote,
  - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - (f) prevent any voter from voting after the close of poll.

26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) instructions on how to vote and how to make a declaration of identity,
  - (v) the date and time of the close of the poll, and
  - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;

- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

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

in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (ii) the candidate or candidates for whom the voter has voted; and
  - (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

*The poll*

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.
29. Spoilt ballot papers and spoilt text message votes
- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter’s identity; and
  - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
  - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
  - (c) the details of the replacement voter ID number issued to the voter.
30. Lost voting information
- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for

- replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
  - (b) has no reason to doubt that the voter did not receive the original voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
  - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
  - (c) the voter ID number of the voter.
31. Issue of replacement voting information
- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.
32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 32.1 In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

*Polling by internet, telephone or text*

33. Procedure for remote voting by internet
- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID

number.

- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.
34. Voting procedure for remote voting by telephone
- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.
35. Voting procedure for remote voting by text message
- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents
- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
  - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

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

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

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

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

### 37. Validity of votes

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

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

- (a) put the ID declaration form if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

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

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

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

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

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

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting

record or text voting record (as applicable) in the list of disqualified documents; and

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

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

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

(a) mark the ID declaration form “disqualified”,

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

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

39. De-duplication of votes

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

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

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

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

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

(a) mark the ballot paper “disqualified”,

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

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

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

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

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

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

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

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

- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

*“mark”* means a figure, an identifiable written word, or a mark such as “X”,

*“non-transferable vote”* means a ballot document:

(a) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule STV49,

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

(a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

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

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
  - (i) the use of such software for the purpose of counting votes in the relevant election, and
  - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

- (a) count and record the number of:
  - (iii) ballot papers that have been returned; and
  - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no

person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

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

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

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

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

FPP44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

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

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

FPP448 A text voting record on which a vote is marked:

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

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

FPP44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

- (a) voting for more candidates than the voter is entitled to,
- (b) writing or mark by which voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

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

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

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

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

STV46. The quota

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

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

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

STV47. Transfer of votes

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

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

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

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

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

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

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

votes.

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

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

- (a) a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

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

STV48. Supplementary provisions on transfer

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

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

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

- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
  - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
  - (ii) the recorded total of valid first preference votes.

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

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

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

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

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

- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

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

STV51. Order of election of candidates

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

FPP51. Equality of votes

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

## PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

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### FPP52. Declaration of result for contested elections

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the 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 he or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

### STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the 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 he or she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

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

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

54. Sealing up of documents relating to the poll
- 54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
  - (b) the ballot papers and text voting records endorsed with “rejected in part”,
  - (c) the rejected ballot papers and text voting records, and
  - (d) the statement of rejected ballot papers and the statement of rejected text voting records,
- and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 54.2 The returning officer must not open the sealed packets of:
- (a) the disqualified documents, with the list of disqualified documents inside it,
  - (b) the list of spoilt ballot papers and the list of spoilt text message votes,
  - (c) the list of lost ballot documents, and
  - (d) the list of eligible voters,
- or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.
- 54.3 The returning officer must endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
55. Delivery of documents
- 55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.
56. Forwarding of documents received after close of the poll
- 56.1 Where:

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

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the Chair of the corporation.

57. Retention and public inspection of documents

57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
  - (i) any rejected ballot papers, including ballot papers rejected in part,
  - (ii) any rejected text voting records, including text voting records rejected in part,
  - (iii) any disqualified documents, or the list of disqualified documents,
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

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

58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is

necessary for the purpose of questioning an election pursuant to Part 11.

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

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

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

- (a) in giving its consent, and
- (b) in making the documents available for inspection

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

- (i) that his or her vote was given, and
- (ii) that NHS Improvement (NHSI) the organisation that incorporates Monitor, the statutory entity that remains the regulator of NHS foundation trusts) has declared that the vote was invalid.

## PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

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FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

FPP59.6 The returning officer is to endorse on each packet a description of:

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed

pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the Chair of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

- (a) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
  - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
  - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

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

*Election expenses*

60. Election expenses

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

61. Expenses and payments by candidates

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

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

62. Election expenses incurred by other persons

62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

*Publicity*

63. Publicity about election by the corporation

63.1 The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including

information compiled by the corporation under rule 64, must be:

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

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

64. Information about candidates for inclusion with voting information

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

65. Meaning of “for the purposes of an election”

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

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

## PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

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66. Application to question an election
- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel ( IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

67.            Secrecy

67.1           The following persons:

- (a)   the returning officer,
- (b)   the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

- (i)   the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
- (ii)  the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv)  the candidate(s) for whom any member has voted.

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

67.3           The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

68.            Prohibition of disclosure of vote

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

69.            Disqualification

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

- (a)   a member of the corporation,
- (b)   an employee of the corporation,
- (c)   a director of the corporation, or
- (d)   employed by or on behalf of a person who has been nominated for election.

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

70.1 If industrial action, or some other unforeseen event, results in a delay in:

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

## ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

### Eligibility to be a Member of the Council of Governors

#### 1. Council of Governors – Further Provisions on disqualification and removal:

Further to the provisions set out in paragraph 15.1 the following may not become or continue as a Governor of the Council of Governors if they are:

- 1.1 a person who has been dismissed in the previous 5 years from any NHS body (except for redundancy or sickness);
- 1.2 a person whose tenure of office as a Chair, Non- Executive Director or Governor of an NHS body has previously been terminated on the grounds that his appointment is not in the interests of the NHS for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 1.3 a person who has previously been or is currently subject to a sex offender order or sexual harm prevention order and/or required to register under the Sex Offences Act 2003 or committed a sexual offence prior to the requirement to register under current legislation;
- 1.4 a person who is a vexatious complainant of the Trust;
- 1.5 a person who has had his name removed from any list prepared under the 2006 Act in accordance with section 91, 106, 123 and 272 of that Act or has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included in such a list or had their suspension lifted or qualification re-instated;
- 1.6 a person who is currently a member of an independent scrutiny body whose role includes or will include independent scrutiny of Humber Teaching NHS Foundation Trust;
- 1.7 a person who is a spouse, partner, parent or child of a Director or the Chair of the Trust;
- 1.8 a person who is under 16 years of age;
- 1.9 a person who on the basis of disclosures obtained through an application to the Disclosure and Barring Scheme is not considered suitable by the Trust;
- 1.10 a person who has physically or verbally abused any NHS staff member and has been taken to Court, found guilty and convicted;
- 1.11 he/she is incapable of managing and administering his property and affairs because of mental disorder, illness or injury and will be suspended from their duties to undertake treatment. Duties will not resume until all the issues are resolved;
- 1.12 making false declaration for any purpose of this Constitution or the 2006 Act; and
- 1.13 he or she has conducted his or herself in a manner that has caused, or is likely to cause, material prejudice to the best interests of the Trust or the proper conduct of the Council of Governors or otherwise in a manner inconsistent with continued membership of the Council of Governors.

11.14 If the conduct or behaviour of a Governor is called into question, discussion with the Governor will take place and relevant support will be provided for the Governor to resume normal duties but under close supervision of the Chair. However, if the behaviour and conduct does not improve and is unacceptable a decision may be made in conjunction with the Lead Governor and Senior Independent Director to suspend the Governor from duties and ultimately could lead to a recommendation to the full Council of Governors to withdraw the Governor from the Council under paragraph 11.13 of this Annex.

This action will only be taken if previous attempts to resolve the situation informally have failed;

11.15 Removal under paragraph 11.13 of this Annex shall be on the recommendation of the Trust Chair and should require the approval of at least two-thirds of the voting Governors present, the Governor concerned not being eligible to participate in such a vote and being absent from the room whilst it takes place. If a Governor's tenure of office is terminated, then he/she should be ineligible to stand for re-election as a Governor for a period of three years. A decision for termination should be effective notwithstanding any reference to dispute resolution.

## **2 Termination of Tenure**

In addition to 14.2 and 15.1 and 15.3 the following apply;

- 2.1 A Governor may resign from that office at any time during the term of office by giving notice in writing to the Trust Secretary;
- 2.2 If a Governor fails to attend 3 consecutive meetings of the Council of Governors his/her tenure of office is to be terminated immediately unless the other Governors or Chair are satisfied that;
  - the absence was due to reasonable cause; and
  - he/she will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
- 2.3 The Council of Governors may terminate the tenure of a Governor by a three quarter majority of those voting if it is satisfied that he/she;
  - fails to adhere to the Trust's 'Governors Code of Conduct'; and/or
  - persists in acting in a manner prejudicial to the best interests of the Trust.
- 2.4 An appointed Governor will cease to hold office if the appointing authority terminate their sponsorship of the individual.

## **ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **Standing Orders for Council of Governors Meetings**

#### **1. Calling Meetings**

- 1.1 The Council of Governors is to meet at least four times in each financial year.
- 1.2 One of these meetings will be an Annual Members' Meeting (AMM) which will be held prior to 31 October each year.
- 1.3 Ordinary meetings of the Council of Governors may be called at any time by the Chair.
- 1.4 One third or more of the Council of Governors may requisition a meeting in writing to the Chair specifying the business to be carried out. If the Chair refuses to organise a meeting, or within 14 days of the requisition being presented fails to organise a meeting, the Governors signing the requisition may forthwith call a meeting.

#### **2. Notice of Meetings and Business to be Transacted**

- 2.1 The Trust Secretary shall give at least 30 days' notice of the date and place of every meeting of the Council of Governors to each Governor. This notice should also specify the business proposed to be transacted.
- 2.2 General meetings may be called by the Chair if the subject matter does not allow for 30 days notice to be given.
- 2.3 In the case of a meeting called by Governors in default of the Chair calling the meeting the notice should be signed by those Governors.

#### **3. Agenda and Supporting Papers**

- 3.1 The Agenda will be sent out to Governors not less than 5 working days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than 3 clear days before the meeting.
- 3.2 Before each meeting of the Council of Governors, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the Trust's website at least 3 days before the meeting.

#### **4. Setting the Agenda**

- 4.1. A Governor or Director desiring a matter to be included on the agenda will make his/her request in writing to the Chair at least 20 days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days may be included at the discretion of the Chair.

## **5 Moving, Amending, Withdrawing and Rescinding Motions**

- 5.1 A Governor desiring to move or amend a motion should send a written notice thereof at least 14 working days before the meeting to the Chair, who will include it in the agenda (where permissible under the appropriate regulations). This includes motions on the possible termination of tenure of Governors as described in Annex 6. This does not prevent a motion being moved during a meeting without notice on any business mentioned on the agenda.
- 5.2 A motion or amendment once moved and seconded can be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 5.3 Notice of a motion to amend or rescind any resolution which has been passed within the preceding 6 calendar months shall bear the signature of the Governor who gives it and also the signature of 10 other Governors. When such a motion has been disposed of by the Council of Governors it cannot be proposed again to the same effect within the next 6 calendar months unless the Chair considers it appropriate.
- 5.4 The proposer of a motion shall have the right of reply at the close of any discussion on the motion or any proposed amendment.
- 5.5 When a motion is under discussion it shall be open to a governor to move
- An amendment to the motion
  - The adjournment of the discussion or the meeting
  - That the meeting proceed to the next business(\*)
  - The appointment of an ad hoc committee to deal with the specific item of business
  - That the motion now be put(\*)
  - That the public now be excluded
- (\*) denotes these motions may only be put by a Governor who has not previously taken part in the debate.
- 5.6 No amendment to a motion will be admitted if the Chair is of the opinion it negates the substance of the motion.

## **6 Declarations**

- 6.1 An elected Governor cannot vote at a meeting of the Council of Governors, unless immediately prior to the commencement of each meeting, he has made a declaration in the form specified by the Trust Secretary, of the particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors by the conditions set out in paragraph 15 in this Constitution.

An elected Governor shall be deemed to have confirmed the declaration upon attending subsequent meetings of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of the elected Governors.

- 6.2 Each Governor is required to declare their interests in accordance with paragraph 20 of this Constitution and the Trust policy. In the event of a material interest which has been previously declared being pertinent to a discussion or decision of a meeting of the Council of Governors the Governor in question should
- Withdraw from the meeting and play no part in the relevant discussion or decision
  - Not vote on the issue
- 6.3 Any Governor who fails to disclose any interest required to be disclosed in accordance with paragraph 20 of this Constitution or the Trust policy will have his/her tenure automatically terminated if required to do so by two thirds of the Governors in accordance with paragraph 2.3 of Annex 6 of this Constitution.

## **7 Voting**

- 7.1 Every question at the meeting shall be determined by a majority of the votes of the Governors present except those issues referred to in the Constitution where other than a simple majority is required.
- 7.2 In the case of an equality of votes the Chair of the meeting will have the casting vote.
- 7.3 All questions put to the vote shall be determined by a show of hands. A paper ballot may also be used if a majority of Governors present request it.

## **8 Minutes**

- 8.1 Minutes of the meeting will be drawn up and submitted for approval at the next meeting where they will be signed by the Chair of that meeting. These will be circulated according to the Governors' wishes.
- 8.2 The names of the Chair of the meeting and the names of those present shall be recorded in the minutes.
- 8.3 Minutes of the meeting shall be available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of paragraph 18.

## **9 Quorum**

- 9.1 No business shall be transacted at a meeting unless at least one third of those Governors holding one of the Council of Governors' currently occupied governor seats are present
- 9.2 If such a quorum is not present the meeting can stand adjourned to such time and place as the Trust Secretary may determine.
- 9.3 The Council of Governors can make decisions despite any vacancy in its membership or any defect in the appointment or election of any Governor.

## **10 Miscellaneous**

- 10.1 The Council of Governors may invite the Chief Executive, or any other member of the Board of Directors, or a representative of the financial auditor or other advisors to attend a meeting of the Council of Governors.

- 10.2 Council of Governor meetings will be held online to facilitate attendance unless the Chair deems otherwise or where the Chair is requested in writing by at least one-third of those Governors holding Council of Governors currently occupied Governor seats to hold a face-to-face meeting
- 10.3 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint Committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint Governors and invite Directors and other persons, to serve on such committees. The Council of Governors may, through the Trust Secretary, request that external assessors assist them or any Committee they appoint in carrying out its duties.
- 10.4 If a meeting is called by Governors in default of the Chair calling a meeting, and the Chair or nominated deputy do not attend, a Governor can, with the agreement of the other Governors present, take on the role of Chair.

## **ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

### Meetings of the Board

#### **1. Calling Meetings**

- 1.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board of Directors may determine.
- 1.2 The Chair of the Trust may call a meeting of the Board of Directors at any time.
- 1.3 One third or more members of the Board of Directors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within 7 days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

#### **2 Notice of Meetings and the Business to be Transacted**

- 2.1 Before each meeting of the Board of Directors a written notice specifying the business proposed to be transacted shall be delivered to every Director, or sent by post to the usual place of residence of each Director, so as to be available at least 5 clear days before the meeting. The notice shall be signed by the Chair or by an officer authorised by the Chair to sign on their behalf. Lack of service of the notice on any Director shall not affect the validity of a meeting. Details of meetings and the public agenda will be published on the Trust's website.
- 2.2 In the case of a meeting called by Directors in default of the Chair calling the meeting, the notice shall be signed by those Directors.
- 2.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 7.
- 2.4 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

#### **3 Agenda and Supporting Papers**

The agenda will be sent to Board members 5 working days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency, with the agreement of the Chair. . An agenda shall be presumed to have been served two days after posting.

#### **4. Petitions**

Where a petition has been received, the Chair shall include the petition as an item for the agenda of the next meeting.

#### **5 Chair of Meeting**

- 5.1 At any meeting of the Board of Directors, the Chair, if there is one present, shall preside. If the Chair is absent from the meeting, the Deputy Chair if present, shall preside.
- 5.2 If the Chair and Deputy Chair are absent, another Non-Executive Director as the Directors present shall choose shall preside.

## **6 Notice of Motion**

- 6.1 Subject to the provision of Standing Orders 8 'Motions: Procedure at and during a meeting' and 9 'Motions to rescind a resolution', a member of the Board of Directors wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chair.
- 6.2 The notice shall be delivered at least 14 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

## **7 Emergency Motions**

- 7.1 Subject to the agreement of the Chair, and subject also to the provision of Standing Order 8 'Motions: Procedure at and during a meeting', a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision on whether to include the item shall be final.

## **8 Motions: Procedure at and During a Meeting**

### **8.1 Who May Propose**

A motion may be proposed by the Chair of the meeting or any Director present. It must also be seconded by another Director.

### **8.2 Contents of Motions**

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the receipt of a report;
- consideration of any item of business before the Board of Directors;
- the accuracy of minutes;
- that the Board of Directors proceed to next business;
- that the Board of Directors adjourn;
- that the question be now put.

### **8.3 Amendments to Motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board of Directors.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

#### 8.4 Rights of Reply to Motions

- Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

- Substantive/original motion

The Director who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

#### 8.5 Withdrawing a Motion

A motion, or an amendment to a motion, may be withdrawn.

#### 8.6 Motions once under debate

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;  
the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a Director be not further heard;

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board of Directors who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

## 9 Motion to Rescind a Resolution

- 9.1 Notice of motion to rescind any resolution (or the general substance of any resolution which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of 3 other Directors, and before considering any such motion of which notice shall have been given, the Board of Directors may refer the matter to any appropriate Committee or the Chief Executive for recommendation.
- 9.2 When any such motion has been dealt with by the Board of Directors it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

## **10 Chair's Ruling**

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

## **11 Voting**

- 11.1 Save as provided in Standing Orders 13 - Suspension of Standing Orders and 14 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of Directors present and voting on the question. In the case of an equal vote, the person presiding (ie: the Chair of the meeting) shall have a second, and casting vote.
- 11.1.1 Where more than one person is appointed jointly to a post in the Trust this shall count as one vote.
- 11.2 At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 11.3 If at least one third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).
- 11.4 If a Director so requests, their vote shall be recorded by name.
- 11.5 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 11.6 A manager who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise all rights including the voting rights of the Executive Director.
- 11.7 A manager attending the Board of Directors meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. A manager's status when attending a meeting shall be recorded in the minutes.

## **12 Minutes**

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.

## **13 Suspension of Standing Orders**

13.1 Except where this would contravene any statutory provision or the rules relating to the Quorum (Standing Order 16), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present (including at least one member who is an Executive Director and one member who is a Non-Executive Director) and that at least two-thirds of those Directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board of Directors' minutes.

13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Directors of the Trust.

13.3 No formal business may be transacted while Standing Orders are suspended.

13.4 The Audit Committee shall review every decision to suspend Standing Orders.

## **14 Variation and Amendment of Standing Orders**

These Standing Orders can only be amended in accordance with paragraph 3 of Annex 9.

## **15 Record of Attendance**

The names of the Chair and Directors/managers present at the meeting shall be recorded.

## **16 Quorum**

16.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and Board Members (including at least one Executive Director and one Non-Executive Director) is present.

16.2 An Officer in attendance for an Executive Director (Officer Member) but without formal acting up status may not count towards the quorum.

16.3 If the Chair or another Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see Standing Order 17) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

## **17 Declarations**

- 17.1 Each Director is required to declare their interests in accordance with paragraph 32 of this Constitution and Trust policy. In the event of a material interest which has been previously declared being pertinent to a discussion or a decision of a meeting of the Board of Directors the director in question should
- Withdraw from the meeting and play no part in the relevant discussion or decision, and:
  - Not vote on the issue.
- 17.2 A report on any Non-Executive Director who fails to disclose any interest to be disclosed in accordance with paragraph 32 of this Constitution or the Trust policy will be considered by the Council of Governors in accordance with the process to remove a Non-Executive Director.
- 17.3 A report on any Executive Director who fails to disclose any interest to be disclosed in accordance with paragraph 32 of this Constitution or the Trust policy will be considered by a Committee consisting of the Chair, the Chief Executive and the Non-Executive Directors in accordance with the process to remove an Executive Director.

## **18 Admission of Public and the Press**

The Board of Directors meetings shall be held in public, at which members of the public and representatives of the press shall be permitted to attend. Members of the public are not permitted to ask questions during the meeting as it is a meeting held in public, not a public meeting. However questions can be submitted to the Chair at the end of a meeting. Responses to the questions may be given at that time or in writing within 5 days of the meeting. Members of the public may be excluded from a meeting for special reasons and having regard to the confidential nature of the business to be transacted, publicity of which would be prejudicial to the public interest.

## ANNEX 9 – FURTHER PROVISIONS

### 1 Restrictions on Membership

- 1.1 An individual may not become or continue as a member of the Trust unless he/ she is aged 14 years or over when an application for membership is made and he/ she:
- 1.1.1 lives in an area specified in Annex 1 as an area for a Public Constituency; or
  - 1.1.2 is eligible for membership of the Staff Constituency in accordance with paragraph 8.1 or paragraph 8.2 of the Constitution.
- 1.2 In addition:-
- 1.2.1 no member should act in a manner which could associate the Trust with any personal opinions expressed by the member;
  - 1.2.2 other than staff members, no member may designate the Trust as his/her personal or professional postal address.

### 2. Dispute Resolution

- 2.1 Any dispute or complaint arising from the procedures set out in the Constitution as they relate to the functioning of the Board of Directors, the Council of Governors or any aspect of the membership or election arrangements will be referred in the first instance for resolution by the Trust Secretary, in consultation with the Chair, Chief Executive or the Council of Governors as appropriate.
- 2.2 If the dispute is between the Council of Governors and the Board of Directors the Chair or Deputy Chair (if the dispute involves the Chair) will endeavour to resolve the issue through discussion with the Governors and Directors to the satisfaction of both parties.
- 2.3 Failing resolution, under 2.2 the Board or the Council, as appropriate, will at its next formal meeting, approve the precise wording of a disputes statement setting out clearly the issues in dispute.
- 2.4 The Chair will ensure that the disputes statement is an agenda item and paper at the next formal meeting of the Council of Governors or Board as appropriate. That meeting will agree a response to the disputes statement.
- 2.5 The Chair (or Deputy Chair) will immediately as soon as practicable communicate the outcome to the other party and deliver the written response.
- 2.6 If the matter remains unresolved and following further discussions and/or use of the above process there appears to the Chair to be no prospect of resolution then he will advise the Council of Governors and the Board accordingly.
- 2.7 Where the dispute remains unresolved or only partially resolved the view of the Board of Directors will prevail.
- 2.8 Nothing in the above procedure will prevent the Council of Governors if it wishes, from informing NHSE , the statutory entity that remains the regulator of NHS foundation trusts that, in the Council's opinion, the Board of Directors has not responded constructively to concerns of the Council that the Trust is not meeting the conditions of its Licence.

#### **4 Further Provisions on Disqualification of Non-Executive Directors**

Further to the requirements set out in paragraph 25 the Board of Directors will determine, and identify in the annual report, each Non-Executive Director it considers to be independent. Anyone identified as not being independent will not be permitted to become or continue as a Non-Executive Director and consideration of independence or otherwise will include the following factors:

- If he/she has been an employee of the Trust within the last 5 years;
- If he/she has, or has had within the last 3 years, a material business relationship with the Trust either directly, or as a partner, shareholder, Director, or senior employee of a body that has such a relationship with the Trust;
- If he/she has received or receives additional remuneration from the Trust apart from a Director's fee, participates in the Trust's performance related pay scheme, or is a member of the Trust's pension scheme;
- If he/she has close family ties with any of the Trust's Directors or senior employees;
- If he/she holds cross Directorships or has significant links with other Directors through involvement in other companies or bodies;
- If he/she has served on the Trust's Board of Directors for more than 9 years from the date of their first appointment.

The Board must state its reasons if it determines that a Director is independent despite the existence of relationships or circumstances such as those listed above.

#### **5 Indemnity**

Members of the Board of Directors and Council of Governors and members of those committees which have delegated powers to make decisions or taken actions on behalf of the Board, as in the case of Mental Health Act Hospital Managers' Panel, who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board of Directors' or Council of Governors functions, save where they have acted recklessly. Any costs arising where members have acted honestly and in good faith will be met by the Trust.

The Trust may make such arrangements, as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, or Directors, or Governors and members of those committees which have delegate powers to make decisions or taken actions on behalf of the Board, as in the case of Mental Health Act Hospital Managers' Panel to meet all or any liabilities, which are properly the liabilities of the Trust under the paragraph above.