

# Gateshead Health NHS Foundation Trust

(A Public Benefit Corporation)

## Constitution

Approved in full by the Trust Board and Council of Governors - May 2020

Amendments approved by the Board and Council of Governors:

- September 2022 – to reclassify volunteers as public Governors
- March 2023 – to amend the membership boundaries for the out of area constituency
- May 2023 – to remove the clause preventing Board Members serving on more than one NHS trust board

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Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the 2003 Act.

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

References to legislation include all regulations, statutory guidance or directions.

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

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

## 1. Definitions

### 1.1 In this Constitution:-

"the 2012 Act"	is the Health and Social Care Act 2012
"the 2006 Act"	is the National Health Service Act 2006
"the 2003 Act"	is the Health and Social Care (Community Health and Standards) Act 2003;
"the 1977 Act"	is the National Health Service Act 1977;
"applicant NHS Trust"	means the NHS Trust which made the application to become an NHS Foundation Trust;
"area of the Trust"	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
"Board of Directors"	means the Board of Directors as constituted in accordance with this Constitution;
"Council of Governors"	means the Council of Governors as constituted in accordance with this Constitution;
"Director"	means a Director on the Board of Directors;
"Financial year"	means:  (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and  (b) each successive period of twelve months beginning with 1 <sup>st</sup> April.
"Local Authority Governor"	means a Member of the Council of Governors appointed by one or more Local Authorities whose area includes the whole or part of an area specified in Annex 1 as an area for a Public Constituency;
"Member"	means a Member of the Trust;
"Monitor"	Is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
"other partnership Governor"	means a Member of the Council of Governors appointed by a partnership organisation other than a Clinical Commissioning Group or university providing a medical or dental school to the

Trust specified in paragraph 6.3;

“CCG Governor” means a Member of the Council of Governors appointed by a Clinical Commissioning Group for which the Trust provides goods or services;

“Public Governor” means a Member of the Council of Governors elected by the Members of the Public Constituency;

“Patient Governor” Means a Member of the Council of Governors elected by the Members of the Patient Constituency;

"Secretary" means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust, including a joint, assistant or deputy Secretary;

“Staff Governor” means a Member of the Council of Governors elected by the Members of the Staff Constituency

“the Trust” means the Gateshead Health NHS Foundation Trust;

## **2. Name**

2.1 The name of this Trust is to be “Gateshead Health NHS Foundation Trust”.

## **3. Principal Purpose**

3.1 The Trust’s principal purpose is the provision of goods and services for the purposes of the Health Service in England.

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

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

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

3.3.2 the promotion and protection of public health.

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

## **4. Powers**

4.1 The Trust is to have all the powers of an NHS Foundation Trust as set out in the 2003 Act, subject to the terms of authorisation.

## 5. Members

### 5.1 Representative Membership

The Trust must take steps to secure that (taken as a whole) the actual membership of any public constituency and patient's constituency is representative of those eligible for such membership.

### 5.2 The Trust is to have five Membership Constituencies, namely:

- (a) Four "Public Constituencies" (including the "Out of Area Constituency), and
- (b) One "Staff Constituency"

### 5.3 Public Constituencies (other than "Out of Area"):

- 5.3.1 An individual who lives in an area specified in Annex 1(a), (b) or (c) as an area for a public constituency may become or continue as a member of the Foundation Trust.
- 5.3.2 Those individuals who live in an area specified in an area for any public constituency are referred to collectively as the Public Constituency
- 5.3.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

### 5.4 Out of Area Constituency:

#### 5.4.1 Members of the Trust who are Members of the Out of Area Constituency are to be:

- (a) Individuals who live in the area of the Trust listed in Annex 1 (d) or
- (b) Individuals who live outside the area of the Trust listed in Annex 1 (a), (b), (c) or (d) and who have used any of the Trust's services within the 7 years immediately preceding the date of their application for membership and had domestic responsibility for the care of the patient once they have received their treatment from the Trust (other than an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation.

Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Patient & Out of Area Constituency.

- 5.4.2 The minimum number of Members required for the Out of Area Constituency is to be the number given for that Constituency in column 3 of Annex 1 of the Public Constituencies.

### 5.5 Staff Constituency:

#### 5.5.1 Members of the Trust who are Members of the Staff Constituency are to be individuals:

- (a) who are employed under a contract of employment by the Trust or a wholly-owned subsidiary of the Trust; and

- (b) who satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 1 to the 2003 Act, that is to say:
  - (i) in the case of individuals described at (a) above:
    - (aa) who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
    - (bb) who have been continuously employed by the Trust for at least 12 months;
  - (c) who are not disqualified for Membership under paragraph 6.4 below; and who have been invited by the Trust to become a Member of that Constituency and have not informed the Trust that they do not wish to do so

5.5.2 The minimum number of Members required for the Staff Constituency is 2,000.

5.5.3 A person who is eligible to be a Member of the Staff Constituency (see paragraph 5.4.1 above) may not become or continue as a Member of any Constituency other than the staff Constituency.

## **5.6 Disqualification for Membership:**

5.6.1 A person may not be a Member of the Trust if they are under 16 years of age.

5.6.2 It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from Membership, they shall carry out all reasonable enquiries to establish if this is the case.

## **5.7 Termination of Membership:**

5.7.1 A Member shall cease to be a Member if he/she:

- (a) resigns by notice to the Trust Secretary;
- (b) ceases to fulfil the requirements of paragraphs 5.3, 5.4 or 5.5;
- (c) dies;
- (d) is disqualified from membership under paragraph 5.6.

## **5.8 Voting at Governor Elections:**

5.8.1 A person may not vote at an election for a Public Governor unless within the specified period they have made a declaration in the specified form stating the particulars of their qualification to vote as a Member of the constituency, identifying the section for which they are a Member, for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

## **6. Council of Governors**

- 6.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, Clinical Commissioning Group Governors, Local Authority Governors, Patient & Out of Area Governors, and other Partnership Governors.
- 6.2 The Council of Governors of the Trust is to include:
- (a) 17 Public Governors
  - (b) 6 Staff Governors
  - (c) 1 Clinical Commissioning Group Governor
  - (d) 1 Local Authority Governor
  - (e) 7 Partnership Governors

The number of Public Governors comprise more than half the total Membership of the Council.

### **Partnership Governors**

- 6.3 The specified partnership organisations below may appoint one Member of the Council of Governors:
- (a) Newcastle University
  - (b) Northumbria University
  - (c) Gateshead College
  - (e) Gateshead Jewish Community Council
  - (f) Gateshead Diversity Forum
  - (g) Gateshead Youth Assembly

In addition one member of the Council of Governors will be appointed from a voluntary organisation working within the community.

### **6.4 Public Governors:**

- 6.4.1 Members of the Public Constituencies may elect any of their number to be a Public Governor.
- 6.4.2 If contested, the election must be by secret ballot.
- 6.4.3 The Election Scheme including the specified forms of and periods for declarations to be made by candidates standing for office and Members as a condition of voting and the process if the election is uncontested, is set out in Annex 3, Part 4
- 6.4.4 A person may not stand for election to the Council as a Public Governor unless, within the period specified in Annex 3, Part 4, they have made a declaration in the form specified in that Part of that Annex of their qualification to vote as a Member of the Public Constituency for which the election is being held and is not prevented from being a Member of the Council by paragraph 8 to Schedule 1 of the 2003 Act or paragraph 6.11 below (disqualification). It is an offence to knowingly or recklessly make a declaration under section 36 of the 2003 Act which is false in a material particular.
- 6.4.5 Paragraph 5.8 (voting at Governor elections) applies.

## 6.5 **Staff Governors:**

- 6.5.1 Members of the staff Constituency may elect any of their number to be a staff **Governor**.
- 6.5.2 If contested, the election must be by secret ballot.
- 6.5.3 The Election Scheme, including the process if the election is uncontested, is set out in Annex 3, Part 4.

## 6.6 **Clinical Commissioning Group Governors**

- 6.6.1 Newcastle Gateshead Clinical Commissioning Group is authorised to appoint one Clinical Commissioning Group Governor pursuant to a process agreed by the Clinical Commissioning Group and the Trust. Where a Clinical Commissioning Group Governor post falls vacant, the CCG will appoint another Governor within three months of the Trust Secretary having received notification that the post is vacant.

## 6.7 **Local Authority Governors**

- 6.7.1 Gateshead Council are authorised to appoint one Local Authority Governor pursuant to a process agreed by that Local Authority and the Trust. Where a Local Authority Governor post falls vacant, the Local Authority will appoint another Governor within three months of the Trust Secretary having received notification that the post is vacant.

## 6.8 **Other Partnership Governors:**

- 6.8.1 Newcastle University, Northumbria University, Gateshead College and Gateshead Voluntary Organisation Council, Gateshead Jewish Community Council, Gateshead Diversity Council, and Gateshead Youth Assembly are authorised to appoint one Governor each pursuant to a process agreed by those organisations and the Trust. Where a Partnership Governor post falls vacant, the relevant organisation will appoint another Governor within three months of the Trust Secretary having received notification that the post is vacant.

## 6.9 **Terms of Office:**

### 6.9.1 **Public and Out of Area Governors:**

- (a) may hold office for a period of three years;
- (b) are eligible for re-election at the end of that period;
- (c) may not hold office for longer than nine consecutive years;
- (d) cease to hold office if they cease to be a Member of the Constituency to which they are elected.

### 6.9.2 **Staff Governors:**

- (a) may hold office for a period of three years;
- (b) are eligible for re-election at the end of that period;
- (c) may not hold office for longer than nine consecutive years;



- (d) cease to hold office if they cease to be a Member of the staff Constituency.

#### **6.9.3 Clinical Commissioning Group Governors:**

- (a) may hold office for a period of three years;
- (b) are eligible for reappointment at the end of that period;
- (c) cease to hold office if the sponsoring Clinical Commissioning Group withdraws its sponsorship of them.

#### **6.9.4 Local Authority Governors:**

- (a) may hold office for a period of three years;
- (b) are eligible for reappointment at the end of that period;
- (c) cease to hold office if the sponsoring Local Authority withdraws its sponsorship of them.

#### **6.9.5 Other Partnership Governors:**

- (a) may hold office for a period of three years;
- (b) are eligible for reappointment at the end of that period;
- (c) cease to hold office if the sponsoring partnership organisation withdraws its sponsorship of them.

### **6.10 Termination of Tenure:**

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

6.10.2 If a Governor fails to attend three consecutive meetings of the Council of Governors, their tenure of office is to be immediately terminated unless the other Governors are satisfied that:

- (a) the absence was due to a reasonable cause; and
- (b) they will be able to start attending meetings of the Trust again within such a period, as they consider reasonable.

6.10.3 A Governor's tenure of office may be terminated if they decline to submit to a DBS check and/or if the Council of Governors reasonably considers, after due consideration in accordance with the procedures set out in its standing orders, and the requirements of Annex 4 Code of Conduct, that they are unfit to discharge the functions of a Governor.

### **6.11 Disqualification**

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

- (a) in the case of a staff Governor or public Governor, they cease to be a member of the constituency they represent;

- (b) in the case of a CCG Governor, Local Authority Governor or other partnership Governor, the sponsoring CCG, Local Authority, or partnership organisation withdraw their sponsorship of them;
- (c) they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- (d) they have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- (e) they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
- (f) they have within the preceding two years been dismissed, from any paid employment for misconduct with a health service body;
- (g) they are a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary/non-pecuniary interest;
- (h) they are an Executive or Non-Executive Director of the Trust, or a Governor, Non-Executive Director, Chair or Chief Executive officer of another NHS Trust;
- (i) they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had their name included in such a list;
- (j) they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
- (k) they have failed to comply with the required standard of behaviour as per the Trust policy for withholding treatment from violent and abusive patients;
- (l) they have been placed on the Registers of schedule 1 Offenders pursuant to the Sex Offenders Act 1977 and /or the Children & Young Person Act 1933;
- (m) they fail to abide by the constitution as set out in this document;
- (n) in the case of a staff Governor who has been suspended from duties for any reason, they will also be suspended from their role as Governor for the duration of their suspension;
- (o) they are under 16 years of age;
- (p) they have failed to undertake the required mandatory training for Governors;
- (q) 3/4 of all governors agree, they can exclude anyone so disqualified from standing from re-election to be a governor of the Foundation Trust for up to a maximum of 5 years. Any such exclusion will take immediate effect and must then be confirmed in writing to the person excluded within 15 working days. At the end of an exclusion period, the exclusion must be explicitly reconsidered if the person so excluded indicates to the Trust Secretary that they wish to stand again for election to become a governor of the Foundation Trust. If the exclusion is then

reaffirmed, the reasoning and length of exclusion should be given in writing to the person excluded and also included in the public papers of the Council of Governors.

- 6.11.2 Where a person has been elected or appointed to be a Governor and they become aware that they are disqualified for appointment under paragraph 6.11.1, they shall notify the Trust Secretary in writing of such disqualification.

If it comes to the notice of the Trust Secretary at the time of their appointment or later that the Governor is so disqualified, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect.

Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and they shall cease to act as a Governor.

## 6.12 **Appointment of a Lead Governor**

- 6.12.1 The Trust will appoint a Lead Governor
- 6.12.2 The Lead Governor will be appointed to carry out the role described in Appendix B of Monitor's FT Code of Governance 2010 or any subsequent amendments.
- 6.12.3 They will be appointed from those in the public, patient or out of area membership category with at least 1 years' experience as a Governor.
- 6.12.4 The Lead Governor will be appointed by the Council of Governors for a period of one year, but may be re-appointed annually up to a maximum of three years.
- 6.12.5 The Lead Governor will, via the Trust Secretary, pass on to Governors within five days any communication received directly from Monitor and, where the Chair of the Board of Governors is conflicted, shall via the Vice-Chair, convene a meeting of the Board of Governors at the earliest opportunity – but only in respect of communications received from Monitor.
- 6.12.6 Where any Governor – including the Lead Governor – wishes to contact Monitor, he/she will first discuss this with the SID (Senior Independent Director). Contact thereafter with Monitor, will be via the Lead Governor. This presupposes that matters have not been resolved locally, either through the Chair or the Board of Governors.
- 6.12.7 Removal of the Lead Governor will require the approval of three-quarters of the members of the whole membership of the Council of Governors.

## 6.13 **Vacancies:**

- 6.13.1 Where membership of the Council of Governors ceases for one of the reasons set out in paragraphs 6.10 or 6.11 or through death in service:
- (a) public and staff Governors shall be replaced at the next annual election in accordance with the relevant Electoral Scheme set out in Annex 3.
  - (b) should the vacancy affect the quorum or representation of a constituency for a period exceeding six months, a by-election shall be held in accordance with the relevant Electoral Scheme set out in Annex 3.

- (c) Clinical Commissioning Group, Local Authority and Partnership Governors shall be replaced in accordance with the processes agreed pursuant to paragraphs 6.6 to 6.8.

#### **6.14 Casual Vacancies:**

- 6.14.1 A casual vacancy is a vacancy that arises because a Governor does not complete his term of office for any reason. A vacancy that arises because the term of office of a governor has expired and he has not been re-elected or re-appointed is not a casual vacancy.
- 6.14.2 The validity of any act of the Council of Governors is not affected by any vacancy amongst the Council of Governors or by any defect in the appointment of any Governor.
- 6.14.3 Where there is a casual vacancy of the Council of Governors for whatever reason:
  - (a) Where the vacancy is for an appointed Governor, the appointing organisation will be requested to appoint a replacement to hold office for the remainder of the term in accordance with the agreed appointment processes; and
  - (b) Where the vacancy is for an elected Governor, the next highest polling candidate at the most recent elections to fill the seat may be invited to take up the seat for the remainder of the period of office at which time he may seek re-election.

#### **6.15 Roles and Responsibilities of Governors:**

- 6.15.1 The roles and responsibilities of the Governors are:
  - (a) At a General meeting:
    - (i) to appoint or remove the Chair and the other Non-Executive Directors. The initial Chair appointed by the Council of Governors is to be the Chair of the applicant NHS Trust if they wish to be appointed. The other initial Non-Executive Directors appointed by the Council of Governors are, so far as possible, to be Non-Executive Directors (other than the Chair) of the applicant Trust who wish to be appointed. The removal of a Non-Executive Director requires the approval of three-quarters of all the Council of Governors;
    - (ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors made by the Governors Remuneration Committee (after taking appropriate independent advice). Details of the remuneration and allowances of Non-Executive Directors will be published in the Trust's annual accounts.
    - (iii) The remuneration and allowances for Non-Executive Directors are to be set by the Council of Governors (after taking independent advice) and are also to be published in the Trust's annual accounts.
    - (iv) to appoint or remove the Trust's auditor at a general meeting of the Board;
    - (v) to be presented with and consider the annual accounts, any report of the auditor on them and the annual report;
  - (b) to approve (by a majority of the Council of Governors voting) an appointment (by the Chair and Non-Executive Directors) of the Chief Executive other than the

initial Chief Executive of the Trust appointed in pursuance of paragraph 19(6) of Schedule 1 to the 2003 Act;

- (c) to give the views of the Council of Governors to Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to Monitor;
- (d) to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors
- (e) to represent the interests of the members of the corporation as a whole and the interests of the public
- (f) to respond as appropriate when consulted by the Directors;
- (g) to carry out other duties as agreed with Directors from time to time.

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

6.15.3 For the purpose 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 Director's performance), the Council of Governors may require one or more of the Directors to attend a meeting.

#### 6.16 **Expenses:**

6.16.1 The Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.

#### 6.17 **Remuneration:**

6.17.1 Governors are not to receive remuneration.

#### 6.18 **Meetings:**

6.18.1 The Chair of the Trust or, in their absence, another Non-Executive Director will preside at meetings of the Council of Governors. The Chair or Non-Executive Director may have a casting vote, provided that they may not exercise that casting vote if they are conflicted on an issue. If this is the case, the Council of Governors shall elect a public Governor from their number to preside over the meeting who shall exercise the casting vote.

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

- (a) during the consideration of any material or discussion in relation to a named person employed by or proposed to be employed by the Trust;
- (b) during the consideration of any material or discussion in relation to a named person who is or has been or is likely to become a patient of the Trust or a carer in relation to such patient;
- (c) during the consideration of any matter, which, by reason of its nature, the Council is satisfied, should be dealt with on a confidential basis.

6.18.3 Members of the Council of Governors will only receive patient and staff identifiable level information where the Council of Governors has satisfied itself that this is necessary for it to be able to meet its responsibilities and duties.

6.18.4 The Council of Governors is to meet at least four times a year.

6.18.5 At a general meeting in September, the Council of Governors is to receive and consider the annual accounts, any report of the auditor on them, and the annual report.

(a) Nothing in sub-paragraph 6.16.5 prevents the Council of Governors from holding a general meeting more than once a year.

6.18.6 The Council of Governors will adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 2.

#### 6.19 **Committees and sub-committees:**

6.19.1 The Council of Governors may appoint committees consisting of its Members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

6.19.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.

#### 6.20 **Declaration of Interests of Governors:**

##### 6.20.1 **Declaration of Interests:**

If a Governor has a pecuniary or non-pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matters which are under consideration by the Council of Governors, they shall disclose that to the rest of the Council of Governors as soon as they are aware of it. The Council of Governors shall adopt standing orders specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter, as appropriate.

6.20.2 For avoidance of doubt, interests that should be disclosed include, but are not limited to:

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

(b) ownership, part ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS;

(a) majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;

(d) a position of authority in a charity or voluntary organisation in the field of health and social care;

(e) any connection with a voluntary or other organisation in the field of health and social care;

(f) to the extent not covered above, any connections with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks

- 6.20.3 If a Governor has any doubt about the relevance or materiality of an interest, the Governor shall discuss this with the Chair.
- 6.20.4 At the time the interests are declared, they shall be recorded in the minutes of the Council of Governors meeting as appropriate. Any changes of interests of a Governor shall be officially declared at the next meeting of the Council as appropriate, following the change occurring. It is the obligation of the Governor to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest. The Trust Secretary will amend the register within three working days.
- 6.20.5 Directorships of companies in 6.18.2 (a) above or in companies likely or possibly seeking to do business with the NHS in 6.18.2 (b) above should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

## **7. Board of Directors:**

- 7.1 The Trust is to have a Board of Directors. It is to consist of Executive and Non-Executive Directors.
- 7.2 The Board is to include:
- (a) the following Non-Executive Directors:
    - (i) a Chair;
    - (ii) seven other Non-Executive Directors;
    - (iii) up to two Associate Non-Executive Directors who will have no voting rights on the Board;
  - (b) the following Executive Directors:
    - (i) a Chief Executive;
    - (ii) a Finance Director;
    - (iii) four other Executive Directors, one of whom is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and another of whom is to be a registered nurse or registered midwife.
- 7.3 Subject to paragraph 7.3.1 below, only a Member of the Public Constituency or Out of Area Constituency is eligible for appointment as a Non-Executive Director.
- 7.3.1 Paragraph 7.3 above does not apply to the appointment of any initial Non-Executive Director in pursuance of paragraph 19 of Schedule 1 to the 2003 Act.
- 7.4 Subject to the provisions in paragraph 7.5.1 regarding initial appointments, Non-Executive Directors are to be appointed in accordance with a process that may include open competition. This process will be agreed by the Council of Governors.
- 7.4.1 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

## 7.5 **Terms of Office:**

- 7.5.1 The Chair and the Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting.
- 7.5.2 The Chief Executive (and accounting officer) shall hold office for a period in accordance with the terms and conditions of office decided by the relevant committee of Non-Executive Directors; (or, pending the establishment of such a committee, in accordance with the terms and conditions decided by the applicant NHS Trust Board of Directors). The appointment requires the approval of the Council of Governors.
- 7.5.3 The Executive Directors, other than the Chief Executive shall hold office for a period in accordance with the terms and conditions decided by the relevant committee of Non-Executive Directors; (or, pending the establishment of such a committee, in accordance with the terms and conditions decided by the applicant NHS Trust Board of Directors).

## 7.6 **Disqualification:**

- 7.6.1 A person may not be a Director of the Trust if:
- (a) in the case of a Non-Executive Director, they no longer satisfy paragraph 7.3.
  - (b) they are a person whose tenure of office as a Chair or as a Member or Director of a Health Service body has been terminated on the grounds that their appointment is not in the interests of public service, for non attendance at meetings, or for non-disclosure of a pecuniary/non-pecuniary interest;
  - (c) they have within the preceding two years been dismissed, from any paid employment for misconduct with a Health Service body;
  - (d) they already hold the position of Governor at the Trust;
  - (e) they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
  - (f) they bring the Board of Directors or any of its Member organisations into disrepute;
  - (g) they have failed to comply with the required standard of behaviour as per the Trust policy for withholding treatment from violent and abusive patients;
  - (h) they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had their name included in such a list;
  - (i) they have been placed on the Registers of schedule 1 Offenders pursuant to the Sex Offenders Act 1977 and/or the Children & Young Person Act 1933;
  - (j) they fails to abide by the Constitution as set out in this document;
  - (k) they have failed to undertake the required training for Directors.
- 7.6.2 In accordance with the Health and Social Care Act 2014 Regulation 5 "Fit and Proper Persons as Directors" the Trust shall also ensure that no person who is an unfit person may become or continue as a Director, except with the approval of Monitor.



In this condition an unfit person is:

- (a) An individual;
  - (i) Who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
  - (ii) Who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it; or
  - (iii) Who within the preceding five years has been convicted in the British Islands of any offence and 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; or
  - (iv) Who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986; or
- (b) A body corporate with a parent body corporate:
  - (i) Where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of subparagraph (a) of this paragraph or,
  - (ii) In relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or
  - (iii) Which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or
  - (iv) Which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or
  - (v) Which passes any resolution for winding up, or
  - (vi) Which becomes subject to an order of a Court for winding up.

## **7.7 Roles and Responsibilities:**

- 7.7.1 The powers of the Trust are to be exercisable by the Board of Directors on its behalf.
- 7.7.2 Any of those powers may be delegated to a committee of Directors or to an Executive Director.
- 7.7.3 A committee of Non-Executive Directors established as an Audit Committee is to monitor, review and carry out such other functions as may be delegated to it by the Board as referenced in 13.3.
- 7.7.4 It is for the Chair and Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and accounting officer). The initial Chief Executive (and accounting officer) is to be the chief officer of the applicant NHS Trust if he/she wishes to be appointed.

- 7.7.5 A panel comprising the Chair, Chief Executive other Non-Executive Directors and external advisors as appropriate will appoint the Executive Directors.
- 7.7.6 It is for the Governors at a meeting of the Council of Governors to appoint or remove the Chair or other Non-Executive Director/s. The removal of the Chair or a Non-Executive Director requires the approval of three-quarters of the Council of Governors.
- 7.7.7 The Trust is to establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Executive Directors (Remuneration Committee). Pending the establishment of such a committee, Executive Directors of the applicant NHS Trust appointed to the Trust will be appointed on their current terms and conditions at the point at which the Trust is established.
- 7.7.8 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
- 7.7.9 The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the auditor on them, and the annual report.
- 7.7.10 The functions of the Trust under paragraph 14.5 below are delegated to the Chief Executive as accounting officer.
- 7.7.11 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 corporation so as to maximize the benefits for the members of the corporation as a whole and for the public
- 7.7.12 (1) The duties that a director of a public benefit corporation has by virtue of being a director include in particular –
- (a) 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 corporation;
  - (b) 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.
- (2) The duty referred to in sub-paragraph 7.7.12 (1) (a) is not infringed if –
- (a) the situation cannot reasonably be regarded as likely to give rise to conflict of interest, or
  - (b) the matter has been authorised in accordance with the constitution.
- (3) The duty referred to in sub-paragraph 7.7.12 (1) (b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- (4) In sub-paragraph (1) (b) "third party" means a person other than –
- (a) the Trust or
  - (b) a person acting on its behalf.

## 8. Declaration of Interest of Directors

The functions of the Trust under paragraph 14.5 below are delegated to the Chief Executive as accounting officer.

### 8.1 Declaration of Interests:

If a Director has a pecuniary or non-pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Board, they shall disclose that to the rest of the Board as soon as they are aware of it. The Board of Directors, in consultation with the Council of Governors, shall adopt Standing Orders specifying the arrangements for excluding Directors from discussion or consideration of the contract or other matter, as appropriate. If a declaration becomes inaccurate or incomplete, a further declaration must be made.

8.1.1 For avoidance of doubt, interests that should be disclosed include, but are not limited to are:

- (a) directorships, including Non-Executive directorships held in private companies or PLCs with the exception of those of dormant companies;
- (b) ownership, part ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS;
- (c) majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- (d) a position of authority in a charity or voluntary organisation in the field of health and social care;
- (e) any connection with a voluntary or other organisation in the field of health and social care;
- (f) to the extent not covered above, any connections with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

8.1.2 If a Director has any doubt about the relevance or materiality of an interest, the Director shall discuss this with the Chair.

8.1.3 At the time the interests are declared, they shall be recorded in the minutes of the Board of Directors meeting as appropriate. Any changes of interests of a Director shall be officially declared at the next meeting of the Board as appropriate, following the change occurring. It is the obligation of the Director to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest. The Trust Secretary will amend the register within three working days.

8.1.4 Directorships of companies in 8.1.1 (a) above or in companies likely or possibly seeking to do business with the NHS in 8.1.1 (b) above should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

## 9. Meetings of Directors

- 9.1 The Board of Directors, in consultation with the Council of Governors, is to adopt Standing Orders covering the proceedings and business of its meetings. These are to include setting a quorum for meetings, both of Executive and Non-Executive Directors. The proceedings shall not however be invalidated by any vacancy of its Membership, or defect in a Director's appointment.
- 9.2 The Chair may have a casting vote, provided that they may not exercise it if they are conflicted on an issue. If this is the case the meeting of the Board of Directors shall be presided over by another Non-Executive Director and that Non-Executive Director shall exercise the casting vote provided they are not conflicted on that issue.
- 9.3 (1) Before holding a public meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors
- (2) As soon as practicable after holding a public meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 9.4 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons These would include Freedom of Information Act 2000 Exemptions:
- |            |                                     |
|------------|-------------------------------------|
| Section 30 | Investigations                      |
| Section 36 | Effective conduct of public affairs |
| Section 40 | Personal data                       |
| Section 43 | Commercial Interests                |

## 10. Registers

- 10.1 The Trust is to have:
- (a) a register of Members showing, in respect of each Member, the Constituency and where there are classes within it, the class to which he belongs;
  - (b) a register of Members of the Council of Governors;
  - (c) a register of interests of the Council of Governors;
  - (d) a register of Directors;
  - (e) a register of interests of the Directors.
- 10.2 The Trust Secretary will set out and agree the format of the Members register with the Council of Governors. The register will list names and Constituency for each Member. The Trust Secretary will be responsible for making arrangements for additions and removals from the register. The register will be reviewed annually for completeness and accuracy.
- The Trust Secretary will also set out and agree the format of the register of Governors and their interests and will be responsible for additions and removals from the register.
- The Trust Secretary will also set out and agree the format of the register of Directors and their interests and will be responsible for additions and removals from the register.
- 10.3 The Trust is to send to Monitor a list of the persons who were first elected or appointed:
- (a) the Members of the Council of Governors;
  - (b) the Directors.

## 11. Documents available for public inspection

- 11.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 11.1.1 a copy of the current constitution
  - 11.1.2 a copy of the latest annual accounts and any report of the auditor on them;
  - 11.1.3 a copy of the latest annual report.
- 11.2 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:
  - 11.2.1 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.
  - 11.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 11.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 11.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 11.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 11.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 11.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 11.2.8 a copy of any final report published under section 65I (administrator's final report).
  - 11.2.9 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.
  - 11.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 11.3 Any person who requests a copy or extract from any of the above documents is to be provided with a copy.
- 11.4 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.

## 12. Auditor

- 12.1 The Trust will appoint an auditor and will provide the auditor with every facility and all information, which they may reasonably require for the purposes of their functions under Part 1 of the 2003 Act.
- 12.2 A person may only be appointed auditor if they(or in the case of a firm each of its Members) is a Member of one or more of the bodies referred to in paragraph 23(4) of Schedule 1 to the 2003 Act.
- 12.3 Appointment of the auditor by the Council of Governors is covered in paragraph 6.13.1, and monitoring of the auditor's function by a committee of Non-Executive Directors is covered in paragraph 7.7.3.
- 12.4 An officer of the Audit Commission may be appointed with the agreement of the Commission.
- 12.5 The auditor is to carry out their duties in accordance with Schedule 5 to the 2003 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

### 13. **Accounts**

- 13.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 13.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 13.3 The accounts are to be audited by the Trust's auditor.
- 13.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 13.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

### 14. **Annual reports, forward plans and non-NHS work**

- 14.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 14.2 The reports must give –
  - 14.2.1 information on any steps taken by the corporation to secure that (taken as a whole) the actual membership of any public constituency and patients' constituency is representative of those eligible for such membership
  - 14.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 6.13.3
  - 14.2.3 information on the Trust's policy on pay and on the work of the Trust Remuneration Committees established under paragraph 7.7.7 and such other procedures as the Trust has on pay,
  - 14.2.4 information on the remuneration of the Directors and on the expenses of the Governors and the Directors.
  - 14.2.5 (i) any other information the regulator requires

(ii) before imposing a requirement under subparagraph 14.2.5 (i) that the regulator considers is sufficiently significant to justify consultation, the regulator must consult such persons as it considers appropriate.

- 14.3 The Trust shall give information as to its forward planning in respect of each financial year to the Secretary of State.
- 14.4 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 14.5 In preparing the document the directors shall have regard to the views of the Council of Governors.
- 14.6 Each forward plan must include information about –
- 14.6.1 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
- 14.6.2 the income it expects to receive from doing so.
- 14.7 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 14.6.1 the Council of Governors must –
- 14.7.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
- 14.7.2 notify the directors of the Trust and its determination.
- 14.8 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.
- 14.9 Annual Meeting of Members
- 14.9.1 The Trust must hold an annual meeting of its members.
- 14.9.2 The meeting must be open to members of the public.
- 14.9.3 At least one member of the Board of Directors of the corporation must attend the meeting and present the following documents to the members at the meeting –
- (a) the annual accounts  
(b) any report of the auditor on them  
(c) the annual report
- 14.9.4 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors –
- (a) at least one member of the Council of Governors must attend the next annual meeting of members and present the amendment, and
- (b) the Trust must give the members an opportunity to vote on whether they approve the amendment.

14.9.5 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.

**15. Indemnity**

15.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, except where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability.

**16. Instruments etc**

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

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

**17. Dispute Resolution Procedures**

17.1 The Trust Secretary shall be the custodian of membership documentation and the membership database. The Trust Secretary shall be responsible for dealing with queries or disputes regarding membership with a right of appeal to a committee of the Council of Governors convened for this purpose, whose decision shall be final and binding.

17.2 In the event of a dispute between the Council of Governors and the Board of Directors, the Council and Board shall meet and attempt to resolve the dispute by negotiation. If agreement cannot be reached then, subject to paragraph 17.3, the dispute shall be referred to the Chair, whose decision shall be final.

17.3 In the event that a dispute is referred to the Chair under paragraph 17.3 and the Chair considers that they have a perceived or real interest in the outcome of that dispute and the dispute would be better resolved externally, then the Chair may refer the dispute for resolution by arbitration.

17.4 All other disputes shall be referred in the first instance to the Chief Executive who will deal with them in accordance with an appropriate dispute resolution procedure.

**18. Amendment of the Constitution**

18.1 (1) The Trust may make amendments to this Constitution only if –

(a) more than half of the members of the council of governors of the Trust voting approve the amendments, and

(b) more than half of the members of the Board of Directors of the Trust voting approve the amendments.

(2) Amendments made under this section take effect as soon as the conditions in subsection 18.1 (1) (a) and (b) are satisfied

(3) But an amendment is of no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the Health Act 2006.

(4) The Trust must inform the regulator of amendments made under this section; but the



regulator’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 Health Act 2006.

18.2 Subject to clause 18.1, this Constitution will be reviewed by the Council of Governors no sooner than the expiry of one year from the date of approval of the previous revisions and no later than two years from such date.

## 19. Dissolution of the Trust

19.1 The Trust may not be dissolved except by order of Monitor, in accordance with Section 54 of the 2006 Act following authorisation of a relevant application by the Council of Governors in Accordance with Para 20.1 below.

## 20. Mergers etc and significant transactions

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

20.2 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

20.3 “Significant transaction” will be defined by the criteria set out by Monitor below:

Ratio	Description	Reporting requirements	
		Non-healthcare/ international	UK Healthcare
<b>Assets</b>	The gross assets* subject to the transaction, divided by the gross assets of the foundation trust	>5%	>10%
<b>Income</b>	The income attributable to the: <ul style="list-style-type: none"> <li>• assets or</li> <li>• contract</li> </ul> associated with the transaction, divided by the income of the foundation trust	>5%	>10%
<b>Consideration to total foundation trust capital</b>	The gross capital** or consideration associated with the transaction divided by the total capital*** of the foundation trust following completion or the effects on the total capital of the foundation trust resulting from a transaction	>5%	>10%

\*Gross assets are the total of fixed assets and current assets.

\*\* Gross capital equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets.

\*\*\*Total capital of the foundation trust equals taxpayers’ equity.

## 21. Foundation Trust Head Office

21.1 The Foundation Trust Head Office may be contacted:

Company Secretary  
Trust Headquarters  
Queen Elizabeth Hospital

Sheriff Hill  
Gateshead  
NE9 6SX

Tel: 0191 4820000 or 0191 4453712  
Fax: 0191 4826001

Email: [foundation.enquiries@ghnt.nhs.uk](mailto:foundation.enquiries@ghnt.nhs.uk)

Website: [www.qegateshead.nhs.uk](http://www.qegateshead.nhs.uk)

## Annex 1

### Public Constituencies Of The Trust

<b>Name of Constituency</b>	<b>Area</b>	<b>Minimum number of Members</b>	<b>Number of Governors</b>
(a) Western Gateshead	The Western area will consist of Prudhoe, Crawcrook & Greenside, Chopwell & Rowlands Gill, Winlaton & High Spen, Blaydon, Ryton, Crookhill & Stella, Whickham North, Whickham South & Sunnyside, Dunston & Teams, Dunston Hill & Whickham East.	600	6
(b) Central Gateshead	The Central area will consist of Lamesley, Birtley, Lobley Hill & Bensham, Bridges, Saltwell, Deckham, Low Fell, Chowdene, High Fell Chester-Le-Street, Ouston and Pelton, Washington.	700	7
(c) Eastern Gateshead	The Eastern area will consist of Felling, Windy Nook & Whitehills, Pelaw & Heworth, Wardley and Leam Lane and parts of Jarrow & Hebburn.	300	3
(d) Out of Area	The geographical area covered by the North East and North Cumbria Integrated Care System other than any areas noted above and users of Trust services living outwith the areas (a) (b) (c) and (d)	100	1

## COUNCIL OF GOVERNORS' STANDING ORDERS

### 1. Meetings of the Council of Governors

#### 1.1 Admission of the Public and the Press:

It is proposed that all meetings will be held in public unless the Council of Governors decides otherwise in relation to part of a meeting for reasons of confidentiality. The Chair may exclude any member of the public from a meeting if they are interfering with or preventing the proper conduct of the meeting.

The Chair shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted.

1.2 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council of Governors.

#### 1.3 Calling meetings:

Meetings of the Council of Governors shall be held at least four times each year, inclusive of an Annual General Meeting, at times and places that the Council of Governors may determine.

Ordinary meetings of the Council of Governors shall be held at such times and places as the Council may determine.

1.4 The Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors, has been presented to them, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more Governors may forthwith call a meeting.

#### 1.5 Notice of meetings:

Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on their behalf shall be issued to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least five clear working days before the meeting.

1.6 Lack of service of the notice on any Governor shall not affect the validity of a meeting.

1.7 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.

1.8 Failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

**1.9 Setting the agenda:**

The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).

1.10 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting, subject to Standing Order 1.5. Requests made less than five days before a meeting may be included on the agenda at the discretion of the Chair.

**1.11 Chair of meeting:**

At any meeting of the Trust, the Chair, if present, shall preside. If the Chair is absent from the meeting either in whole or temporarily on the grounds of a declared conflict of interest, the Non-Executive Director, shall preside

**1.12 Annual public meeting:**

The Trust will publicise and hold an annual public meeting in accordance with the NHS Trusts (Public Meetings) Regulations 1991 (SI(1991)482).

**1.13 Notices of motion:**

A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 1.7.

**1.14 Withdrawal of motion or amendments:**

A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

**1.15 Motion to rescind a resolution:**

Notice of motion to amend or 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 Governors who gives it and also the signature of three other Governors. When any such motion has been disposed of by the Trust, it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within three months; however the Chair may do so if he/she considers it appropriate.

**1.16 Motions:**

The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

1.17 When a motion is under discussion or immediately prior to 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 a specific item of business
- that the motion be now put (\*)
- in the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate

No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

**1.18 Chair's ruling:**

Statements of Governors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

**1.19 Voting:**

Save where all public Governors present are unanimous in opposing a motion, every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote. In the event that a motion is opposed by all public Governors present, that motion shall not be passed.

1.20 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

1.21 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

1.22 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

1.23 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

**1.24 Minutes:**

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

1.25 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

1.26 Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public (required by the Code of Practice on Openness in the NHS).

**1.27 Suspension of Standing Orders:**

Except where this would contravene any statutory provision or any direction made by the Secretary of State and/or Monitor, any one or more of the Standing Orders may be suspended at any meeting,

provided that at least two-thirds of the Council of Governors are present, including one staff Governor and one public Governor, and that a majority of those present vote in favour of suspension.

- 1.28 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 1.29 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 1.30 No formal business may be transacted while Standing Orders are suspended.
- 1.31 The Audit Committee shall review every decision to suspend Standing Orders.
- 1.32 **Variation and amendment of Standing Orders:**

These Standing Orders shall be amended only if:

- a notice of motion under Standing Order 1.14 has been given; and
- no fewer than half the total of the Trust's public Governors vote in favour of amendment; and
- at least two-thirds of the Governors are present; and
- the variation proposed does not contravene a statutory provision or direction made by the Secretary of State.

1.33 **Record of attendance:**

The names of the Governors present at the meeting shall be recorded in the minutes.

1.34 **Quorum:**

No business shall be transacted at a meeting of the Council of Governors unless one third of the Governors in office (ie not counting vacant posts) are present and entitled to vote, the majority of which must be Public Governors.

- 1.35 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest they 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 and the decision to that effect shall be recorded.

## 2. **Committees**

2.1 **Appointment of committees:**

Subject to such directions as may be given by the Secretary of State and/or any requirements of Monitor, the Council of Governors may and, if directed by them, shall appoint committees of the Council of Governors, consisting wholly or partly of Governors.

- 2.2 A committee appointed may, subject to such directions as may be given by the Secretary of State or the Council of Governors appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Governors).
- 2.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Council of Governors.
- 2.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council of Governors), as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 2.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Council of Governors.

2.6 **Confidentiality:**

A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.

- 2.7 A Governor or a member of a committee shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee shall resolve that it is confidential.

3. **Declarations of interests and register of interests**

3.1 **Declaration of interests:**

The Trust's constitution requires Governors to declare interests which are relevant and material to the Council of Governors of which they are a member. All existing Governors should declare such interests. Any Governors appointed subsequently should do so on appointment.

- 3.2 For avoidance of doubt, interests that should be disclosed include, but are not limited to are:

- a) Directorships, including Non-Executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS services.
- f) to the extent not covered above, any connections with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

- 3.3 If Governors have any doubt about the relevance of an interest, this should be discussed with the Chair.



- 3.4 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes of the relevant meeting. Any changes in interests should be declared at the next Council of Governors' meeting following the change occurring.
- 3.5 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Council of Governors' annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 3.6 During the course of a Council of Governors' meeting, if a conflict of interest is established, the Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 3.7 **Register of interests:**
- The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by Governors.
- 3.8 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 3.9 The Register will be available to the public and the Trust Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

#### 4. **Disability of Governors in proceedings on account of pecuniary interest**

- 4.1 Subject to the following provisions of this Standing Order, if a Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council of Governors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 4.2 Monitor may, subject to such conditions as that organisation may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to Monitor in the interests of the National Health Service that the disability shall be removed.
- 4.3 The Council of Governors shall exclude a Governor from a meeting of the Trust while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 4.4 Any expenses payable to a Governor shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 4.5 For the purpose of this Standing Order the Chair or a Governor shall be treated, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) he/she, or a nominee of his/her, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - (b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

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

- (a) of his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which he/she is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

4.7 Where a Governor:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

this Standing Order shall not prohibit them from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

**ANNEX 3  
GATESHEAD HEALTH NHS FOUNDATION TRUST  
(COUNCIL OF GOVERNORS)  
RULES FOR THE CONDUCT OF ELECTIONS FOR  
PUBLIC AND STAFF GOVERNORS**

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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;

(5) “*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

(6)

“*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.

**2. Timetable**

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

<b>Proceeding</b>	<b>Time</b>
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination 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:
    - (7) (i) configured in accordance with these rules; and
    - (8) (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 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  
(9)
  - (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 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 -
    - (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:
  - (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:
  - (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
  - (10) (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 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;
  - (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

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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.

(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 spoiled ballot papers and the list of spoiled 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,

(11)

*“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 subparagraphs (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-paragraph 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.
- STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
  - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**STV50. Filling of last vacancies**

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

**STV51. Order of election of candidates**

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

**FPP51. Equality of votes**

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

### **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 [Gateshead Health ] NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Foundation 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 [Gateshead Health ] NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Foundation 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
- (12) (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

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

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

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

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

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

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

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

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

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

**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.

**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.

## Gateshead Health NHS Foundation Trust

### Governors' Code of Conduct

#### PART 1

In undertaking the role of Governor of Gateshead Health NHS Foundation Trust, at a personal level, Governors will:

1. respect that Gateshead Health NHS Foundation Trust is an apolitical organisation;
2. if they are a member of any trade union, political party of other organisation, recognise that should they be elected, they will not be representing those organisations (or the views of those organisations) but will be representing the constituency that elected them;
3. be honest and act with integrity at all times;
4. accept responsibilities for their own actions;
5. show their commitment to working as a team member by working with all their colleagues in the NHS and the wider community;
6. seek to ensure that the membership of the constituency they represent is properly informed and able to influence services;
7. seek to ensure that no-one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social and economic status or national origin; and
8. uphold the seven principles of public life as detailed by the Nolan Committee (see Part 4).

#### **As part of Gateshead Health NHS Foundation Trust Council of Governors, Governors will:**

9. actively support the vision and aims of Gateshead Health NHS Foundation Trust in developing as a successful NHS Foundation Trust;
10. contribute to the work of the Council of Governors in order for it to fulfil its role as defined in the Trust's constitution;
11. recognise that the Council of Governors exercises collective decision-making;
12. acknowledge that, other than when attending meetings and events as a Governor, they have no rights or privileges over any other member. Governors wishing to visit the Trust in a formal capacity shall liaise with the Trust Secretary to make the necessary arrangements and must wear their ID badge when undertaking such visits and at all other times when carrying out duties as a Governor
13. recognise that the Council of Governors does not exercise a managerial role within Gateshead Health NHS Foundation Trust;
14. value and respect all colleagues and members of staff and the opinions of individuals;
15. recognise and help the Council of Governors to balance the priorities across the full range of health needs of those we serve;

16. respect the confidentiality of information they receive in their role as a Governor. Governors should ensure that documents sent to them are carefully retained and ensure other people do not have access to them. Confidential papers, will be on pink paper and must not be shared with any third party. Once records are no longer needed they should be destroyed by shredding or returned to the Trust
17. act with integrity and objectivity and in the best interests of Gateshead Health NHS Foundation Trust, without any expectation of personal benefit;
18. attend meetings of the Council of Governors, member meetings and training events, on a regular basis. Some training will be defined as mandatory and Governors must attend these sessions;
19. conduct themselves in a manner that reflects positively on Gateshead Health NHS Foundation Trust; and
20. abide by the Trust's policies and procedures, including its standing orders and standing financial instructions. Trust policies and procedures also cover equity regarding sex, disability and other types of discrimination.

## **PART 2 – ELIGIBILITY**

Potential Governors (members wishing to stand for election) will openly declare to the Trust matters which would affect their eligibility under paragraph 6.11.1 of the constitution.

Where a person has been elected or appointed to be a Governor and he/she becomes aware that he/she is disqualified for appointment under paragraph 6.11.1 of the constitution he/she shall notify the Trust Secretary in writing of such disqualification.

If it comes to the notice of the Trust Secretary at the time of his/her appointment or later that the Governor is so disqualified, he/she shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect.

Upon receipt of any such notification, that person's tenure of office, shall be terminated and he/she shall cease to act as a Governor.

## **PART 3 – CONFLICTS OF INTEREST**

It is very important that Governors act and are seen to act in accordance with high standards of public office. Governors should not use their role to gain media or public attention in order to advance their personal, business or party political interests.

If a Governor has a pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matters which are under consideration by the Council of Governors, he/she shall disclose that to the rest of the Council of Governors as soon as he/she is aware of it. The Council of Governors shall adopt standing orders specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter, as appropriate

Under the constitution all conflicts of interest must be declared.

## **PART 4 - THE SEVEN PRINCIPLES OF PUBLIC LIFE**

***Selflessness*** – Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

***Integrity*** - Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

**Objectivity** - In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability** - Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness** - Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty** - Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership** - Holders of public office should promote and support these principles by leadership and example

**These principles apply to all aspects of public life.**

### **PART 5 - Guide to Social Media for the Council of Governors**

The Trust would like to make Governors aware of its position in relation to social networking sites. Governors must be mindful of the fact that posting inappropriate comments on social networking/external discussion board sites, even during their own time, relating to the Trust are a matter of concern in relation to their role as a Governor.

Social media describes the online tools, websites and services that people use to share content, profiles, opinions, insights, experiences, perspectives and media itself. These tools include social networks, blogs, message boards, podcasts, microblogs, image sharing, livestreams, social bookmarks, wikis and vblogs.

### **PART 6 – Upholding this Code of Conduct**

1. Following approval of this Code of Conduct by the Council, Governors agree to comply with all of its content.
2. The Constitution provides that where there are concerns as to the conduct or performance of a Governor these are to be addressed in the first instance by the Chair, with support from the Secretary, to include training and development where this is considered relevant and necessary. Where such concerns exist the Chair will write to the Governor concerned to set out the concerns and the action agreed to rectify or otherwise address them.
3. The Constitution provides for the circumstances in which a Governor can be removed from office, including where any Governor fails to comply with this Code of Conduct. As required by the Constitution, it is for the Council of Governors to determine (in accordance with the rules set out in the Constitution) whether any Governor should be removed from office following a proposal from the Chair.

I ..... (print name)	
agree to abide by the Code of Conduct of the Council of Governors of Gateshead Health NHS Foundation Trust	
Signed	Date