

126th Meeting of the Board of Directors

9am, Thursday 7 June 2018

Conference Room
Bracton Centre
Bracton Lane
DA2 7WG

AGENDA

ITEM	ACTION	PRESENTED BY	ENC
1	Apologies for absence and declaration of any conflicts of interest	To note Andy Trotter Chair	-
2	Minutes of the Board of Directors' Meeting held on 3 May 2018	To agree Andy Trotter Chair	1
3	Matters arising	To note Andy Trotter Chair	-
4	Nominations Committee update	To approve Andy Trotter Chair Meera Nair Director of Workforce and Quality Improvement	2
5	Updated Constitution	To agree Sally Bryden Trust Secretary and Associate Director of Corporate Affairs	3

ANY OTHER BUSINESS

QUESTIONS FROM THE PUBLIC

DATE OF NEXT MEETING

The next Board of Directors Meeting will take place on:
Thursday 5 July 2018 at 10.30am
Maple Room, Pinewood House

Board of Directors
7 June 2018

Item 2
Enclosure 1

Report Title	Minutes of the Board of Directors Meeting held on 3 May 2018
Author	Susan Owen, Risk and Governance Manager
Accountable Director	Andy Trotter, Chair
Confidentiality/ FOI status	Public

Report Summary	Minutes of the Board of Directors meeting held on 3 May 2018		
Purpose (To select purpose, click on relevant choice for drop down box)	Information	To Note	
	Approval ✓	Decision	
Recommendation	The Board agrees the minutes as a true record of the meeting.		

Link to strategic objectives (click on relevant choice for drop down box)	Quality	Workforce	Sustainability	Partnerships
Link to Board Assurance Framework	N/A			

Implications	
Quality	
Financial	
Equality analysis	
Service user/carer/staff	

125th Meeting of the Board of Directors Thursday 3 May 2018 - Maple Room, Pinewood House

Board of Directors

Andy Trotter	Chair
Steve James	Non-executive Director
Jo Stimpson	Non-executive Director
Stephen Dilworth	Non-executive Director
Seyi Clement	Non-executive Director
James Kellock	Non-executive Director
Yemisi Gibbons	Non-executive Director
Helen Smith	Acting Chief Executive
Iain Dimond	Acting Deputy Chief Executive and Director of Service Delivery
Ify Okocha	Medical Director
Meera Nair	Director of Workforce and QI
Jane Wells	Director of Nursing
Jazz Thind	Director of Finance

In attendance

Michael Witney	Director of Therapies
Sally Bryden	Trust Secretary and Associate Director Corporate Affairs
Alison Furzer	Director of Informatics (Items 9 and 19)
Tom Brown	Director, Bexley Care (Item 9)
Susan Owen	Risk Manager (Minutes)

Members of the Council of Governors in attendance

Sue Read	Staff Governor: Adult Community Health Services
Victoria Smith	Staff Governor: Corporate and Partner

Representatives of the Care Quality Commission (CQC) Observing

Steve George	Care Quality Commission
Judith Edwards	Care Quality Commission

		Action
1	<p>Apologies for absence and declarations of interest None received</p> <p>Conflicts of interest SJ declared a conflict of interest in relation to item 7.</p>	Noted
2	<p>Minutes of the Board of Directors' Meeting held on 1 March 2018 Page 3, item 6: Amend to read that the vacancy rate had reduced to 11.1% Page 2, item 5: re meeting with NHSI, should read they are considering our approach to the rent dispute with LGT Pending these amendments, the minutes of the meeting on 1 March 2018 were approved as an accurate record.</p>	Approved
3	<p>Matters arising Page 2, item 5: SB confirmed that the draft terms of reference for the independent review of homicides has been shared with the Board. Page 4, item 7: It was noted that Lorraine Regan has been appointed as Interim Service Director for Greenwich Mental Health Services and Trustwide ALD Services.</p>	Noted

		Action						
	<p>Page 3, item 7: It was noted that the letter relating to the joint inspected in CYP has not yet been received.</p> <p>Action Tracker</p> <p>2018-03/#2: A report on MHA explanation of rights was presented to the Performance and Quality Assurance Committee (PQAC) in April 2018</p> <p>2018-01/#2: KPMG are currently scoping the terms of reference for the serious incident audit and it expected that this will be undertaken in August 2018.</p> <p>2017-12/#3: A report on medical devices is to be presented to the next Executive Team and then to the Board of Directors.</p> <p>2017-11/#1: The KPMG re-audit of lone working is to be presented to the Executive Team and Audit and Risk Assurance Committee in May 2018. Ligature risk assessments are included on the KPMG audit plan for 2018/19.</p> <ul style="list-style-type: none"> • Other items to note <ul style="list-style-type: none"> MN said that the review of staff partnership arrangements commenced in March. Progress will be reported to the July 2018 Board of Directors. IO said that all wards are sighted on ensuring compliance with 48 hour follow up and this is being reported to the Acute Care Forum and the Clinical Effectiveness Group. 	MN						
4	<p>Board Assurance Framework</p> <p>HS presented the Board Assurance Framework (BAF)</p> <p>The risk on application of the Mental Capacity Act has been escalated to the BAF so as to ensure regular oversight at the Executive Team and Board of Directors. The risk is rated at consequence of 4, likelihood of 3, risk rating of 12 (high).</p> <p>The risk relating to environmental violence and aggression risk assessments was reduced at the March 2018 meeting of the Health and Safety Committee as all actions are complete and the Committee felt assured that this has now been embedded into practice. At the March 2018 meeting of the Audit and Risk Committee, it was subsequently agreed to de-escalate this from the BAF listing.</p> <p>The risk relating to usage of agency staff has been reduced by the Business Committee as there has been a significant improvement in reducing agency usage, and we are now consistently being below the NHSI monthly agency cap.</p> <p>The risk relating to reliance on non-Oxleas beds has been reduced by the Business Committee as benchmarking data demonstrates that length of stay in our in-patient services is performing very well against our peers.</p> <p>The risk relating to the reduction of contract values has been reduced as Greenwich CCG is the only CCG that continues to ask for QIPP.</p> <p>At the Board on 1 March 2018, the Board asked that the Patient Safety Committee considers increasing this risk. This was discussed at the meeting on 19 March 2018, where the Committee suggested that the risk should remain a moderate risk as all reasonable mitigations are in place. The Audit and Risk Committee agreed that the risk rating could remain as a moderate risk.</p> <p>The risk relating to data accuracy has been reframed so that it better describes the impact that late data entry may have in terms of submitting reports to different organisations at different times so data appears to be inconsistent. A new mitigation has been added to develop RiO Standing Operating Procedures for each team to set out expectations on what needs to be recorded, where it needs to be recorded and the timescales.</p> <table border="1" data-bbox="199 1966 1316 2027"> <thead> <tr> <th data-bbox="199 1966 1029 2027">Changes to existing risks</th> <th data-bbox="1029 1966 1177 2027">Previous rating</th> <th data-bbox="1177 1966 1316 2027">Current rating</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Changes to existing risks	Previous rating	Current rating				Noted
Changes to existing risks	Previous rating	Current rating						

			Action
	<p>1452: The HSE investigation into the incident at the Bracton Centre found that our environmental violence and aggression risk assessment for Burgess was not sufficient. There is a risk that the risk assessments for other services may not be adequately completed or actioned, impacting on the safety of staff, patients and visitors</p>	<p>HIGH (10) (5 x 2)</p>	<p>MOD (5) (5 x 1) ↓</p>
	<p>1217: Reliance and usage of agency staff poses a financial risk as agency staff are more expensive than permanent staff, due to higher rates, agency commission, and VAT</p>	<p>HIGH (12) (4 x 3)</p>	<p>MOD (9) (3 x 3) ↓</p>
	<p>1606: The trust continues to rely on non-Oxleas beds (NHS and Non-NHS) to manage demand on in-patient services and the changes associated with the MHA. If the trust is not able to reduce demand through the deployment of admission avoidance strategies, this will continue to create a cost pressure and impact on the overall financial position of the Trust</p>	<p>SIG (16) (4 x 4)</p>	<p>HIGH (12) (4 x 3) ↓</p>
	<p>1216: There is continued pressure in the sector and it is likely that commissioners will be attempting to significantly reduce contract values to try and mitigate the impact of funding reductions and cost pressures associated with their financial position.</p>	<p>SIG (16) (4 x 4)</p>	<p>HIGH (12) (4 x 3) ↓</p>
5	<p>Chief Executive update HS presented the Chief Executive update.</p> <p>Serious incidents <i>Oxleas House:</i> On 21 April 2018, the Duty Senior Nurse (DSN) at Oxleas House received a phone call from the police to warn the unit that a person known to the trust was making his way to the unit having made threats of violence. The building was locked immediately, the police arrive quickly and the individual was apprehended before he had entered the ward. A level 4 investigation will be chaired by the Head of Safety and Compliance and will include police liaison. Extra security has been put in place at Oxleas House. The Board commended how staff responded to the unit and in particular, the actions of the DSN. <i>Millbrook Ward:</i> On 17 March 2018, a 17 year old woman was found deceased in her room on Millbrook Ward. The level 5 investigation will be chaired by ID. The NED representative is JK. The panel will also include an independent psychiatrist. <i>Norman Ward:</i> On 23 April 2018, a 52 year old woman was found unresponsive in her room on Norman Ward. The Level 5 inquiry will be chaired by JW and the panel will include an independent psychiatrist. A thematic review of deaths has been undertaken and no links have been identified. Immediate actions have been taken in response to the incident and the Clinical Director is providing additional support. Appointment of a substantive ward manager has been prioritised. All ligature related incidents have been reviewed and Modern Matrons are raising awareness of how to prevent self-ligatures. JT – In light of this incident, we should bring forward the KPMG audit on ligature risk assessment. AT – What action is being taken to raise awareness and reduce risk? IO – This is challenge as we need to avoid blanket rules on restricting items of clothing. There needs to be a balance on how we apply rules. SJ – Are there enough staff members on the ward? JW – A wider review of staffing is being undertaken this month. This is a busy ward and the main priority is the appointment of a substantive ward manager. IO – Skill mix and flexibility need to be considered rather than numbers. JW – We need to consider having the availability of an activities co-ordinator. IO – The Modern Matron has plans in place for resolving these issues. SD – How long will it take to appoint a ward manager? JW – Interviews are taking place on 16 May and five high calibre candidates have been short-listed. We will work with HR to bring the start date forward once an appointment has been made. JS - We need to ensure that we have good senior staff cover over the summer holiday period. YG – Will Oxleas House need to review their environmental risk assessment?</p>		Noted

		Action
	<p>HS – The Local Security Management Specialist (LSMS) is working on this. SC – We need to ensure that staff are aware of the Lockdown Policy and major incident arrangements.</p> <p>CQC visit to Oaktree Lodge Oaktree Lodge is a 17 bed unit on the Memorial Site, which provides continuing care for older people with mental health needs. In September 2017, the CQC received a whistle-blowing concern in relation to the unit and a safeguarding referral was made. On 9 April 2018, the CQC made an unannounced visit to the unit. As a result of this, an improvement notice has been issued in relation to person-centred care, dignity and respect, safe care and treatment and good governance. The CQC has asked the trust to remedy the concerns by 18 June 2018 and an action plan was submitted to the CQC on 26 April 2018. Immediate actions taken included changing the ward leadership, suspension of a staff member who was witnessed to make an inappropriate comment and a review of Do Not Attempt Resuscitation (DNAR) orders. A Task Force, chaired by ID, has been established to oversee the action plan. Royal Greenwich (RBG) were asked to consider a service line review of safeguarding adults. The Head of Safeguarding has confirmed that they are satisfied with our arrangements, so this will not be taken forward at this stage. A panel, chaired by SJ, is investigating the gaps in our assurance processes, in particular the response to whistleblowing concerns. The Director of Nursing from Lewisham and Greenwich NHS Trust is the independent panel member.</p> <p>YG – This was discussed at length at the PQAC. Whilst it is positive that an action plan is in place, we need to be more proactive in how we pick up concerns and to ensure our whistle-blowing arrangements work well. The investigation needs to be more wide ranging. How frequently will the task force meet, how long will this remain in place and what is the membership? With regard to the individual staff member, will there be disciplinary proceedings?</p> <p>ID – The task force will meet weekly, using the action plan to inform the work. Membership includes the Service Director, Clinical Director and Associate Director, plus IO and JW. The Head of Safeguarding at RBG will be kept informed of progress. The staff member has been placed in a non-patient facing role and it subject to a disciplinary process.</p> <p>HS – The investigation will be wide ranging and terms of reference have been agreed. The response to the whistle-blowing concern raised in September 2017 looked only at the individual patient and we acknowledge there was a missed opportunity to review the unit as a whole.</p> <p>SJ – It is important the investigation is not prolonged. We need recommendations on how the trust can obtain good quality assurance data. The CQC base their findings on observation. The trust needs to compare data sources with observation and experience.</p> <p>JK – How often do whistle-blowing concerns get reported directly CQC?</p> <p>IO – This is rare, possibly once or twice a year.</p> <p>SD – Why was this not brought to the attention of the Board in September? We need to ensure that staff are confident with raising concerns internally.</p> <p>HS – We will ensure that the Board are made aware of any concerns raised in this way in the future.</p> <p>YG – Do concerns raised with the CQC feed into the internal process?</p> <p>MN – The conduit used should not make a difference to how the concern is investigated.</p> <p>JK – What is the link to the incident management process?</p> <p>HS – This can be picked up in the KPMG review.</p> <p>YG – Who will the task force report to?</p> <p>ID – This will be report to the PQAC and also to the Board.</p>	
6	<p>Integrated Dashboard HS presented the Integrated Dashboard report. The one red-rated exception is vacancies in prison health care services. The Board noted that it was positive that there are no other red-rated exceptions. It was noted that the roster score (item 37) has been amber for six months. A new policy covering rostering, temporary staffing and agency controls has been drafted and is with staff side for approval.</p> <p>SD – Are we getting sufficient candidates for prison healthcare posts?</p> <p>MN – There are sufficient candidates. The delay is caused by the extended pre-employment checks required for prisons, and also that not all areas will have high cost areas supplements attached to the post. We are undertaking some work to rationalise this.</p>	Noted

		Action
	<p>JW – We have had positive conversations with NHSI on the challenges of recruiting to prisons and they have committed to take forward a national programme on this.</p> <p>SJ – Are there seasonal patterns to the increase in pressure ulcer incidents?</p> <p>SR – This could be related to winter pressures and increased time spent in A&E.</p> <p>SC – Consent to treatment compliance appears to have slipped.</p> <p>IO – This relates to one consultant. This has been addressed and apologies have been given to the patient.</p> <p>JS – Is the correct number of serious incidents seven or eight?</p> <p>JW – The correct number is seven.</p>	
7	<p>Operational Performance Report</p> <p>ID presented the Operational Performance Report.</p> <p><i>Adult Learning Disability Services:</i> Oxleas has an opportunity to broaden the SLP LD workstream and take a lead on delivering the programme. This will include developing new models for working with third sector providers.</p> <p><i>Children and Young People:</i> We have identified that some children in Bromley were not offered a check during the service transition period. A four-week programme to offer checks has commenced. We have also identified additional venues from which we can offer our service. The SLP forensic CAMHS bid submitted to NHSE was successful. This will involve the provision of an assessment and treatment service for young people across the 12 boroughs delivered by a highly specialist team using a hub and spoke model. There has been good progress made in reducing out of area bed days and increasing access for South London CYP to SLP beds. Work is underway to extend service hours for community based service.</p> <p><i>Forensic and Prison Services:</i> We have successfully defended the contract for the provision of provision of physical health care services at West Kent prisons. Following an inspection in October 2017, the CQC have issued a requirement notice in respect of the safe transportation of medicines and access to primary care services. We have responded to the CQC detailing the actions taken, which include medicines storage on the house blocks and access to a same-day nurse led clinic for emergency appointments.</p> <p><i>Bexley Care:</i> District nursing activity has decreased, but this remains a challenge for the twilight service. The Crisis Café has been open for six weeks. On average, one to two people attend per day during the week and three to four per day at the weekend. To increase the numbers using the facility, the Crisis Café manager is revisiting the Mental Health teams across the directorate to raise awareness and the team is reviewing all Bexley admissions to the inpatient units on a daily basis to checking that crisis plans were effective.</p> <p><i>Bromley:</i> A multi-agency workshop took place between Oxleas, Bromley Healthcare and MIND to progress plans for the development of a Single Point of Entry. This will commence from 31 July 2018. Good progress is being made with the Lived Experience Practitioner work and we are beginning to see the benefits.</p> <p><i>Greenwich:</i> We continue to support the wider system by opening further intermediate care beds at Eltham Community Hospital and changing the staffing skills mix. We received funding for two years to provide peri-natal mental health services across the three boroughs. There will be a joint team across Bexley and Greenwich with Bromley continuing to have its own team. The go live date is currently anticipated to be September 2018. We will review management across the three boroughs.</p> <p>Greenwich has been successful in receiving wave one Individual placement and support (IPS) funding. Three posts employed by MIND will be embedded in our CMHTs to offer evidence-based interventions to engage service users in employment.</p> <p>JK – Is the Lived Experience Practitioner project unique to Oxleas and does it make a difference?</p> <p>ID – We are not unique in offering this role. There is evidence that this has a positive impact but we do need to measure this more systematically.</p> <p>HS – Each year, the cohort of Lived Experience Practitioners presented their projects at a ‘graduation’ event; NEDs would be welcome to attend this</p> <p>SD – It is a good achievement to have 49 volunteers and it would be good to hear more about this at a future Board.</p>	Noted

		Action
	<p>SC – We were aware of the concerns at HMP Rochester? JW – Medication incidents are the most frequently reported at this site and we are working with the pharmacy to address this. IO – The pharmacy is very busy and the new arrangements will help. With regard to primary care, there can be a two-week wait to see a GP, so the nurse led clinic will give quicker access. SC – Are there any risks relating to the fact that some children in Bromley were not offered a check during the service transition period? ID – This will be resolved quickly. The service is aware of those who have been missed. JS – Do we need to be more proactive in data surveillance? HS – We were proactive in doing this. There were some challenges with finding a suitable venue for clinics but this has been addressed. SC – What work is being taken forward to address district nursing activity in Bexley? IO – We have agreed activity levels with the CCG. JT – Some of this is historical from when the service transferred to Oxleas. We have got clarity on who is commissioned for each activity. TB – The breakthrough was getting the CCG to work in partnership and agree priorities.</p>	
8	<p>Performance and Quality Assurance Committee Report The report from the Performance and Quality Assurance Committee was noted.</p>	Noted
9	<p>Serious Incident Report – DJ AF presented the inquiry report into the death of DJ, a 41 year old male who died in Greenwich on 5 October 2017, after choking on food. An addendum to the report was tabled at the meeting.</p> <p>The inquiry panel reviewed the care offered to DJ during his period of admission as an inpatient from May 2017. The panel were unable to determine the root causes of DJ’s choking but concluded that his death was not preventable based on the evidence the panel had at the time of writing. The subsequent post mortem information has not revealed anything significant. The panel did identify that there were areas in the care that could have been improved and will be addressed; these did not contribute to DJ’s death. Two recommendations were made:</p> <ul style="list-style-type: none"> • Recommendation 1: The clinical system needs to be updated so that it is easier to record and review physical health information over a period of time. Specifically, the system needs to be changed so that the date a patient’s weight is taken is always shown, a graphical display of the weight over time is added and an area added for stool charts to be documented and monitored. • Recommendation 2: A case management review should be held for any patient who continues to deteriorate and remains an inpatient for longer than would usually be expected in order to conduct an in depth holistic review. This should include input from physical health leads and acute colleagues if relevant. <p>The addendum report highlighted issues of concern, that whilst not causal to DJ’s death need to be addressed by the trust. These are:</p> <ul style="list-style-type: none"> • Documentation of changes that are visually observed when it is not possible to weigh or take other observations • Ensuring that care plans capture all concerns, including physical health • Ensuring that mental health professionals are aware of and are confident on policies on physical health • Protected time for well-being clinics • Dedicated roles for physical health champions <p>The findings have been presented to the ward and an embedding learning event is planned for July.</p>	Noted

		Action
	<p>JS – Was there a heightened risk of DJ being vulnerable to choking? IO – This could possibly be linked to medications or weakened muscles. AF – This was explored. The speech and language therapist interviewed did not find any evidence of this. JS – The weight loss is significant. How often was he weighed and how often should he have been weighed? AF – DJ was challenging to manage. He did not always consent to being weighed and four nurses were needed to move him to the scales. He should have been weighed weekly, but there were no more than three or four records of weight. However, the team was aware of his weight loss. RiO has now been updated to show a graphical view of weight change over time. JW – It is a lot to expect a mental health nurse to have the level of skills and knowledge as a district nurse. We need to consider filling some of our vacancies with general nurses. IO – We need to ensure there are robust arrangements for MDT reviews. AT – How will learning be shared? IO – We will prioritise attendance at the embedding learning event and then broaden this to other areas. ID – The acute wards are busy environments and we need to ensure that staff are able to escalate concerns. JK – There needs to be a radical shift on how we approach this. ID – This will be taken through the Acute Care Forum and Workforce Committee. JW – An intermediate care nurse spent some time working on Holbrook Ward and there was useful learning from this. We need to enhance this through integrated working. SC – Some of the care failures were not identified until after DJ died. Three of our staff were at QEH as escorts, but there was a lack of clarity with the acute trust as to who was responsible for physical health care and personal care. HS – We need to raise this with the Director of Nursing at L&G Trust. ID – The role of our staff was principally to help with managing DJ's behaviour. There is no record of our staff asserting that that QEH staff should be providing physical health care. AT – This needs swift attention so we can be assured that this is an isolated incident. JT – We should have a quality taskforce to check the performance in other units. HS – The Acute Care Forum will focus on how we progress this and report to the Board in six months. In the interim, we will feedback through the PQAC. SD – We need to be confident that the recommendations are capturing all the issues. We should take forward JT's proposal of a quality taskforce. SJ – I agree that a group needs to take this forward and report back. YG – If necessary, we can hold an extra meeting of the PQAC to review the findings. AT – The recommendations from the investigation must be re-written to capture all the issues. There must be an immediate audit and a long-term plan. This can be reported to the next informal meeting of the Board and also to the PQAC. HS – We will ask Clinical Directors and Heads of Nursing to visit all units and report back by the end of next week. The panel will be re-convened to review the recommendations.</p>	<p>AF 2018-05/#1</p> <p>HS, ID, JW and IO 2018-05/#2</p>
10	<p>Six month review of RP inquiry plan JW presented the six month review of the RP inquiry. All actions are now complete. The Transfer of Care Policy has been reviewed and awareness of this will be raised. Datix is being reviewed to ensure that an incident report is raised when information on patients transferred from another inpatient unit is not received within 24 hours of transfer. The Absent Without Leave (AWOL) policy has been updated to clarify making risk based decisions on the period of grace. AT – What is the position with investigating the conduct of the staff member with regard to observation recording? JW – I will check this and report back. JK – We need to consider if the BAF risk relating to learning from incidents should be increased.</p>	<p>Noted</p> <p>JW</p>

		Action
11	<p>Mortality Surveillance Quarterly Report</p> <p>JW presented the Mortality Surveillance Report. A thematic review on co-sleeping has been undertaken and some useful learning has been identified from this. It was noted that the trust is sharing learning with SLAM and SWLStG. AT said that it would be useful to bring together themes from inquests, incidents and civil claims.</p>	Noted
12	<p>Safe staffing bi-annual report</p> <p>JW presented the safe staffing bi-annual report. There were no significant exceptions to note. The approach has changed so that JW is now undertaking these reviews with MW.</p> <p>JK – What is our approach to non-bedded units?</p> <p>JW – Caseload numbers are reviewed through the productivity workstream.</p> <p>YG – There is scope to expand this so that it covers quality and skills mix as well as numbers.</p> <p>JW – We do triangulate a lot of data.</p>	Noted
13	<p>Quality Improvement and Innovation Committee Report</p> <p>SJ and IO presented the report from the Quality Improvement and Innovation Committee. The April meeting received presentations on the RTT project and noted the good progress made with clarifying definitions and targets. The Qi Team has been recruited and training is taking place. We are working to identify an external partner for providing training and support. The programme is still in the very early stages and it was noted that seeing large scale benefits can take some time.</p> <p>JK – We need to be aware of the scope for taking forward innovations that are not part of the formal Qi process.</p>	Noted
14	<p>Workforce Committee report</p> <p>JK and MN presented the report from the Workforce Committee. It was noted that the 2017 flu campaign achieved a vaccination uptake of 40% which was a 10% increase on 2016. Lessons learnt from the 2017 flu campaign will be reviewed to ensure that we can achieve a further increase in uptake. Incentives included a charitable donation for every vaccination and static clinics. It was noted that there will be additional challenges in 2018, as the current lead is leaving the trust, and also two types of vaccination will be offered.</p>	Noted
15	<p>NED report – Board Visits</p> <p>JK – <i>Oaktree Lodge</i>: Whilst this was a positive visit, it would have been helpful for the team to have been aware of the whistle-blowing concern.</p> <p>SD – <i>Scadbury Ward</i>: The patient group has recently changed. A new Band 6 nurse has had previous experience of Qi and the ward should make use of this. <i>Bromley MHLT</i>: A committed team, working under pressure. Relationships with the PRUH could be improved. The team needs more assessment space, but this has been challenging due to the PFI arrangement. AT suggested it might be useful to involve A&E staff in future visits.</p> <p>SC – <i>Bromley CAMHS</i>: This was a revisit following a challenging visit last year, and improvements had been made.</p> <p>JS – <i>Birchwood Unit</i>: A very impressive visit.</p> <p>SJ – <i>Bromley DTT</i>: A positive visit with a good manager. <i>Bromley HTT</i>: The team would benefit from a follow up in six months.</p>	Noted
16	<p>Business Committee report</p> <p>JS and JT presented the report from the Business Committee. Contract negotiations have been positive. The control total for 2017/18 was achieved but some non-recurrent actions were required. For 2018/19, we have received £1.45m cash, but this does not support the income and expenditure position. The control total target for 2018/19 is £4.6m.</p> <p>Charitable funds</p> <p>Plans have been made for £220k of the £680k available and spend is being tracked.</p>	Noted
17	<p>NHS Improvement Declaration of Compliance</p> <p>SB presented the NHS Improvement Declaration of Compliance. NHS foundation trusts are required to</p>	Approved

		Action
	<p>self-certify whether or not they have:-</p> <ul style="list-style-type: none"> • complied with the conditions of the NHS provider licence, NHS Acts and NHS Constitution (Condition G6(3)); • have the required resources available if providing commissioner requested services (Condition CoS7(3)); and • have complied with governance requirements as laid out in the NHS foundation trust code of governance and single oversight framework (Condition FT4 (8)). <p>The evidence for compliance with G6/CoS7 was reviewed by the Business Committee on 17 April 2018 who recommended a declaration of compliance. The evidence of compliance with Condition FT4 was reviewed by a sub-group of board members, governors, clinical and service directors at the Board Strategy Awayday who recommended a declaration of compliance.</p> <p>The Board approved the declaration of compliance. This will be published on our website. Some trusts will be selected for an audit by NHS Improvement from July 2018 onwards.</p>	
18	<p>Infrastructure Committee Report</p> <p>SC and JT presented the report from the Infrastructure Committee. The 2018/19 capital programme has been submitted to NHSI. The total capital allocation has been increased to £16.335m to take account of the additional expenditure at Queen Marys Hospital, £0.9m of which has been funded by Kings. The Board approved the capital plan for 2018/19. Discussions are taking place with The Oxleas Property Partnership (TOPP) about the level of risk and cash required for TOPP schemes. A new risk has been identified in relation to Greenwich Square and the mitigation plan is to decant the teams based there to other locations.</p> <p>JS – Have we accounted for the extra revenue from the QMH rate card and what are the reasons for the extra costs? JT – This is based on 2015 figures. Extra space incurs more cost.</p>	Approved
19	<p>General Data Protection Regulations (GDPR) Readiness Report</p> <p>AF presented the GDPR readiness report. The GDPR comes into force on 25 May 2018. A detailed action plan has been developed. We are engaging with staff across the trust to raise awareness. Privacy notices including one for patients and one for staff have been drafted and are being checked by external legal advisors. Contracts have been updated and policies have been reviewed. The risk register includes risks on impact of a fine and how we report breaches. We have a statutory obligation to appoint a Data Protection Officer (DPO) and ensure the Board are sighted on this. It is proposed that Julie Lucas, Information Governance Manager, is appointed as DPO.</p> <p>JK – The proposal states that the DPO must have direct access to the Board. How will this work in practice? AF – This has been incorporated into the job description. The DPO can bring concerns directly to the Board.</p> <p>JS – It would be useful to see the gap analysis as at 25 May 2018, with a RAG rating and timescales for closing the gaps. Are we confident we have paid enough attention to partnership arrangements? AF – We have always had data processing arrangements in place and we have a communications plan to identify areas we do not know about.</p> <p>AT – The Information Commissioners Office (ICO) have indicated that they do not expect full compliance immediately, but how long will this last? AF – We are taking legal advice. We have clear timescales for closing the gaps. JS – Having a cogent plan puts us in a good position.</p> <p>The Board approved the appointment of Julie Lucas as the Data Protection Officer.</p> <p>Cyber security The trust is required to submit a formal return to NHSI on our cyber security arrangements. This will be</p>	Noted

		Action
	sent to AT, SC and HS for approval prior to submission.	
20	<p>Audit and Risk Assurance Committee Report</p> <p>SD presented the report from the Audit and Risk Assurance Committee. The Terms of Reference for the Committee have been revised to state that the Committee will review the work of other Board sub-committees to provide relevant assurance on risk management and governance processes within the organisation, and that the Committee will receive an annual report on whistleblowing arrangements reporting and outcomes. The Committee received the internal audit reports on data quality and performance, information governance, safeguarding children top-up and safeguarding adults top up. It was noted that the information governance audit and safeguarding children audit both received a rating of significant assurance. At a future meeting, the Committee will receive a report on the positive aspects of risk and how we have used risks to make improvements. A detailed proposal on the remit and membership of the Remuneration Committee is being prepared and will be presented to the Board of Directors and Council of Governors for agreement. The Committee discussed the lack of clarity on how out of area placements are defined; a different provider within our geographical footprint is still deemed to be out of area. As partnership working is now part of the normal flow, it was noted that this needs to be discussed with NHSI. This is being discussed within the STP and SLP.</p> <p>The Board approved the changes to the Terms of Reference subject to clarification on co-opting members.</p>	Noted
21	<p>Annual Report and Accounts 2017/18</p> <p>The text of the Annual Report 17/18 needs to be submitted to NHS Improvement by 29 May 2018. This is prior to the next meeting of the Board of Directors on 5 July 2018. Therefore, it is proposed that approval for the document is delegated to the Audit and Risk Assurance Committee meeting on Tuesday 22 May 2018.</p> <p>The Board agreed to delegate authority in this matter to the Audit and Risk Assurance Committee.</p>	Approved
22	<p>Council of Governors update</p> <p>In response to a suggestion put forward by a group of governors, the Council of Governors has agreed to ask the membership to vote on a proposal to change the composition of the Council. This aims to organise the Council on a similar structure to the trust directorates to enable closer engagement and reduce the number of public governors in each borough from four to three. A Special Members' meeting will be held to approve the changes.</p> <p>The Board agreed that the proposal is taken to the membership for decision.</p>	Approved
22	<p>Questions from the public</p> <p>None raised.</p>	Noted
23	<p>Any other business</p> <p>JK – What progress is being made with the appointment of a Chief Executive? AT – Four candidates have been shortlisted and interviews will take place on 17 May 2018.</p>	Noted
<p>Next meeting of the Board of Directors Thursday 5 July 2018 at 10.30 am Maple Room, Pinewood House</p>		

Board of Directors
7 June 2018

Item 4
Enclosure 2

Report Title	Update on the appointment to the post of Chief Executive Officer
Author	Meera Nair, Director of Workforce and Quality Improvement
Accountable Director	Andy Trotter, Chair
Confidentiality/ FOI status	Public

Report Summary	<p>The Chair, Non-Executive Directors, Lead Governor, Medical Director and Director of Workforce and QI met on 25 April 2018 to consider applications for the post of Chief Executive of Oxleas following the departure of Ben Travis in March 2018. Four candidates were shortlisted.</p> <p>The four shortlisted candidates participated in a recruitment process on 17 May 2018 which comprised of</p> <ul style="list-style-type: none"> i) A presentation and question session with a group of our key stakeholders, with representatives from the three clinical commissioning groups, the three local authorities, acute partner trust, governors, staff side chair, trust directors and non-executive directors ii) a meeting with the Chief Executives of the two partner trusts in the South London Partnership; and iii) an interview with a panel <p>The interview was with the Chair, Lead Governor and four non-executive directors. Steve Russell, Executive Regional Managing Director – London, NHSI attended as an independent panel member.</p> <p>The interview panel considered the evidence from the interview as well as scores and opinions from those attending the other parts of the process.</p> <p>It was the unanimous decision of the panel to appoint Matthew Trainer as Chief Executive of Oxleas NHS Foundation Trust. Mr Trainer was also the preferred candidate from the stakeholder group and the South London Partnership CEOs.</p> <p>The panel felt that Matthew had the ability to lead the trust, reflected our values and demonstrated the ambition and vision to steer it through forthcoming challenges. He had a strong understanding of the trust, including local and regional issues. The panel was confident that he was best placed to lead Oxleas in meeting those challenges.</p> <p>The Nominations Committee on 17 May 2018 proposed that an offer of the Chief Executive role be made to Mr Trainer. Mr Trainer would be informed that he was the preferred candidate subject to employment checks and ratification at the June Council of Governors meeting. The offer was subsequently accepted and employment checks are currently underway.</p> <p>A copy of Mr Trainer’s CV is attached (personal details have been redacted).</p>
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Purpose (To select purpose, click on relevant choice for drop down box)	Information To Note <input checked="" type="checkbox"/> Approval <input checked="" type="checkbox"/> Decision
Recommendation	The Board is asked to <ul style="list-style-type: none"> - note and approve the decision to offer the post to Mr Trainer; and - support the proposal for ratification of the decision at the Council of Governors meeting on 21 June 2018

Link to strategic objectives (click on relevant choice for drop down box)	Quality <input checked="" type="checkbox"/> Workforce <input checked="" type="checkbox"/> Sustainability <input checked="" type="checkbox"/> Partnerships <input checked="" type="checkbox"/>
Link to Board Assurance Framework	<i>Cross reference to risk register</i>

Implications	<i>Briefly outline implications of the recommendations in this report</i>
Quality	
Financial	
Equality analysis	
Service user/carer/staff	

Matthew Trainer - CV

- Managing director of an acute hospital and elective orthopaedic hospital in South East London, with 2,800 staff and a budget of £236m, and part of the executive team at King's College Hospitals NHS Foundation Trust
- An experienced system leader in the London NHS, with previous roles as a director of operations at NHS England and at CQC, and with extensive experience of quality assurance, transformation and improvement
- A confident leader of people and strong communicator with a background in strategy development, able to work well with NEDs, executive colleagues and frontline staff, and with the public to deliver a vision for improvement backed up by a visible, hands-on management style
- Strong financial acumen built through management of a large deficit budget at the Princess Royal and in CCG assurance at NHSE, including via active roles in a number of arbitrations and turnaround programmes

EMPLOYMENT

Managing Director, Princess Royal University Hospital (PRUH) and South Sites King's College Hospitals NHS Foundation Trust November 2016-present

- Member of King's Executive, accountable for the delivery of quality, performance, workforce and financial objectives at the PRUH, Orpington Hospital, and King's services at Beckenham Beacon and Queen Mary's Sidcup
- Leader of a senior team responsible for the management of 2,800 staff, actively seeking to reduce the vacancy rate at the PRUH and drive up staff satisfaction and improve patient experience as a result
- A hands-on frontline operational director, working actively with teams across ED, acute medicine, post-acute medicine and outpatients to set a clear direction for the division, implement transformation programmes to improve patient flow, and to actively tackle quality and safety concerns as they arise
- Delivered the best A&E performance since the King's acquisition in October 2013 for 10 of 12 months in 2017; eliminated 52 week waits by March 2018; improved cancer performance consistently across the year
- Leads the division's financial recovery programme, through a combination of CIP delivery, run rate reduction, grip and control, and income improvement; delivered the most robust divisional CIP programme for 2018-19
- Working closely with the new Chair of King's as leader of an initiative to tackle over-65 year olds who are frequent attenders at A&E, bringing together partners across the acute, community, primary care and social care sector to design a 'hospital at home' model appropriate for the needs of Bromley

- Programme lead for the ophthalmology ‘Getting it Right First Time’ initiative across the entire Trust, working with the Chair to improve the clinical and workforce model and deliver better patient experience and significant income as a result of improved pathways
- A visible leader across the Bromley and SEL system, driving partners toward the goal of setting up an integrated care organisation in order to address a 7.5% year on year increase in non-elective demand by pushing care upstream to support people to stay well

Director of Commissioning Operations (South London)

NHS England, London SW1E 6QT

June 2013-present

- Responsible for assurance of 12 clinical commissioning groups (CCGs) in South London, holding them to account for delivery of NHS constitutional standards, for balancing their budgets (total £3.9bn), and for ensuring that they are well-run and effectively governed public bodies
- Leader of a matrix team operating across operations and delivery, medical, nursing and finance within the London regional office of NHS England
- Accountable for making appropriate interventions in case of service / organisational failure, including oversight of detailed financial and quality recovery plans (primarily for A&E, cancer, RTT and diagnostics) for a range of commissioning and provider organisations
- NHS Gold on call for London on a one-in-six rota, responsible for senior decision making in response to trust divert requests, for managing PICU and CAMHS bed pressures out of hours, and for leading the NHS response to serious incidents
- SRO for Transforming Care for people with learning disabilities across London, accountable for working with commissioners and providers to transform the way in which the NHS in London cares for some of its most vulnerable people
- SRO for the London A&E taskforce for winter 2015-16, running three programmes (LAS handovers, DTOCs and system performance management) across NHS England and Monitor / TDA to improve urgent and emergency care
- Interim role as programme director for the South West London STP (February to April 2016) on behalf of the London tripartite to manage a crisis in the development of their five-year plan, including working with CCG chief officers and Trust chief executives to secure buy in to major system transformation

Regional Director of Operations (London)

Care Quality Commission, London EC1Y

December 2011-May 2013

- Responsible for leadership and management of 12 London inspection teams, managing 150 staff and a budget of £8.1m; member of CQC’s executive team
- Worked to Professor Sir Mike Richards as delivery director for the first ‘wave’ of new model CQC hospital inspections from September to December 2013; made a significant contribution to the development of CQC’s new five-year strategy
- Successfully managed quality risk and delivery of CQC’s inspection programme taking in 6,500 services across the 33 London boroughs

- Worked to improve culture and morale in the London region, increasing positive morale by more than 20 percentage points over 18 months as regional director
- Responsible for maintaining strong stakeholder networks across health and social care in London, building an effective relationship with NHS England, the TDA, Monitor and ADASS, and with local politicians and scrutiny bodies
- Representing CQC and its work in a range of national and local media (from BBC breakfast news to Nick Ferrari on LBC; frequent public speaker, actively promoting CQC and its strategy with the public and providers)

**Head of Public Affairs
Public Affairs Manager**

March 2010 to November 2011
October 2009 to March 2010

Care Quality Commission, London EC1Y

- Set up and chaired CQC's first effective cross-sector and stakeholder external advisory group for the 'Dignity and Nutrition' inspections programme in 2011; also wrote the national report (front page news on publication)
- Responsible for delivery of CQC's first Board-approved stakeholder strategy, covering government, Parliament, trade associations and user groups

**Head of Communications
Communications Manager**
MS Society, London NW2

January 2007 to October 2009
May 2005 to December 2006

- Set up the MS Society's communications department following an organisational review, managing 16 staff through a period of change, with a £2.3m budget
- Organisational lead on PR, on internal comms (8,000 volunteers and 550 staff at seven UK-wide locations), on crisis management and brand development

(Prior employment history available on request)

EDUCATION

MA in Philosophy (distinction)
Open University

2/02 – 6/06

Postgraduate Diploma in Newspaper Journalism
University of Central Lancashire

9/98 – 6/99

B.A. Joint Honours History/Philosophy (2:1)
University of Leeds

9/93 – 6/96

A-levels: 3xA, 1xB GCSE: eight at grade A, one B
Cardinal Griffin RC Comprehensive, Cannock

9/87 – 6/93

References – to follow

Board of Directors
7 June 2018

Item 5
Enclosure 3

Report Title	Updated Trust Constitution
Author	Sally Bryden, Trust Secretary
Accountable Director	Andy Trotter, Chair
Confidentiality/ FOI status	Public

Report Summary	<p>Earlier this year, the Council of Governors and the Board of Directors agreed to take a proposal to the membership to amend the configuration of the Council of Governors and membership constituencies. The vote on this will take place at a Special Members’ Event on Friday 29 June 2018.</p> <p>Assuming that the membership agree to the changes, we will need to publish an updated Trust Constitution so that voting can take place to elect governors in the new configuration.</p> <p>An updated Constitution is attached which includes transition arrangements to enable the re-configuration of the Council of Governors and also amendments to bring us in line with the current NHS Improvement model constitution. These include:</p> <ul style="list-style-type: none"> • noting Monitor is now part of NHS Improvement • emphasising that the AMM is a public meeting • widening eligibility for governors and board members - the restrictions around overview and scrutiny committee membership and being directors/governors of other trusts are not in the model constitution and may be a barrier to our future collaboration/partnership working • reducing the number of governors required to be quorate in light of the smaller council <p>The attached draft shows these amendments in tracked changes.</p> <p>Our legal advisers Bevan Brittan have been consulted and have helped draft the amendments. These amendments are able to be made the Board of Directors and Council of Governors under our existing Constitution.</p> <p>The Board of Directors is asked to agree to the amended Trust Constitution and to it coming into action if the membership agree to the proposed Council of Governors’ reconfiguration at the Special Members Meeting on 29 June 2018. The amended Constitution will also be taken to the Council of Governors’ meeting on 21 June for agreement.</p>
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Purpose (To select purpose, click on relevant choice for drop down box)	Information	To Note
	Approval ✓	Decision
Recommendation	The Board is asked to agree to the amended Trust Constitution and that it will come into action if the membership agree to the proposed changes.	

Link to strategic objectives (click on relevant choice for drop down box)	Quality	Workforce	Sustainability	Partnerships ✓
Link to Board Assurance Framework	<i>Cross reference to risk register</i>			

Implications	<i>Briefly outline implications of the recommendations in this report</i>
Quality	
Financial	
Equality analysis	
Service user/carer/staff	

**CONSTITUTION OF
OXLEAS NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

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CONSTITUTION OF OXLEAS NHS FOUNDATION TRUST

1 DEFINITIONS

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2 References in this constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.5 In this constitution:

“the 2006 Act”	means the National Health Service Act 2006 (as amended by the 2012 Act);
“the 2012 Act”	means the Health and Social Care Act 2012;
“appointed Governors”	means those Governors appointed by the appointing organisations;
“appointing organisations”	means those organisations named in this constitution who are entitled to appoint Governors;
“authorisation”	means an authorisation given by Monitor;
“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, which has the same meaning as the Council of Governors in the 2006 Act;
“carer”	means a person who has attended any of the Foundation Trust’s premises from which services are provided as the carer of a service-user within the last five years and who provides substantial regular care for a service-user, provided that such person is not providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation;
“Director”	means a member of the Board of Directors;

“elected Governors”	means those Governors elected by the public constituencies, the classes of service-user/carers’ constituency and the classes of the staff constituency;
“external auditor”	means any external auditor other than the auditor appointed under this constitution to review and report upon other aspects of the Foundation Trust’s performance;
“Financial Year”	means: <ul style="list-style-type: none"> (a) a period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April.
“the Foundation Trust”	means Oxleas NHS Foundation Trust;
“General Meeting”	means a meeting of the Council of Governors;
“Governor”	means a member of the Council of Governors;
“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the public constituency areas;
“member”	means a member of the Foundation Trust;
“Monitor”	means the body corporate known as Monitor, as provided by section 61 of the 2012 Act; From April 2016 Monitor has been part of NHS Improvement
“the NHS Trust”	means Oxleas NHS Trust which made the application to become an NHS foundation trust;
“partner”	means, in relation to another person, a member of the same household living together as a family unit;
“Partnership Governor”	means a Governor appointed by a partnership organisation;
“partnership organisation”	means Bexley Voluntary Service Council;
“public constituency”	means (collectively) the members who live in an area specified in this constitution as an area for any public constituency of the Foundation Trust;
“public constituency areas”	which are Bexley, Bromley, Greenwich, and the Rest of England;

“Public Governor”	means a Governor elected by the members of one of the public constituencies;
“registered dentist”	means a registered dentist within the meaning of the Dentists Act 1984;
“registered medical practitioner”	means a fully registered person within the meaning of the Medical Act 1983 who holds a license to practice under that Act;
“Secretary”	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
“service-user”	means a person who has attended any of the Foundation Trust’s premises from which services are provided as a service-user within the last five years and is referred to as a “patient” in the 2006 Act;
“service-user/carers’ constituency”	means (collectively) the members of the service-user/carers’ constituency which is referred to as the “patients’ constituency” in the 2006 Act;
“Service-user/carer Governor”	means a Governor elected by the members of one of the classes of the service-user/carers’ constituency;
“staff constituency”	means (collectively) the members of the seven classes comprising the staff constituency;
“Staff Governor”	means a Governor elected by the members of one of the classes of the staff constituency.
“vexatious complainant”	means a person who has been deemed to be an unreasonably persistent complainant following the procedure laid out in the Foundation Trust’s Complaints Policy and Procedures.
“voluntary organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit.

2 NAME AND STATUS

- 2.1 The name of the Foundation Trust is to be “Oxleas NHS Foundation Trust”. The Foundation Trust is a public benefit corporation.

3 PRINCIPAL PURPOSE

- 3.1 The Foundation Trust's principal purpose is to serve the community by the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation 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 purpose.
- 3.3 The Foundation Trust may provide goods and services for any purpose related to:
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness;
 - 3.3.2 the promotion and protection of public health; and
 - 3.3.3 the provision of goods and services, including education and training, research, accommodation and other facilities, for purposes related to the provision of health and social care.
- 3.4 The Foundation 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 business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.
- 4.2 The Foundation Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 4.3 In particular it may:
 - 4.3.1 acquire and dispose of property;
 - 4.3.2 enter into contracts;
 - 4.3.3 accept gifts of property (including property to be held on trust for the purposes of the Foundation Trust or for any purposes relating to the health service); and
 - 4.3.4 employ staff.
- 4.4 Any power of the Foundation Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

- 4.5 The Foundation Trust may borrow money for the purposes of or in connection with its functions, subject to any limit imposed by its authorisation or specified in the prudential borrowing code published by Monitor from time to time.
- 4.6 The Foundation Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:
 - 4.6.1 forming or participating in forming bodies corporate; and/or
 - 4.6.2 otherwise acquiring membership of bodies corporate.
- 4.7 The Foundation Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

5 COMMITMENTS

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

Representative membership

- 5.2 The Foundation Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:
 - 5.2.1 the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years;
 - 5.2.2 the Council of Governors shall present to each annual members meeting:
 - 5.2.2.1 a report on steps taken to secure that taken as a whole the actual membership of its public constituencies, the classes of the service-user/carers' constituency and of the classes of the staff constituency is representative of those eligible for such membership;
 - 5.2.2.2 the progress of the membership strategy; and
 - 5.2.2.3 any changes to the membership strategy.

Co-operation with health service and other bodies

- 5.3 In exercising its functions the Foundation Trust shall co-operate with Health Authorities, Special Health Authorities, NHS trusts and NHS Foundation Trusts.

Respect for rights of people

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

Openness

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

Prohibiting distribution

- 5.6 The profits or surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way at all among members of the Foundation Trust.

6 FRAMEWORK

- 6.1 The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this constitution and the Foundation Trust's authorisation and any licence issued by Monitor to the Trust. The members, the Council of Governors, and the Board of Directors are to have the roles and responsibilities set out in this constitution.

Members

- 6.2 Members may attend and participate at members meetings, vote in elections to, and stand for election to the Council of Governors, and take such other part in the affairs of the Foundation Trust as is provided in this constitution.

Council of Governors

- 6.3 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Foundation Trust's authorisation, are:

6.3.1 at a General Meeting:

- 6.3.1.1 to appoint or remove the Chair and the other non-executive Directors;
- 6.3.1.2 to approve an appointment (by the non-executive Directors) of the chief executive;
- 6.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
- 6.3.1.4 to appoint or remove the Foundation Trust's auditor;

- 6.3.1.5 to be presented with the annual accounts, any report of the auditor on them and the annual report,
- 6.3.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;
- 6.3.3 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
- 6.3.4 to undertake such functions as the Board of Directors shall from time to time request;
- 6.3.5 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive Directors; and
- 6.3.6 when appropriate to make recommendations for the revision of this constitution.

7 MEMBERS

- 7.1 Subject to the transitional provisions set out in paragraphs 7.5A, 7.8A, 11.4.1A and 11.4.2A, the members of the Foundation Trust are those individuals whose names are entered in the register of members. Every member is either a member of one of the public constituencies, or a member of one of the classes of the service-user/carers' constituency, or a member of one of the classes of the staff constituency.
- 7.2 Subject to this constitution, membership is open to any individual who:
 - 7.2.1 is fourteen years of age or over;
 - 7.2.2 is entitled under this constitution to be a member of one of the public constituencies, or one of the classes of the service-user/carers' constituency or one of the classes of the staff constituency; and
 - 7.2.3 (unless they are a member of one of the classes of the staff constituency) completes a membership application form in whatever form the Secretary specifies.

Public constituencies

- 7.3 There are four public constituencies corresponding to the public constituency areas as specified in Annex 1. Membership of a public constituency is open to individuals who:
 - 7.3.1 live in the relevant area of the Foundation Trust;
 - 7.3.2 are not a member of another public constituency or of one of the classes of the service-user/carers' constituency; and

- 7.3.3 are not eligible to be members of any of the classes of the staff constituency.
- 7.4 The minimum number of members of each of the public constituencies is to be four.

Service-user/carers' constituency

- 7.5 Up and until 11 September 2018, the service-user/carers' constituency is divided into six classes as follows:

- 7.5.1 Working Age Adult Mental Health (including the interests of those in forensic and prison services);
- 7.5.2 Older People Mental Health;
- 7.5.3 Adult Community Health;
- 7.5.4 Children's;
- 7.5.5 Learning Disability; and
- 7.5.6 Carers.

7.5A From 11 September 2018, the service user/carers' constituency is divided into seven classes as follows:

- 7.5A.1 Bromley adult
- 7.5A.2 Bexley adult
- 7.5A.3 Greenwich adult
- 7.5A.4 Forensic and prisons
- 7.5A.5 Children
- 7.5A.6 Learning disability; and
- 7.5A.7 Carers

7.5B For the avoidance of doubt, to give effect to the transitional arrangements described in 7.5A above and only for the purposes of enabling an election to be held prior to 11 September 2018, each member who retains membership of their existing class shall be deemed to be members of the new class for which they are eligible until such time as their membership of relevant new class take effect formally on 11 September 2018.

7.5.6

- 7.6 Membership of the service-user/carers' constituency is open to individuals:
- 7.6.1 who are a service-user or carer when they apply for membership or have been a service-user or carer within the period of five years ending on the date they apply for membership; and

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7.6.2 who are not a member of a public constituency, nor eligible to be a member of the staff constituency.

7.7 The minimum number of members of the service-user/carers' constituency is to be ~~twelve~~ fourteen (two per class).

Staff constituency

7.8 Up and until 11 September 2018, tThe staff constituency is divided into seven classes as follows:

- 7.8.1 adult community health services;
- 7.8.2 older people mental health services;
- 7.8.3 working age adult mental health services;
- 7.8.4 children's services;
- 7.8.5 learning disability services;
- 7.8.6 forensic and prison health services; and
- 7.8.7 corporate and partnership organisations

7.8A From 11 September 2018, the staff constituency is divided into seven classes as follows:

- 7.8A.1 Bromley adult;
- 7.8A.2 Bexley adult;
- 7.8A.3 Greenwich adult;
- 7.8A.4 Children;
- 7.8A.5 Learning Disability;
- 7.8A.6 Forensic and Prison; and
- 7.8A.7 Corporate and partnership organisations.

7.8B For the avoidance of doubt, to give effect to the transitional arrangements described in 7.8A above and only for the purposes of enabling an election to be held prior to 11 September 2018, each member who retains membership of their existing class shall be deemed to be members of the new class for which they are eligible until such time as their membership of relevant new class take effect formally on 11 September 2018

7.9 Membership of one of the classes of the staff constituency is open to individuals:

- 7.9.1 who are employed under a contract of employment by the Foundation Trust and who either:
 - 7.9.1.1 are employed by the Foundation Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or

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- 7.9.1.2 who have been continuously employed by the Foundation Trust or the NHS Trust for at least 12 months; or
 - 7.9.1.3 who are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust and who have continuously exercised the functions for the purposes of the Foundation Trust or the NHS Trust for at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Foundation Trust on a voluntary basis.
- 7.10 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 7.11 All individuals who are entitled under this constitution to become members of one of the classes of the staff constituency, and who:
- 7.11.1 have been invited by the Foundation Trust to become a member of the appropriate class; and
 - 7.11.2 have not informed the Foundation Trust that they do not wish to do so,
- shall become members of the appropriate class.
- 7.12 A person who is eligible to be a member of one of the classes of the staff constituency may not become or continue as a member of any of the public constituencies, or the service-user/carers' constituency and may not become or continue as a member of more than one class of the staff constituency.
- 7.13 The minimum number of members of each class of the staff constituency is to be four.

8 DISQUALIFICATION FROM MEMBERSHIP

- 8.1 This provision applies to:
- 8.1.1 any person involved within the last five years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against registered volunteers; and
 - 8.1.2 any person who has been excluded from the Foundation Trust's premises from which services are provided.

In relation to any such person, membership of the Foundation Trust may be refused or withdrawn if the Council of Governors considers that it is not in the best interests of the Foundation Trust for them to become or remain a member.

9 TERMINATION OF MEMBERSHIP

- 9.1 A member shall cease to be a member if:
- 9.1.1 they resign by notice to the Secretary;
 - 9.1.2 they die;
 - 9.1.3 they are expelled from membership under this constitution;
 - 9.1.4 they cease to be entitled under this constitution to be a member of any of the public constituencies, of any of the classes of the service-user/carers' constituency, or of any of the classes of the staff constituency; and/or
 - 9.1.5 if it appears to the Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust.
- 9.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted:
- 9.2.1 any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust;
 - 9.2.2 if a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - 9.2.2.1 dismiss the complaint and take no further action; or
 - 9.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
 - 9.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
 - 9.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

- 9.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 9.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 9.3 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 9.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

10 MEMBERS MEETINGS

10.1 The Foundation Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each Financial Year. The Annual Members' Meeting shall be open to members of the public.

~~10.1~~

- 10.2 All members meetings other than annual meetings are called special members meetings.
- 10.3 Members meetings are open to all members of the Foundation Trust, Governors, and Directors but not to members of the public (aside from the annual members' meeting) unless the Council of Governors decides otherwise. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.
- 10.4 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 10.5 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members:
 - 10.5.1 arrange for the annual members meeting to be held in different venues each year; and
 - 10.5.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 10.6 At the annual members meeting:
 - 10.6.1 the Board of Directors shall present to the members:
 - 10.6.1.1 the annual accounts;

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- 10.6.1.2 any report of the auditor; and
- 10.6.1.3 forward planning information for the next Financial Year.
- 10.6.2 the Council of Governors shall present to the members:
 - 10.6.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies, of the classes of the service-user/carers' constituency and of the classes of the staff constituency is representative of those eligible for such membership;
 - 10.6.2.2 the progress of the membership strategy; and
 - 10.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors.
- 10.6.3 The results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 10.7 Notice of a members meeting is to be given:
 - 10.7.1 by notice to all members;
 - 10.7.2 by notice prominently displayed at the head office; and
 - 10.7.3 by notice on the Foundation Trust's website,
 at least 14 clear days before the date of the meeting. The notice must:
 - 10.7.4 be given to the Council of Governors and the Board of Directors, and to the auditor;
 - 10.7.5 state whether the meeting is an annual or special members meeting;
 - 10.7.6 give the time, date and place of the meeting; and
 - 10.7.7 indicate the business to be dealt with at the meeting.
- 10.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
- 10.9 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 10.10 It is the responsibility of the Council of Governors, the Chair of the meeting and the Secretary to ensure that at any members meeting:
 - 10.10.1 the issues to be decided are clearly explained; and

- 10.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 10.11 The Chair of the Foundation Trust, or in their absence the Deputy Chair of the Council of Governors, or in their absence one of the other Public Governors shall act as chair at all members meetings of the Foundation Trust. If neither the Chair nor the Deputy Chair of the Council of Governors is present, the members of the Council of Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act they shall be Chair.
- 10.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 10.13 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 10.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second or casting vote.
- 10.15 The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

11 COUNCIL OF GOVERNORS

- 11.1 The Foundation Trust is to have a Council of Governors. It is to consist of Public Governors, Service-user/carer Governors, Staff Governors, Local Authority Governors and Partnership Governors.
- 11.2 The aggregate number of Public Governors and Service-user/carer Governors is to be more than half of the total number of members of the Council of Governors.
- 11.3 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
 - 11.3.1 the interests of the community served by the Foundation Trust are appropriately represented;
 - 11.3.2 the level of representation of the public constituencies, the classes of the service-user/carers' constituency, the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs;
 - 11.3.3 and to this end, the Council of Governors:

- 11.3.4 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
- 11.3.5 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
- 11.3.6 when appropriate shall propose amendments to this constitution.

11.4 The Council of Governors of the Foundation Trust is to comprise:

11.4.1 up to and until 11 September 2018 thirteen Public Governors from the following public constituencies:

- 11.4.1.1 Bexley – four Public Governors;
- 11.4.1.2 Bromley – four Public Governors;
- 11.4.1.3 Greenwich – four Public Governors; and
- 11.4.1.4 Rest of England – one Public Governor.

11.4.1A from 11 September 2018, ten Public Governors from the following public constituencies:

- 11.4.1A.1 Bexley – three Public Governors;
- 11.4.1A.2 Bromley – three Public Governors;
- 11.4.1A.3 Greenwich – three Public Governors; and
- 11.4.1A.4 Rest of England – one Public Governor.

~~11.4.1.4~~

11.4.2 up and until 11 September 2018, thirteen Service-user/carer Governors from the classes of the service-user/carers' constituency (with the number of governors as indicated):

- 11.4.2.1 Working Age Adult Mental Health (including the interests of those in forensic and prison services) – four Service-user/carer Governors;
- 11.4.2.2 Older People Mental Health – two Service-user/carer Governors;
- 11.4.2.3 Adult Community Health – four Service-user/carer Governors;
- 11.4.2.4 Children's – one Service-user/carer Governor;
- 11.4.2.5 Learning Disability – one Service-user/carer Governor; and
- 11.4.2.6 Carers – one Service-user/carer Governor;

11.4.2A from 11 September 2018, eleven Service-user/carer Governors from the classes of the service-user/carers' constituency (with the number of governors as indicated):

- 11.4.2A.1 Bromley adult – two Service-user/carer Governors;

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- 11.4.2A.2 Bexley adult – two Service-user/carer Governors;
- 11.4.2A.3 Greenwich adult – two Service-user/carer Governors;
- 11.4.2A.3 Children – two Service-user/carer Governors;
- 11.4.2A.4 Learning disability – one Service-user/carer Governor;
- 11.4.2A.5 Forensic and prison – one Service user/carer Governor; and
- 11.4.2A.6 Carers – one Service-user/carer Governor;

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11.4.3 seven Staff Governors, one from each of the classes of the staff constituency;

11.4.4 three Local Authority Governors, one appointed by each of Bexley Council, the London Borough of Bromley, and the London Borough of Greenwich;

11.4.5 six Partnership Governors who may be appointed by the partnership organisation.

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11.4A For the avoidance of doubt, to give effect to the transitional arrangements described in 11.4.1A and 11.4.2A above, each governor whose tenure of office has not expired shall continue as a member of the Council of Governors for the relevant class by which they were elected until the results of the election take effect on 11 September 2018.

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11.4.5

11.5 The partnership organisation shall appoint Partnership Governors following consultation with Community Links Bromley and Greenwich Action for Voluntary Service in order to represent the interests of (without limitation) children, older people and people with, or people engaging with people with, learning disabilities and/or mental health issues.

Elected Governors

11.6 Public Governors are to be elected by members of their public constituency, Service-user/carer Governors are to be elected by members of their class of the service-user/carers' constituency and Staff Governors are to be elected by members of their class of the staff constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this constitution.

11.7 If contested, the elections must be by secret ballot.

11.8 Elections shall be carried out in accordance with the model election rules (as published from time to time by NHS Providers) set out in Annex 2.

11.9 A member of a public constituency may not vote at an election for a Public Governor and a member of the service-user/carers' constituency may not vote at an election for a Service-user/carer Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant public constituency or the service-user/carers' constituency (as the case may

be). It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Local Authority Governors

11.10 The Chair, having consulted Bexley Council, the London Borough of Bromley, and the London Borough of Greenwich is to adopt a process for agreeing the appointment of Local Authority Governors with those local authorities.

Partnership Governors

11.11 The Partnership Governors are to be appointed by the partnership organisation, in accordance with paragraph 11.5 and a process agreed with the Chair.

Appointment of Deputy Chair of the Council of Governors

11.12 The Council of Governors shall appoint one of the Governors to be Deputy Chair of the Council of Governors.

Terms of office for Governors

11.13 Elected Governors:

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

11.13.2 are eligible for re-election after a three year period of office and after a six year period of office;

11.13.3 may not hold office for more than three successive terms making nine consecutive years, and shall not be eligible for re-election if they have already held office for more than six consecutive years.

11.14 Appointed Governors:

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

11.14.2 are eligible for re-appointment after a three year period of office and after a six year period of office;

11.14.3 may not hold office for longer than three successive terms making nine consecutive years, and shall not be eligible for re-appointment if they have already held office for more than six consecutive years.

11.15 For the purposes of these provisions concerning terms of office for Governors, "year" means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

Eligibility to be a Governor

11.16 A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:

11.16.1 they are under sixteen years of age;

~~11.16.2 they are a Director of the Foundation Trust, or a governor or director of a community health NHS Trust/foundation trust or mental health NHS Trust/foundation trust;~~

~~11.16.3~~ 11.16.2 _____ they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;

~~11.16.4~~ 11.16.3 _____ ~~they are a member of a local authority's Scrutiny Committee covering health matters;~~

~~11.16.5~~ 11.16.4 _____ being a member of one of the public constituencies or the service-user/carers' constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors;

~~11.16.6~~ 11.16.5 _____ they are a vexatious complainant;

~~11.16.7~~ 11.16.6 _____ on the basis of disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Foundation Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements), they are not considered suitable by the Foundation Trust's executive Director responsible for Human Resources or the Chairman;

~~11.16.8~~ 11.16.7 _____ they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;

~~11.16.9~~ 11.16.8 _____ they are a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);

~~11.16.10~~ 11.16.9 _____ they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;

~~11.16.11~~ 11.16.10 _____ 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;

~~11.16.12~~ 11.16.11 _____ they do not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time);

~~41.16.13~~11.16.12 they have within the preceding two years been dismissed from any paid employment with a health service body, otherwise than by reason of redundancy, sickness or dismissal that was found by an Employment Tribunal or competent court (or on appeal in either case) to be unfair, wrongful or discriminatory; and/or

~~41.16.14~~11.16.13 they are a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

Termination of office and removal of Governors

11.17 A person holding office as a Governor shall immediately cease to do so if:

11.17.1 they resign by notice in writing to the Secretary;

11.17.2 they fail to attend two consecutive meetings, unless the other Governors are satisfied that:

11.17.2.1 the absences were due to reasonable causes; and

11.17.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.

11.17.3 in the case of an elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected;

11.17.4 in the case of an appointed Governor, the appointing organisation terminates the appointment;

11.17.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;

11.17.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;

11.17.7 they are removed from the Council of Governors under the following provisions.

11.18 A Governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining Governors present and voting on the grounds that:

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

11.18.2 they have acted in a manner detrimental to the interests of the Foundation Trust; and

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

Vacancies amongst Governors

- 11.19 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 11.20 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 11.21 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
- 11.21.1 to call an election within three months to fill the seat for the remainder of that term of office; or
 - 11.21.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office.

Expenses and remuneration of Governors

- 11.22 The Foundation Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties at such rates as the Board of Directors decides.
- 11.23 Governors are not to receive remuneration.

Meetings of the Council of Governors

- 11.24 The Council of Governors is to meet at least twice in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Foundation Trust, and on the Foundation Trust's website.
- 11.25 Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by ten Governors (including at least two elected Governors and two appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or ten Governors, whichever is the case, shall call such a meeting.
- 11.26 All meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or

on other proper grounds. The Chair may exclude any person from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

- 11.27 ~~Thirteen-Twelve~~ four-two Public Governors, not less than ~~three-two~~ four-two Service-user/carer Governors, not less than two Staff Governors and not less than two appointed Governors shall form a quorum.
- 11.28 The Chair of the Foundation Trust or, in their absence, the Vice Chair of the Board of Directors, or in their absence one of the non-executive Directors is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Deputy Chair of the Council of Governors will chair that part of the meeting.
- 11.29 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 11.30 The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 11.31 Subject to this constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 11.31.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.
- 11.31.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Service User/Carer Governors and Public Governors present.
- 11.32 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint Governors and may invite Directors and other persons to serve on such committees. The Council of Governors may, through the Secretary, request that external advisors assist them or any committee they appoint in carrying out its duties.
- 11.33 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

Disclosure of interests

- 11.34 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:

- 11.34.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 11.34.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 11.35 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 11.36 Subject to the exceptions below, a material interest is:
- 11.36.1 any directorship of a company;
 - 11.36.2 any interest or position held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
 - 11.36.3 any interest in an organisation providing health and social care services to the National Health Service;
 - 11.36.4 a position of authority in a charity or voluntary organisation in the field of health and social care; and/or
 - 11.36.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 11.37 The exceptions which shall not be treated as material interests are as follows:
- 11.37.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 11.37.2 an employment contract held by a Staff Governor;
 - 11.37.3 an employment contract with a local authority held by a Local Authority Governor; and/or
 - 11.37.4 an employment contract with the partnership organisation held by a Partnership Governor.
- 11.38 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

Declaration

- 11.39 An elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Foundation Trust and that they are not prevented from being a member of the Council of Governors. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected Governors.

12 BOARD OF DIRECTORS

12.1 The Foundation Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors.

12.2 The board is to include:

12.2.1 the following non-executive Directors:

12.2.1.1 a Chair, who is to be appointed (and removed) by the Council of Governors at a General Meeting;

12.2.1.2 not less than five and not more than seven other non-executive Directors who are to be appointed (and removed) by the Council of Governors at a General Meeting;

in each case subject to the approval of a majority of the Council of Governors (in the case of an appointment) present and voting at the meeting, and three-quarters of all of the members of the Council of Governors (in the case of a removal) voting at the meeting;

12.2.2 the following executive Directors:

12.2.2.1 a Chief Executive (who is the accounting officer), who is to be appointed (and removed) by the non-executive Directors, and whose appointment is subject to the approval of a majority of the members of the Council of Governors present and voting at a General Meeting;

12.2.2.2 a Finance Director, and other executive Directors, subject to a maximum of six executive Directors which must include a registered medical practitioner or a registered dentist, a registered nurse or registered midwife, all of whom are to be appointed (and removed) by a committee consisting of the Chair, the Chief Executive and the other non-executive Directors.

12.3 The Board of Directors shall appoint one of the non-executive Directors to be Vice-Chair of the Board of Directors. If the Chair is unable to discharge their office as Chair of the Foundation Trust, the Vice-Chair of the Board of Directors shall be acting Chair of the Foundation Trust.

12.4 The Chief Executive shall nominate one of the executive Directors to be Deputy Chief Executive.

12.5 Only a member of one of the public constituencies or service-user/carers' constituency is eligible for appointment as a non-executive Director.

12.6 Non-executive Directors are to be appointed by the Council of Governors using the following procedure:

- 12.6.1 the Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years;
 - 12.6.2 the Board of Directors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive Directors;
 - 12.6.3 appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required; and
 - 12.6.4 the Nominations Committee will comprise the Chair of the Foundation Trust (or the Vice Chair unless they are standing for appointment, in which case another non-executive director, when a Chair is being appointed), two elected Governors and one Appointed Governor.
- 12.7 The removal of the Chair or another non-executive Director shall be in accordance with the following procedures:
- 12.7.1 any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors;
 - 12.7.2 written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons;
 - 12.7.3 in making any decision to remove a non-executive Director, the Council of Governors shall take into account any annual appraisal carried out by the Chair; and
 - 12.7.4 if any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

Terms of Office

- 12.8 The Chair and other non-executive Directors shall hold office for a period of up to three years, and are eligible for re-appointment after a three year period of office.
- 12.9 The Chair and other non-executive Directors may not hold office for more than three successive terms (nine consecutive years in total).
- 12.10 The Council of Governors at a General Meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive Directors.

- 12.11 The Chair and the non-executive Directors are to be appointed in accordance with the terms and conditions of office, decided by the Council of Governors at a General Meeting. Any re-appointment of a non-executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.
- 12.12 The remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

Disqualification

- 12.13 A person may not become or continue as a Director of the Foundation Trust if:
- 12.13.1 they are a member of the Council of Governors;
 - 12.13.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
 - ~~12.13.3 they are a member of a local authority's Scrutiny Committee covering health matters;~~
 - ~~12.13.4~~12.13.3 _____ they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - ~~12.13.5~~12.13.4 _____ they are a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
 - ~~12.13.6~~12.13.5 _____ they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
 - ~~12.13.7~~12.13.6 _____ they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
 - ~~12.13.8~~12.13.7 _____ they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - ~~12.13.9~~12.13.8 _____ they are a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - ~~12.13.10~~12.13.9 _____ they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
 - ~~12.13.11~~12.13.10 _____ on the basis of disclosures obtained through an application to the Disclosure and Barring Service established

under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Foundation Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements), they are not considered suitable by the Foundation Trust's executive Director responsible for Human Resources or the Chairman;

~~42.13.42~~12.13.11 _____ in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors;

~~42.13.43~~12.13.12 _____ they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors;

~~42.13.44~~12.13.13 _____ in the case of a non-executive Director, they are no longer a member of one of the public constituencies or the service-user/carers' constituency; and/or

~~42.13.45~~12.13.14 _____ they do not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time).

Committees and delegation

- 12.14 The Board of Directors may delegate any of its powers to a committee of Directors or to an executive Director.
- 12.15 The Board of Directors shall appoint an audit committee of non-executive Directors to perform such monitoring, reviewing and other functions as are appropriate.
- 12.16 The Board of Directors shall appoint a remuneration committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors.

Meetings of the Board of Directors

- 12.17 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
- 12.18 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, including but not limited to where the Board of Directors decides all or part of a meeting must be held in private for reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 12.19 Meetings of the Board of Directors are called by the Secretary, or by the Chair, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all

Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting.

- 12.20 Seven Directors including not less than two executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive), and not less than two non-executive Directors (one of whom must be the Chair or the Vice-Chair of the Board) shall form a quorum.
- 12.21 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 12.22 The Chair of the Foundation Trust or, in their absence, the Vice-Chair of the Board of Directors, is to chair meetings of the Board of Directors.
- 12.23 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
 - 12.23.1 In case of an equality of votes the Chair shall have a second and casting vote.
 - 12.23.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive Directors present or by all of the executive Directors present.
- 12.24 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

Conflicts of Interest of Directors

- 12.25 Any Director who has a material interest in a matter as defined below shall declare such interest to the Board of Directors and:
 - 12.25.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 12.25.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 12.26 Details of any such interest shall be recorded in the register of the interests of Directors.
- 12.27 Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by the requisite majority of the Council of Governors.
- 12.28 A material interest is:

- 12.28.1 any directorship of a company;
 - 12.28.2 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
 - 12.28.3 any interest in an organisation providing health and social care services to the National Health Service;
 - 12.28.4 a position of authority in a charity or voluntary organisation in the field of health and social care; and/or
 - 12.28.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 12.29 A material interest shall have been authorised if:
- 12.29.1 the Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;
 - 12.29.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 12.29.3 the Director's conflict of interest arises from a permitted cause.
 - 12.29.4 For the purposes of paragraph 12.29.3, the following is a permitted cause:
 - 12.29.4.1 a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Foundation Trust or any of its subsidiaries.
- 12.30 For the purposes of this paragraph, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.
- 12.31 Subject to paragraph 12.32, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 12.32 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by

a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

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

12.34 Should an interest in a matter for consideration or decision at a board meeting or board committee meeting affect either all the non-executive Directors or all the executive Directors, the Directors present not affected by the interest will form the quorum for that item.

Expenses

12.35 The Foundation Trust may reimburse executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.

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

13 REGISTERS

13.1 The Foundation Trust is to have:

13.1.1 a register of members showing, in respect of each member, the constituency and (where relevant) the class of a constituency to which they belong;

13.1.2 a register of members of the Council of Governors;

13.1.3 a register of Directors;

13.1.4 a register of interests of Governors; and

13.1.5 a register of interests of the Directors.

13.2 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

14 PUBLIC DOCUMENTS

14.1 The following documents of the Foundation Trust are to be available for inspection by members of the public free of charge at all reasonable times, and shall be available on the Foundation Trust's website:

14.1.1 a copy of the current constitution;

- 14.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
 - 14.1.3 a copy of the report of any other external auditor of the Foundation Trust's affairs appointed by the Council of Governors;
 - 14.1.4 a copy of the latest annual report;
 - 14.1.5 a copy of the latest information as to its forward planning;
 - 14.1.6 a copy of the Foundation Trust's membership development strategy; and
 - 14.1.7 a copy of the Foundation Trust's policy for the composition of the Council of Governors and of the non-executive Directors; and
 - 14.1.8 a copy of any notice, information, order, statement, or report given under paragraph 22(1) of schedule 7 to the 2006 Act.
- 14.2 The registers specified in paragraph 13 above shall be made available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations. The Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
- 14.2.1 any member of the service user/carers' constituency where that member has not consented to his details being made so available; or
 - 14.2.2 any other member of the Foundation Trust, if they so request, and
- so far as they are required to be available they are to be available free of charge at all reasonable times.
- 14.3 Any person who requests it is to be provided with a copy or extract from any of the above documents or registers. The Foundation Trust may impose a reasonable charge for providing the copy or extract, but a member is entitled to a copy or extract from the registers free of charge.

15 AUDITOR

- 15.1 The Foundation Trust shall have an auditor.
- 15.2 The Council of Governors at a General Meeting shall appoint or remove the Foundation Trust's auditor.

16 ACCOUNTS

- 16.1 The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 16.2 Monitor may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts.

- 16.3 The accounts are to be audited by the Foundation Trust's auditor.
- 16.4 The Foundation 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.
- 16.5 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
 - 16.5.1 the accounts;
 - 16.5.2 the records relating to them; and
 - 16.5.3 any report of the auditor on them.
- 16.6 The accounting officer shall cause the Foundation Trust to prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 16.7 In preparing its annual accounts, the accounting officer shall cause the Foundation Trust to comply with any directions given by Monitor with the approval of the Secretary of State as to:
 - 16.7.1 the methods and principles according to which the accounts are to be prepared; and
 - 16.7.2 the content and form of the accounts.
- 16.8 The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a General Meeting.
- 16.9 The accounting officer shall cause the Foundation Trust to:
 - 16.9.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
 - 16.9.2 once it has done so, send copies of those documents to Monitor within such a period as Monitor may direct.

17 ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK

- 17.1 The Foundation Trust is to prepare annual reports and send them to Monitor.
- 17.2 The reports are to give:
 - 17.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of its public constituencies, the classes of the service-user/carers' constituency and of the classes of the staff constituency is representative of those eligible for such membership;
 - 17.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 11.29 above;

- 17.2.3 information on the Foundation Trust's policy on pay and on the work of the committee established under paragraph 12.12 above and such other procedures as the Foundation Trust has on pay;
 - 17.2.4 information on the remuneration of the Directors and on the expenses of the Governors and the Directors; and
 - 17.2.5 any other information Monitor requires.
- 17.3 The Foundation Trust is to comply with any decision Monitor makes as to:
- 17.3.1 the form of the reports;
 - 17.3.2 when the reports are to be sent to him; and
 - 17.3.3 the periods to which the reports are to relate.
- 17.4 The Foundation Trust is to give information as to its forward planning in respect of each Financial Year to Monitor. The document containing this information is to be prepared by the Directors, and in preparing the document, the Board of Directors must have regard to the views of the Council of Governors.
- 17.5 Each forward plan must include information about:
- 17.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on; and
 - 17.5.2 the income it expects to receive from doing so.
- 17.6 Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in sub-paragraph 17.5.1 the Council of Governors must:
- 17.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its principal purpose or the performance of its other functions; and
 - 17.6.2 notify the Directors of the Foundation Trust of its determination.
- 17.7 Where the Foundation Trust 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 it may implement the proposal only if more than half of the members of the Council of Governors of the Foundation Trust voting approve its implementation.

18 INDEMNITY

- 18.1 Members of the Council of Governors and the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have

acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Secretary.

19 EXECUTION OF DOCUMENTS

- 19.1 A document purporting to be duly executed under the Foundation 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.
- 19.2 The Foundation Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

20 DISPUTE RESOLUTION PROCEDURES

- 20.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:
- 20.1.1 a member; or
 - 20.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
 - 20.1.3 any person bringing a claim under this constitution; or
 - 20.1.4 an office-holder of the Foundation Trust,
- is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties.
- 20.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

21 AMENDMENT OF THE CONSTITUTION

- 21.1 The Foundation Trust may make amendments of its constitution only if:
- 21.1.1 more than half of the members of the Council of Governors of the Foundation Trust voting approve the amendments; and
 - 21.1.2 more than half of the members of the Board of Directors of the Foundation Trust voting approve the amendments.
- 21.2 Amendments made under paragraph 21.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

- 21.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust):
- 21.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 21.3.2 the Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.
- 21.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 21.5 Amendments by the Foundation Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

22 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 22.1 The Foundation 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.
- 22.2 The Foundation Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Foundation Trust voting approve entering into the transaction.
- 22.3 In paragraph 22.2, the following words have the following meanings:
- 22.4 "significant transaction" means a transaction which meets any one of the tests below:
- 22.4.1 the fixed/gross asset test; or
 - 22.4.2 the turnover/income test; or
 - 22.4.3 the gross capital test (relating to acquisitions or divestments).
- The fixed asset test:
- 22.4.4 is met if the assets which are the subject of the transaction exceed 10% of the fixed assets of the Foundation Trust.
- The turnover test:
- 22.4.5 is met if, following the completion of the relevant transaction, the gross income of the Foundation Trust will increase or decrease by more than 10%.
- The gross capital test:
- 22.4.6 is met if the gross capital of the company or business being acquired or divested represents more than 10% of the capital of the Foundation Trust following completion (where "gross capital" is

the market value of the relevant company or business's shares and debt securities, plus the excess of current liabilities over current assets, and the Foundation Trust's capital is determined by reference to its balance sheet).

- 22.4.7 for the purposes of calculating the tests in this paragraph 22.4 figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

- 22.4.8 includes all agreements (including amendments to agreements) entered into by the Foundation Trust; but

22.4.8.1 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Foundation Trust);

22.4.8.2 excludes any agreement or changes to healthcare services carried out by the Foundation Trust following a reconfiguration of services led by the commissioners of such services;

22.4.8.3 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Foundation Trust.

23 HEAD OFFICE

- 23.1 The Foundation Trust's head office is at Pinewood House, Pinewood Place, Dartford, Kent DA2 7WG or such other place as the Board of Directors shall decide.

24 NOTICES

- 24.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.
- 24.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

Annex 1

PUBLIC CONSTITUENCIES

1. Bexley – the electoral area covered by Bexley Council
2. Bromley – the electoral area covered by the London Borough of Bromley
3. Greenwich – the electoral area covered by the London Borough of Greenwich
4. Rest of England – all other electoral areas in England not already covered by the electoral areas in Bexley, Bromley, and Greenwich

Annex 2

Oxleas NHS Foundation Trust (Council of Governors) Election Rules

Model Election Rules – Single Transferable Vote

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2. Timetable
3. Computation of time

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4. Returning officer
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12. Declaration of eligibility
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16. Inspection of statement of nominated candidates and nomination forms
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20. The ballot paper
21. The declaration of identity (public and service user/carers' constituencies)

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
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28. Voting by persons who require assistance
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PART 10 ELECTION EXPENSES AND PUBLICITY

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- 60. Election expenses
- 61. Expenses and payments by candidates
- 62. Expenses incurred by other persons

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- 63. Publicity about election by the corporation
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PART 11 QUESTIONING ELECTIONS AND IRREGULARITIES

- 66. Application to question an election

PART 12 MISCELLANEOUS

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

PART 1 INTERPRETATION

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;
"Monitor"	means the corporate body known as Monitor as provided by section 61 of the 2012 Act;
"numerical voting code"	has the meaning set out in rule 64.2(b);
"poling website"	has the meaning set out in rule 26.1;

"postal voting information"	has the meaning set out in rule 24.1;
"telephone short code"	means a short telephone number used for the purposes of submitting a vote by text message;
"telephone voting facility"	has the meaning set out in rule 26.2;
"telephone voting record"	has the meaning set out in rule 26.5 (d);
"text message voting facility"	has the meaning set out in rule 26.3;
"text voting record"	has the meaning set out in rule 26.6 (d);
"the telephone voting system"	means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;
"the text message voting system"	means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;
"voter ID number"	means a unique, randomly generated numeric identifier allocated to each voter by the returning officer for the purpose of e-voting;
"voting information"	means postal voting information and/or e-voting information.

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

PART 2 TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the 40th day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the 28th day before the day of the close of the poll.
Publication of statement of nominated Candidates	Not later than the 27th 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 25th day before the day of the close of the poll.

Notice of the poll	Not later than the 15th day before the day of the close of the poll.
Close of the poll	By 5pm 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.

PART 3 RETURNING OFFICER

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

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 email 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 email 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 service user/carers' 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 email 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.

PART 5 COUNTING THE VOTES

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 email 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 is to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

- 20.1. The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2. Every ballot paper must specify:
- (a) the name of the corporation;
 - (b) the constituency, or class within a constituency, for which the election is being held;
 - (c) the number of members of the council of governors to be elected

from that constituency, or class within that constituency;

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

20.3. Each ballot paper must have a unique identifier.

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

21. The declaration of identity (public and service user/carers' constituencies)

21.1. The corporation shall require each voter who participates in an election for a public or service user/carers' constituency to make a declaration confirming:

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

("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2. The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's email 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 email to

those members in the list of eligible voters for whom an email 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 64 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 email 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 email to those members in the list of eligible voters for whom an email address is included in that list, then the returning officer shall only send that information by email.

24.5. The voting information is to be sent to the postal address and/or email 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 to the returning officer:

- (a) the completed ID declaration form if required; and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-Voting systems

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

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

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

26.4. The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or service user/carers' constituency, make a declaration of identity;

in order to be able to cast his or her vote;

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

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

- (a) require a voter to:
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or service user/carers' constituency, make a declaration of identity;

- (b) specify:
 - (i) the name of the corporation;
 - (ii) the constituency, or class within a constituency, for which the election is being held;
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency;
 - (iv) instructions on how to vote and how to make a declaration of identity;
 - (v) the date and time of the close of the poll; and
 - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote;
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or service user/carers' 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;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by

text message that comprises of:

- (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote;
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

- 28.1. The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1. If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2. On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3. The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter's identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4. After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
- (a) the name of the voter; and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that

officer was able to obtain it); and

(c) the details of the unique identifier of the replacement ballot paper.

29.5. If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.

29.6. On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7. The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.

29.8. After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):

(a) the name of the voter; and

(b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it); and

(c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

30.2. The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

(a) is satisfied as to the voter's identity;

(b) has no reason to doubt that the voter did not receive the original voting information;

(c) has ensured that no declaration of identity, if required, has been returned.

30.3. After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

(a) the name of the voter;

(b) the details of the unique identifier of the replacement ballot paper, if applicable; and

(c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1. If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2. After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter;
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public and service user/carers' constituencies)

- 32.1. In respect of an election for a public or service user/carers' constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1. To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2. When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4. To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5. The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1. To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone

keypad.

- 34.2. When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3. If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4. When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5. The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1. To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2. The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3. The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

- 36.1. Where the returning officer receives:
 - (a) a covering envelope; or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper;before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2. The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
 - (a) the candidate for whom a voter has voted; or
 - (b) the unique identifier on a ballot paper.
- 36.3. The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

- 37.1. A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2. Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet; and
 - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3. Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper "disqualified";
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper;
 - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the "list of disqualified documents"); and
 - (d) place the document or documents in a separate packet.
- 37.4. An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5. Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6. Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified";
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
 - (c) place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (public and service user/carers' constituency)**
- 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 (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1. As soon as is possible after the close of the poll and after the completion of

the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

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

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

PART 6 COUNTING THE VOTES

41. Interpretation of Part 6

41.1. 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 49;

"preference" as used in the following contexts has the meaning assigned below:

- (a) "first preference" means the figure "1" or any mark or word which

clearly indicates a first (or only) preference;

- (b) "next available preference" means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a "second preference" is shown by the figure "2" or any mark or word which clearly indicates a second preference, and a third preference by the figure "3" or any mark or word which clearly indicates a third preference, and so on;

"quota" means the number calculated in accordance with rule 46;

"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 47.4 or 47.7.

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(a)(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.

44. Rejected ballot papers and rejected text voting records

44.1. 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.

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

44.3. 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.

44.4. The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

44.5. 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 44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

45. First stage

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

45.2. 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.

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

46. The quota

46.1. 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.

46.2. The result, increased by one, of the division under rule 46.1 (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").

46.3. 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 47.1 to 47.3 has been complied with.

47. Transfer of votes

47.1. 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.

- 47.2. The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1 (a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4. The vote on each ballot document transferred under rule 47.3 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).
- 47.5. 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.
- 47.6. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.7. The vote on each ballot document transferred under rule 47.6 shall be at:
- (a) a transfer value calculated as set out in rule 47.4(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.
- 47.8. Each transfer of a surplus constitutes a stage in the count.
- 47.9. Subject to rule 47.10, 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.
- 47.10. 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.

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

48. Supplementary provisions on transfer

48.1. 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.

48.2. The returning officer shall, on each transfer of transferable ballot documents under rule 47:

- (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.

48.3. All ballot documents transferred under rule 47 or 49 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.

- 48.4. Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a nontransferable 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.
- 49. Exclusion of candidates**
- 49.1. If:
- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred; and
 - (b) subject to rule 50, 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 49.12 applies, the candidates with the then lowest votes).
- 49.2. The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 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).
- 49.3. The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.
- 49.4. The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- 49.5. If, subject to rule 50, 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 49.1 into sub- parcels according to their transfer value.
- 49.6. 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).
- 49.7. The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.

- 49.8. Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9. 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 49.1.
- 49.10. 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.
- 49.11. 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 47.5 to 47.10 and rule 48.
- 49.12. 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.
- 49.13. 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.

50. Filling of last vacancies

- 50.1. 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.
- 50.2. 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.
- 50.3. Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

51. Order of election of candidates

- 51.1. 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 47.10.
- 51.2. 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 or she obtained the quota.
- 51.3. 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.
- 51.4. Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

- 52.1. 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 NHS Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust; or
 - (ii) in any other case, to the chair of the corporation; and
 - (c) give public notice of the name of each candidate who he or she has declared elected.

- 52.2. 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 44.1;
 - (f) the number of rejected text voting records under each of the headings in rule 44.3;
- 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.

PART 8 DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

- 54.1. On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records;
 - (b) the ballot papers and text voting records endorsed with "rejected in part";
 - (c) the rejected ballot papers and text voting records; and
 - (d) the statement of rejected ballot papers and the statement of rejected text voting records;

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with

rule 26 are held in a device suitable for the purpose of storage.

54.2. The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it;
- (b) the list of spoilt ballot papers and the list of spoilt text message votes;
- (c) the list of lost ballot documents; and
- (d) the list of eligible voters;

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

54.3. The returning officer must endorse on each packet a description of:

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

55. Delivery of documents

55.1. Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1. Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1. The corporation may not allow:

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

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

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

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

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

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

58.4. On an application to inspect any of the documents listed in rule 58.1 the

board of directors of the corporation must:

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

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

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

PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

59.1. 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.

59.2. 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).

PART 10 ELECTION EXPENSES AND PUBLICITY

60. Election expenses

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

61. Expenses and payments by candidates

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

- (a) personal expenses;

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

62. Election expenses incurred by other persons

62.1. No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1. The corporation may:

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

as it considers necessary.

63.2. Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

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

63.3. Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must

not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

64. Information about candidates for inclusion with voting information

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

64.2. The information must consist of:

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

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

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

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

PART 11 QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

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.

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 Monitor may require.

- 66.5. The application must be presented in writing within 21 days of the declaration of the result of the election.
- 66.6. If Monitor 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 person or panel of persons nominated in accordance with rule 66.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9. Monitor may prescribe rules of procedure for the determination of an application including costs.

PART 12 MISCELLANEOUS

67. Secrecy

67.1. The following persons:

- (a) the returning officer; and
- (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 paper;

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.