

Meeting of the public session of the Council of Governors

Monday 11 January 2021

15:30 – 18:00

via videoconference



Queen Victoria Hospital NHS Foundation Trust Council of Governors

Membership January 2021

Members	
Beryl Hobson	Trust Chair
Brian Beesley	Public governor
Liz Bennett	Stakeholder governor for West Sussex CC
St John Brown	Stakeholder governor for League of Friends
Anthony Fulford-Smith*	Public governor
Janet Haite*	Public governor
Chris Halloway	Public governor
John Harold	Public governor
Julie Holden	Stakeholder governors for EG Town Council
Douglas Hunt*	Public governor
Andrew Lane	Public governor
Carol Lehan*	Staff governor
Sandra Lockyer*	Staff governor
Peter Shore	Public governor
Robert Tamplin*	Public governor
Martin Williams	Public governor
Invited attendees	
Steve Jenkin	Chief Executive
Nicky Reeves	Director of nursing (interim)
Keith Altman	Medical director
Abigail Jago	Director of operations
Michelle Miles	Director of finance
Geraldine Opreshko	Director of workforce
Clare Pirie	Director of communications and corporate affairs
Hilary Saunders	Deputy company secretary
Gary Needle	Senior independent director
Kevin Gould	Non-executive director
Paul Dillon-Robinson	Non-executive director
Karen Norman	Non-executive director

*Non-voting

Meeting of the QVH Council of Governors
Monday 11 January 2021 at 15:30
via MS Teams

Agenda: meeting session held in public			
Standing items			
Ref	Item	Purpose	page
04-21	Welcome, apologies, declarations of interest and eligibility <i>Beryl Hobson, Chair</i>	-	-
05-21	Draft minutes of the meeting held on 28 September 2020 for approval <i>Beryl Hobson, Chair</i>	Approval	1
06-21	Matters arising and actions pending from previous meetings <i>Beryl Hobson, Chair</i>	Review	-
Know your trust			
Ref	Item	Purpose	page
07-21	Merger proposal: update <i>Steve Jenkin, Chief Executive</i>	Information	-
Council business			
Ref	Item	Purpose	page
08-21	Review of GSG Terms of Reference <i>Clare Pirie, Director of communications and corporate affairs</i>	Approval	10
09-21	Review of Appointments committee Terms of Reference <i>Clare Pirie, Director of communications and corporate affairs</i>	Approval	13
10-21	Review of governor approval process for possible merger <i>Steve Jenkin, Chief Executive</i>	Information	18
11-21	Extension of Trust Chair appointment <i>Clare Pirie, Director of communications and corporate affairs, and John Harold, Chair of Appointments Committee</i>	Approval	-
12-21	Board-level governance: engagement with governors <i>Clare Pirie, Director of communications and corporate affairs</i>		24
13-21	Changes to Trust Constitution <i>Clare Pirie, Director of communications and corporate affairs</i>	approval	30
14-21	Proposal to postpone 2021 governor elections <i>Clare Pirie, Director of communications and corporate affairs</i>	Approval	136

Holding non-executive directors to account for the performance of the board of directors			
Ref	Item	Purpose	page
15-21	Board of Directors <i>Beryl Hobson, Trust Chair and Peter Shore, Lead governor</i>	Information	-
16-21	Finance and performance committee <i>Feedback provided by Paul Dillon-Robinson, Committee chair</i>	Discussion	-
17-21	Quality and governance committee <i>Feedback provided by Karen Norman, Committee Chair and Doug Hunt, governor representative</i>	Discussion	-
18-21	Audit Committee <i>Feedback provided by Kevin Gould, committee Chair and Antony Fulford-Smith, governor representative</i>	Discussion	-
19-21	Charity Committee <i>Update provided by Gary Needle, committee Chair, Chris Halloway, governor representative and Carol Lehan, staff governor</i>	Discussion	-
20-21	Any other questions for non-executive directors <i>All members of Council of Governors</i>	Discussion	-
Representing the interests of members and the community			
Ref	Item	Purpose	page
21-21	External auditor appointment for 2021/22 <i>Kevin Gould, Audit committee Chair</i>	approval	138
22-21	Annual planning for 2021/22 <i>Michelle Miles, Director of finance</i>		presentation
23-21	Quality Account priorities for 2021/22 <i>Nicky Reeves, interim Director of nursing</i>		presentation
Any other business			
Ref	Item	Purpose	page
24-21	<i>By application to the Chair</i>	Discussion	-

Questions			
Ref	Item	Purpose	mode
25-21	<p>To receive any questions or comments from members of the foundation trust or members of the public</p> <p><i>We welcome relevant, written questions on any agenda item from our staff, our members or the public. To ensure that we can give a considered and comprehensive response, written questions must be submitted in advance of the meeting (at least three clear working days). Please forward questions to Hilary.Saunders1@nhs.net clearly marked "Questions for the Council of Governors". Members of the public may not take part in the Council of Governors discussion. Where appropriate, the response to written questions will be published with the minutes of the meeting.</i></p>	Discussion	-
Dates of next meeting			
Business meetings of the council of governors to be held in public			
<p>2021/22</p> <p>12 April 2021</p> <p>19 July 2021</p> <p>27 September 2021</p> <p>10 January 2022</p>			

Document:		Minutes DRAFT & UNCONFIRMED	
Meeting:		Council of Governors session in public Monday 28 September 2020, 14:30 – 16:30 Via videoconference	
Present:	Beryl Hobson (BH)	Trust Chair	
	Antony Fulford Smith (AF-S)	Public governor	
	Janet Haite (JDH)	Public governor	
	John Harold (JH)	Public governor	
	Chris Halloway (CH)	Public governor	
	Doug Hunt (DH)	Public governor	
	Carol Lehan (CL)	Staff governor	
	Sandra Lockyer (SL)	Staff governor	
	Peter Shore (PS)	Public governor	
	Martin Williams (MW)	Public governor	
In attendance:	Paul Dillon Robinson (PD-R)	Non-Executive Director	
	Kevin Gould (KG)	Non-Executive Director	
	Gary Needle (GN)	Senior Independent Director	
	Karen Norman (KN)	Non-Executive Director	
	Steve Jenkin (SJ)	Chief Executive	
	Jo Thomas (JMT)	Director of Nursing & Quality	
	Abigail Jago (AJ)	Director of Operations	
	Michelle Miles (MM)	Director of Finance & performance	
	Geraldine Opreshko (GO)	Director of Workforce & OD	
	Clare Pirie (CP)	Director of Communications & corporate affairs	
	Hilary Saunders (HS)	Deputy Company Secretary	
	Apologies:	Liz Bennett (LB)	Stakeholder governor (WSCC)
Julie Holden (JH)		Stakeholder governor (EGTC)	
St John Brown (SJB)		Stakeholder governor (LoF)	
Andrew Lane (AL)		Public governor	
Did not attend:	Brian Beesley (BB)	Public governor	
	Robert Tamplin (RT)	Public governor	
Ref.	Item		
Standing items			
43-20	Welcome, apologies and declarations of interest The Chair opened the meeting. Council was asked to note that all board members and staff governors have a conflict of interest regarding item 46-20. As spouse of a member of staff, AF-S would have a similar conflict. There were no further declarations of interest and apologies were noted as above. The Chair recognised that Matt Ratana, the police officer killed recently whilst on duty, had played a big part in East Grinstead community and expressed condolences to his friends and family on behalf of the Trust.		
44-20	Draft minutes of meeting held on 20 July The minutes of the public meeting held on 20 July were approved as correct record		
45-20	Matters arising and actions pending from previous meetings There were none.		

Know your trust

46-20

QVH Partnership update

BH reminded Council that questions for today's meeting had been submitted in advance and those relating to this item would be addressed at the end of this update.

As one of the governors' duties is to hold NEDs to account, after the presentation, BH would invite individual NEDs to speak from their perspective about the way forward.

SJ introduced his presentation noting that the first half would focus on current operational working, with the second half focusing on our partnership strategy.

Highlights of how we were continuing to work during the pandemic included:

- Operations:
 - Trauma work transferred back from The McIndoe Centre (TMC) in early August, but the contract with TMC would continue until 31 December to support our elective work; it was anticipated this arrangement would remain until the end of the financial year.
 - As part of the Sussex ICS, QVH had an ambitious operating plan for the remainder of 2020/21.
 - QVH continues as a cancer hub, treating breast, skin and head and neck patients; previous referring trusts were repatriating their own breast patients from October. The continuing role of QVH as a regional cancer hub limits the extent to which other planned care services can be restored and we now had a significant number patients working more than 52 weeks for their treatment. All delayed patients will be reviewed for any clinical harm.
 - A review of the activity which has gone through QVH since being appointed as a cancer hub.
 - Optigene testing of patients and staff continued
 - There was strong clinical engagement and a real 'can-do' attitude throughout the organisation which had been impressive.
- The financial regime was changing; our budget was still being worked through to understand the impact. At ICS system level, there were possible fines for not achieving the operating plan.
- Workforce:
 - Most office based staff continued to work from home where possible, and the Workforce team had developed 'Stay Well' initiatives to support all of our staff.
 - Risk assessments had been carried out on all staff who were shielding, and with our BAME staff.
 - We had recently appointed two staff to establish the Trust's first BAME network.
- Feedback: We were very proud of the support we have received, both from patients and other providers.

SJ moved on to the partnership working update, reminding Council that this was something we had been working on for over three years; a detailed exploration was agreed by the Board in November. This work was paused due to the challenges of COVID. However, the recent announcement of a planned merger between WSFHT and BSUH required us re-consider our future strategy.

Council was familiar with the challenges faced by the Trust; these included reliance on key individuals, the need for swift access to other services within the Sussex network when our patients become very unwell and our significant financial challenges, as a result of the imbalance between our income and costs.

The Trust would need to be assured that working with WSHFT would provide better opportunities for our staff, help develop a future strategy for our services to benefit patients across the region, and help deliver financial sustainability.

We would be exploring these issues in greater detail over the next few months and Council noted the proposed timeline to support this. The Chair and CEO of WSHFT would join our board seminar later this week to consider the next steps.

In parallel to this, regional plans were underway to create a Sussex-wide clinical strategy, looking at how services should be developed and positioned across the area. The timing of this would be helpful to QVH to support a shared understanding of a long term, sustainable future for the Trust. Endorsement of the Sussex Acute Services Review would be considered at the October board meeting.

Governors play a key role at QVH in holding the non-executive directors to account for the performance of the board, and representing the views of members and the public and Council was reminded of guidance available to them in 'Your statutory duties'.

BH thanked SJ for his presentation, noting the importance of QVH retaining control over its future. She went on to invite each of the NEDs individually for their comments, which included:

- QVH was the second smallest FT in the country and unsustainable in its current format; to do nothing was not an option.
- The FT model was originally highly competitive, but the new ethos is that of collaboration to ensure patients receive a high standard of care in the right place.
- Staff would benefit from greater development opportunities in a sustainable organisation.
- Although this was likely to be an emotive decision, the most important consideration for both the Board and Council was what was best for patients, staff and community. It was incumbent on all to ensure any proposal includes a clear link between the challenges faced and proposed solutions. We have a duty to ensure we achieve the best for QVH and its patients and staff.
- This exercise would be difficult at the best of times but would be particularly challenging during this pandemic. We must do this properly and involve and listen to all who wish to express a view.
- It is vital to maintain high standards of clinical care and the timing of the Sussex Acute Services Review was opportune.
- We should proceed in good faith but carefully monitor anything likely to be problematic.
- Moving away from competition to collaboration is sensible but it is our duty to ensure the hospital is viable going forward.

As lead governor, PS noted there had been extensive analysis of issues and high level of discussions on this matter. This was clearly a big issue and it would be important to mitigate any negativity as well as accentuate the positive aspects of the proposal.

BH reminded Council that this had been a whole board decision and paid tribute to executive colleagues who had managed to focus on this at the same time as managing the impact of the pandemic.

Questions had been raised at the recent smaller sessions held between BH and individual governors recently and there would also be the opportunity to ask further questions as matters progressed.

In the meantime, questions which had been raised in advance by Council were addressed by SJ as follows:

1. Does the partnership pose any possibility of the QVH being closed and all services transferred elsewhere?

QVH has 12 theatres which are recognised as extremely important to the NHS in Sussex and regionally. There has been absolutely no discussion of closing this site. It is important everyone understands the case for change and the compelling vision.

2. Which services are being considered for transfer out and which services are potentially to be moved to the QVH?

We are not looking at removing any services from QVH. There is work already underway, led by our clinicians, looking at whether in the longer term (3-5 years) inpatient burns patients might be better treated in Brighton. The timeline for considering that change is longer term because it is dependent on the 3Ts building work at Brighton. We have also had some quite complex trauma patients coming to QVH for plastics; our clinicians have said that it is probably right that they should be treated at Brighton when we have a sufficient rota of plastics consultants working in Brighton.

3. Once the planned combination of the two hospital trusts has taken place, will there still be a requirement for Public Governors with the QVH or will these also be combined with a responsibility for the whole combined trust?

The new organisation formed by the planned merger of BSUH and Western will be a foundation trust with governors. If QVH decides joining this organisation is in the best interests of QVH patients, staff and services then we understand that there would be a single council of governors for the new organisation. There is work to be done to look at the detail of how that council of governors would be formed in a way that represents the stakeholders, public and patients of all the hospitals involved.

4. Western and BSUH were discussing a partnership with QVH. During Covid they changed that to a merger. Mergers need a high level of communication and trust between organisations, so I wonder at what stage was QVH informed?

QVH was informed late in the process and the leadership of BSUH/WSHFT have apologised for that. We are all clear that our values and behaviours will be very important in building a strong relationship to support any future merger. Clinician to clinician conversations will be particularly important for this too and we will be looking at how to build those into the process.

5. There is past experience of QVH using finance systems that belonged to another trust, having no real control and suffering reputational damage. Are you assured partnership with BSUH and Western will not leave QVH 6th is the pecking order of the 6 hospitals?

The chief executive and chair of BSUH/WSHFT are meeting with the QVH Board in October and we plan to continue to build our understanding of how QVH would fit into a new organisation. QVH has vital specialist services and assets such as our theatres which we would hope would make it a highly valued part of any new organisation.

6. QVH has a superb reputation for focussing not just on the physical injury but on the whole person – their mental wellbeing and activities they want to resume. How can we protect that quality of service?

QVH receives exceptional positive patient feedback and any future merger must protect the high standard of our care. That will be part of our conversations with the leadership of BSUH/WSHFT. There may be experience and skills to be shared

	<p>between all the hospitals for the benefit of all our patients. The Patient First initiative introduced into BSUH by WSHFT produced enormous benefits for their patients.</p> <p>7. Now that the issue of a full merger is on the table are we looking at cost savings and efficiencies? We know that QVH's cost base is (relatively) one of the highest in the country, given the small size of the Trust. The three obvious areas to look at are Finance, IT, and Purchasing. Could back office services be offsite in cheaper or less critical space than on the main hospital sites with reduced need for management across the multiple sites?</p> <p>We have three aims in looking at a partnership – give key individuals the back up of a wider team; plan for the future in a way that builds on synergies between clinical services; make sure we provide value for money.</p> <p>QVH has never stood alone as an organisation, and has always recognised that, for a relatively small hospital, there are huge benefits from collaboration and cooperation with other providers. For example, our pay roll is provided by Northumbria Healthcare.</p> <p>The question suggests we should look at finance, IT and purchasing. If we do make a decision to join BSUH and Western in a new organisation, we would want to look at all areas where we could be more efficient and bring greater resilience to our back office services by working together. In a new organisation there is indeed potential make greater use of technology and there would also be procurement savings to be made through the greater buying power of a larger organisation.</p> <p>The question asks about moving back office services off site; there is no particular issue with a shortage of space for back office services on the QVH site.</p> <p>An additional governor seminar (virtual) to continue discussions was scheduled for Monday 2 November at 2pm.</p> <p>There were no further comments and Council noted the contents of the update.</p>
Holding non-executive directors to account for the performance of the board of directors	
47-20	<p>Board of Directors</p> <p>BH summarised the content of the board meetings and seminars which had taken place since the last Council meeting; she also recommended governors read the Chair's reports contained within the regular board papers.</p> <p>The issue of Trust services within Kent was raised regularly in the context of new partnership working. BH had joined the Kent Chair's group to ensure QVH remained relevant and involved in future discussions.</p> <p>One of the two seminars held in August included an excellent session led by Cavita Chapman, Head of Equality, Diversity and Inclusion for the South East region which focused on the best way in which Trust could meet its Workforce Race Equality Standard (WRES) aspirations.</p> <p>NEDs continued to meet more frequently with the CEO than pre-pandemic which had been a useful way to keep abreast of current developments.</p> <p>PS commended changes to the board meeting format since the pandemic. He went on to remind governors that his role as lead governor required feedback and engagement from other Council members in order to be effective.</p>

	There were no further comments and Council noted the contents of the update.
48-20	<p>Finance and performance committee</p> <p>PD-R provided a summary of Committee recent activity, noting that the meeting originally scheduled for August had been cancelled due to the large number of conflicting priorities the management team were currently working on.</p> <p>The Committee had noted the ambitious plan of work for the Trust over the next six months and was keen to be able to support the executive to oversee the complex programme of restoring services. Patient safety remained the priority and was aligned to Q&GC objectives.</p> <p>Delivery of our operating plan was crucial. Workforce metrics were positive but sensitive, and our ability to deliver the plan depended on them remaining robust.</p> <p>Changes to the current financial regime were being introduced and would impact trusts in the coming months. A central control total for the ICS would be allocated to individual organisations.</p> <p>Although governor representative AL had been unable to attend the September F&PC he had received papers and had been kept up to date on the current situation.</p> <p>BH concurred that the September F&PC had been a very effective and worthwhile meeting.</p> <p>There were no further comments and Council noted the latest update.</p>
49-20	<p>Quality and governance committee</p> <p>KN presented an update on the work of the Committee. Although we were now working in a different way since the pandemic, lively debate still ensued, holding people to account.</p> <p>Two meetings had taken place since the July CoG, including one to receive a significant number of annual reports. A review of the assurance report to Board was currently underway.</p> <p>The Committee was overseeing issues the Trust was facing; these included helping the wider system catch up on waiting lists as well as managing our own waiting lists. Due to extensive use of PPE to keep everyone safe, it was necessary to work at a slower pace.</p> <p>The Committee took all reports of serious incidents and never events very seriously, undertaking rigorous investigation, and overseeing action plans.</p> <p>DH noted the high volume of reports presented at Q&GC; this was due to the large number of groups reporting through to the Committee. However, review and scrutiny of papers remained thorough, despite meetings now taking place in virtual format.</p> <p>There were no further comments and Council noted the contents of the update.</p>
50-20	<p>Audit committee</p> <p>Two audit meetings had taken place since the CoG meeting in July.</p> <p>As reported at the previous meeting, there would be a change in the external audit team with a new manager and new director joining QVH next month. KG and MM had met with both outgoing and incoming auditors to ensure as smooth a transition as possible.</p> <p>There had been a slight delay to delivery of the internal audit plan during the early days of the pandemic but the programme was now back on track; audits had continued as normal,</p>

	<p>which was not the case in many other trusts and was a testament to our team. . The audit plan had been amended slightly to reflect changing priorities but reports had not highlighted anything of particular concern and controls were operating as effectively as normal. Both external and internal auditors had reflected on levels of cooperation and collaboration within the Trust, evidence of how well the hospital was run.</p> <p>There were no further comments and Council noted the content of the update.</p>
51-20	<p>Charity committee GN provided a brief update on the meeting which took place earlier this month. QVH had been allocated £45,000 from NHS Charities Together which had paid for free staff meals in the early part of the pandemic, staff psychological support, outdoor seating areas for staff and hand cream for nurses.</p> <p>QVH had also bid for additional funding to support the establishment of a BAME network at the Trust and been allocated a further £50,000.</p> <p>A further tranche of funding will be issued to tackle legacy of issues associated with COVID and to cope with second wave; it was anticipated that this would be in the region of around £22,000.</p> <p>BH noted the importance of this funding which would help offset the lack of fundraising income at this time.</p> <p>In response to a question raised by the staff governor, GO advised that staff uptake of psychological therapy support had been positive; a further update would be provided at the next Charity meeting.</p> <p>CH noted a positive outcome of the pandemic was the willingness of the public to fundraise as a thank you to NHS staff.</p> <p>There were no further comments and Council noted the contents of the update.</p>
52-20	<p>Any other questions for non-executive directors There were none.</p>
Council business	
53-20	<p>Chair and NED appraisal process This item had been discussed during the earlier private session, and confirmation was provided for the record that this year's NED and Chair appraisal process was complete.</p> <p>As Chair of the Appointments committee, JH confirmed that this had been a robust and transparent process.</p> <p>BH thanked all governors who had supported this year's process.</p> <p>There were no further comments and Council noted the content of the update.</p>
54-20	<p>Chair and NED annual remuneration review This item had also been considered during the private session, and confirmation was provided for the record that Council had reviewed and approved remuneration rates for the Chair and NEDs for 2020/21.</p>
55-20	Governor selected quality indicator 2020/21

	<p>BH reminded Council that this would be JMT's last Council meeting before she retired in November. On behalf of Council she thanked JMT for all she had achieved during her tenure, including the two 'good' CQC reports and the sustained excellent feedback on outpatient and inpatient care.</p> <p>JMT reminded Council that each year we ask governors to select one indicator which external auditors (currently KPMG) would review as part of the annual quality report audit. The requirement in 2019/20 for auditors to provide assurance on the Quality Report (including quality indicator) was removed to alleviate pressures on providers, following the outbreak of COVID-19. It was uncertain as to whether this metric might be reintroduced in 2020/21 but JMT suggested governors should start thinking about this now, rather than leaving until Q4. Any metric would require a full year's data, and advice should be sought from KPMG in advance to ensure this would be auditable.</p> <p>Last year's QI was based on patient cancellations; however, JMT suggested governors may wish to select something more pertinent given the current pandemic.</p> <p>Council agreed to respond to PS as lead governor by Friday 30 October. PS would then feedback suggestions to the Director of Nursing and KPMG to ensure the feasibility of auditing [Action: All]. A reminder of this process would be included in the September edition of GMU.</p> <p>There were no further comments and Council noted the contents of the update.</p>
56-20	<p>Assessment of the auditor's 2019/20 work and fees</p> <p>KG presented his summary of the 2019/20 work and fees, reminding Council that detailed summary reports were included throughout the year in the board papers.</p> <p>Given that the annual auditor's report on the Trust's financial statements is made 'solely to the Council of Governors', KG was asked to highlight key items to look for in the report to enable governors to responsibly fulfil their role in this respect.</p> <p>KG reminded Council that the role of governors is to appoint the auditors and receive the audit report. The detailed review is done by the audit committee, who receive a more detailed report.</p> <p>KG also noted the increasing level of disclosure over the last few years; whilst this is a good thing because it provides additional information it can also make it harder for most users of financial reports to understand.</p> <p>KG suggested that Council specifically look out for the following:</p> <ul style="list-style-type: none"> • Whether an opinion is modified. If unmodified, Council can generally rely on the information in the financial statements. • Material uncertainties. There had been a lot more in many types of organisation this year due to the pandemic. For the second consecutive year, QVH had one relating to going concern. • Changes in audit risks and key audit matters, ideally in the context of the market. For QVH this year, valuation of buildings would be the main highlight, again consistent with other trusts due to market uncertainty. • Under Value for Money, try to understand the basis of any qualified opinion; this is much more common than for financial statements, and are effectively an assessment against set criteria. As with last year, QVH has a qualified opinion which relates to our financial sustainability. <p>There were no further comments and Council noted the contents of this year's update.</p>

57-20	<p>Information governance: annual update</p> <p>CP reminded governors that they were required to remain cognisant about information security, privacy and confidentiality whilst carrying out their duties. Information governance training was provided to governors at the Trustwide induction programme every three years, throughout their six-year tenure; this was supplemented by an annual update in the intervening period. A summary of key principles relevant to governors was included in today's report.</p> <p>There were no further comments and Council noted the contents of the annual update.</p>
Representing the interests of members and the community	
58-20	<p>Foundation Trust membership review</p> <p>CP presented a report noting that membership had remained stable over the last year, and reminding Council that foundation trusts were no longer required nor expected to increase membership.</p> <p>QVH is proud of the support it gets from its members and provides a high level of communication to members. It will be important to maintain this whilst we go through partnership discussions.</p> <p>There were no further comments and Council noted the contents of the update.</p>
Any other business	
59-20	There was none.
Questions	
60-20	<p>Council sought and received clarification regarding the following:</p> <ul style="list-style-type: none"> • There was a national push to install and start using the NHS 'Test and Trace' app, and we were currently advising staff to pause it when they come on site. • QVH reports very few Never Events but all are taken very seriously and investigated using the national framework, with scrutiny applied through Q&GC and associated groups. We would need advance notice before being able to report on trends. <p>There were no further comments and the Chair closed the meeting.</p>

Chair:..... Date:

Terms of reference	
Name of governance body	Governor Steering Group (GSG)
Constitution	The Governor Steering Group ("the group") is a standing and permanent committee of the Council of Governors established in accordance with paragraph 25 of the Trust's constitution.
Accountability	The group is accountable to the Council of Governors for its performance and effectiveness in accordance with these terms of reference.
Authority	The group is authorised by the Council of Governors to form working groups to facilitate the work of the group, and to support any recommendations they may make to the Council of Governors.
Purpose	<p>The purpose of the group is to:</p> <ul style="list-style-type: none"> Support and facilitate the work of the Council of Governors and make recommendations to it on any aspects of its work through forward planning and helping to set agendas for council meetings Facilitate communication between the Council of Governors and the Board of Directors Provide advice and support to the Trust Chair, Chief Executive and the company secretarial team Initiate appropriate reviews and reports on matters within the remit of the Council of Governors Actively engage governors in adding value to the Trust.
Responsibilities and duties	<p>Responsibilities</p> <p>On behalf of the Council of Governors, the group shall be responsible for:</p> <ul style="list-style-type: none"> Supporting the work of the Council of Governors in order that it might better fulfil its statutory duties, particularly: <ul style="list-style-type: none"> Holding the Trust's Non-Executive Directors to account for the performance of the Board of Directors Representing the interests of members and the public Developing and maintaining close and effective working relationships with the Trust Chair, company secretarial team and Senior Independent Director. <p>Duties</p> <p>The group has a duty to consult with and represent the interests of governors and members to:</p> <ul style="list-style-type: none"> Set the agenda for Council of Governors meetings held in public Influence the agenda and planning of the annual general meeting and annual members' meeting Identify themes and objectives for governor forum meetings.

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Reviewed by GSG December 2020
For approval by Council of Governors on 11 January 2021

Meetings
<p>Meetings of the group shall be formal, compliant with the relevant codes of conduct and action notes will be recorded.</p> <p>The group will meet quarterly in advance of each ordinary meeting of the council of governors. The group Chair may cancel, postpone or convene additional meetings as necessary for the group to fulfil its purpose and discharge its duties.</p>
Chairmanship Chairing
<p>The group shall be chaired by the Lead governor</p> <p>If the Chair is absent or has a conflict of interest which precludes his or her attendance for all or part of a meeting, the group shall be chaired by the Trust Chair.</p>
Secretariat
<p>The Deputy Company Secretary shall be the secretary to the group and shall provide administrative support and advice to the Chair and membership. The duties of the secretary shall include but not be limited to:</p> <ul style="list-style-type: none"> • Preparation of the draft agenda for agreement with the Chair. • Organisation of meeting arrangements, facilities and attendance • Collation and distribution of meeting papers • Taking action notes and keeping a record of matters arising and issues to be carried forward • Maintaining the group's work programme.
Membership
<p>Full Members with voting rights</p> <p>The following governor roles are entitled to membership of the group and shall have full voting rights:</p> <ul style="list-style-type: none"> • The Trust Chair, as Chair of the Council of Governors • The Lead governor • Governor representative to the committees of the Board of Directors, as elected by the Council of Governors, including: <ul style="list-style-type: none"> ○ Audit ○ Finance and Performance ○ Quality and Governance ○ Charity Committee ○ Appointments' Committee, and ○ Membership representative • Nominated staff governor, as elected by the Council of Governors • Nominated stakeholder governor, as elected by the Council of Governors <p>It should be noted that in the event a governor holds more than one role, they are still only entitled to one vote.</p> <p><u>This group expects to work by consensus but should voting be needed the full members listed above shall have a vote.</u></p> <p>In attendance with no voting rights</p> <p>The following posts are invited to attend meetings of the group but shall not be members or have voting rights:</p> <ul style="list-style-type: none"> • The secretary to the committee (for the purposes described above)

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<ul style="list-style-type: none"> • Director of Communications and Corporate Affairs • Any other individuals as it considers appropriate and as the need arises.
Quorum
For any meeting of the group to proceed the Chair or Lead governor must be present along with two other governor representatives.
Attendance
Members and attendees are expected to attend all meetings or to send apologies to the Chair and committee secretary at least one clear day* prior to each meeting.
Papers
Meeting papers shall be distributed to members and individuals invited to attend at least five clear days prior to the meeting.
Reporting
Action notes shall be approved formally by the group at its next meeting.
The group shall report to the Council of Governors as required.
Review
These terms of reference shall be reviewed by the group annually or more frequently if necessary. The review process should include the company secretarial team. The Council of Governors shall be required to approve all changes.
The next scheduled review of these terms of reference will take place in December 2021 ¹⁰
* Definitions
<ul style="list-style-type: none"> • In accordance with the trust's constitution, 'clear day' means a day of the week not including a Saturday, Sunday or public holiday.

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Terms of reference	
Name of governance body	Appointments committee of the Council of Governors
Constitution	The Appointments committee is assigned by the Council of Governors to assist it in carrying out its functions. However, Council may not delegate any of its powers or functions to it. The Appointments committee may appoint its own working groups as appropriate.
Accountability	The Appointments committee is accountable to the Council of Governors for its performance and effectiveness.
Authority	The Appointments committee of the Council of Governors will operate within the requirements of the Constitution, the Standing Orders adopted by the Council of Governors and these terms of reference.
Purpose	<p>The role of the Committee is to:</p> <ol style="list-style-type: none"> 1. Conduct the appointment processes for the Foundation Trust (FT) Chair and non-executive directors, making recommendations in this regard to the Council of Governors. 2. Consider the composition and skills mix of the non-executive element of the Board of Directors and, in so doing, receive information regarding non-executive director appraisals (including that of the FT Chair) and take a view on succession planning. 3. Review at least once a year the remuneration and terms and conditions of the FT Chair and non-executive directors, making recommendations in this regard to the Council of Governors.
Duties and responsibilities	<p>1. General</p> <p>The Committee will:</p> <ol style="list-style-type: none"> a. ensure a regular review of the skills, knowledge and experience required of non-executive directors and make recommendations to the Council of Governors with regard to any changes considered necessary; b. give full consideration to succession planning for all non-executive directors in the course of the Board's work, taking into account the challenges and opportunities facing the trust, and the skills and expertise likely to be required on the Board of Directors in the future. c. review annually the performance of the non-executive directors, including the FT Chair, by taking the lead in agreeing a process for determining the performance evaluations. The Council of Governors will, through its Appointments Committee, receive a report from the FT Chair regarding performance reviews of the non-executive directors, (the FT Chair having carried out these performance reviews). In consultation with the Senior Independent Director, the Chair of the Appointments Committee will carry out the performance review of the FT Chair. The outcomes of the evaluations and

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any recommendations will be reported to the Council of Governors in this regard. **[NB** In accordance with legislation (NHS Act 2006) and as described under S.35 of the Trust's Constitution, any recommendation to the Council of Governors pertaining to the removal of any non-executive director, including the Chair of the Board of Directors, shall be subject to a vote in favour by three quarters of the Council of Governors].

2. Selection and Appointment

The Committee will:

- a. be responsible for selecting and nominating candidates to fill non-executive director vacancies, (including the FT Chair), as and when they arise for appointment by the Council of Governors;
- b. before any appointment is made by the Council of Governors, evaluate the balance of skills, knowledge and experience of the non-executive directors and, in light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.
- c. In identifying suitable candidates, the Committee will:
 - use open advertising or the services of external advisers to facilitate the search;
 - create selection panels to carry out individual appointment processes, including the review of applications and interviewing of candidates. The panels will, for the appointment of non-executive directors, include the FT Chair, and for the appointment of the FT Chair, will include an independent assessor. In line with the NHSI guidance '*Your statutory duties*' there should be a majority of governors on the interview panel.
 - consider candidates on merit and against objective criteria, taking care that appointees have enough time available to devote to the position, and take into account the views of the Board of Directors as to the skills, experience and attributes required for each position,
- d. consider recommending for re-appointment by the Council of Governors any non-executive director nearing the end of their initial term in office and do so in accordance with the provisions of the Constitution in that regard.
- e. ensure that on appointment to the Board of Directors, non-executive directors receive a formal letter of appointment setting out clearly what is expected of them in terms of time commitment, committee service and involvement outside Board meetings, and that all non-executive directors have confirmed that they have the time to serve. Terms and conditions of appointment should be made available for public inspection.
- f. ensure the full range of eligibility checks have been performed and satisfactory references provided before any offer of appointment is finalised;

3. Terms and Conditions

The Committee will

- a. make recommendations to the Council of Governors about the terms and conditions of appointment and terms of office for the FT Chair and non-executive directors;

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- b. make recommendations to the Council of Governors about the remuneration and allowances of the FT Chair and non-executive directors, bearing in mind appropriate external benchmarking, the economic and financial climate, trust performance and any proposals for executive pay reviews. External professional advisers should be consulted to market-test the remuneration levels of the Chair and other non-executive directors at least once every three years and when any material change to the remuneration of a non-executive is proposed;

4. Other Duties

The Committee will:

- a. ensure the FT's annual report provides sufficient information about the Committee's role and duties, and the process by which it fulfils those duties;
- b. have access to sufficient resources in order to carry out its duties, including access to the trust secretariat for assistance as required;
- c. give due consideration to laws and regulations, and the provisions of *the NHS Foundation Trust Code of Governance*;
- d. oversee any investigation of activities which are within its Terms of Reference, and
- e. at least once a year, review its Terms of Reference, to ensure it is operating at maximum effectiveness, and recommend any changes it considers necessary to the Council of Governors for approval.

Chairing

The Appointments Committee will be chaired by a member of the Council of Governors, appointed by Council for this purpose.

In the event that the Chair is absent or has a conflict of interest which precludes his or her attendance for all or part of the meeting, a member of the Committee will be nominated by the Chair to deputise on his/her behalf.

Secretariat

The Deputy Company Secretary will be the secretary to the Appointments Committee. The duties of the secretary will include but not be limited to:

- providing administrative support and advice to the Chair and membership;
- preparation of the draft agenda for agreement with the Chair;
- organisation of meeting arrangements, facilities and attendance;
- collation and distribution of meeting papers;
- taking the minutes of meetings, including recording the names of those present and in attendance, and keeping a record of matters arising and issues to be carried forward;
- ascertaining at the beginning of each meeting, the existence of any conflicts of interest and minute them accordingly, and
- maintaining the Appointments Committee's work programme.

Membership

Members with voting rights

Membership of the Committee will be elected from the members of the Council of Governors. Officers and directors of the Trust may, on invitation by the Committee,

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attend any of its meetings as advisers, but will not be eligible to vote on any matters which the Committee will be responsible for deciding on.

The Committee will comprise between five and eight governors, including the Chair of the Committee and the Lead Governor.

The Council of Governors will appoint the Chair of the Committee. The terms of office for the Chair of the Committee will be for one year, with the option for the incumbent to stand again. Any Committee member dissatisfied with the performance of the Committee Chair will follow the procedure as laid down in the Constitution with this regard.

The Director of Communications and Corporate Affairs and/or Deputy Company Secretary will attend all meetings of the Committee, and other executive directors or advisers may be invited to attend in an advisory capacity. Such officers attending may, at the discretion of the Committee Chair be required to leave any part of the Committee's meetings.

Members conflicted on any aspect of an agenda presented to the Committee, such as succession planning for a non-executive director vacancy or the Chair's position will declare their conflict and withdraw from discussions.

In attendance with no voting rights

The following posts are invited to attend meetings of the Appointments' Committee but will not be members or have voting rights:

- The Trust Chair
- The Senior Independent Director
- The Director of Communications and Corporate Affairs
- The Deputy Company Secretary

Quorum

Three members present will form a quorum for any of the Committee's meetings

Attendance

Members are expected to attend all meetings or to send apologies at least 24 hours prior to each meeting.

Frequency of meetings

The Committee will meet at least four times each year, and at other times as the Committee Chair and members may agree.

Papers

Papers to be distributed to members and those in attendance at least three working days in advance of the meeting.

Reporting

The Committee will report to the Council of Governors

The Committee Chair will report formally to the Council of Governors on its proceedings after each meeting on all matters within its duties and responsibilities.

The Committee will make whatever recommendations to the Council of Governors it deems appropriate on any area within its remit where action or improvement is needed.

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The Committee will ensure that a statement is made in the annual report about its activities, including the process used to make appointments and explain if external advice or open advertising has not been used.

The Committee will make available upon request, in a format they deem appropriate, information regarding the attendance of all members at Committee meetings.

The Committee Chair will attend the annual members' meeting and be prepared to respond to any members' questions on the Committee's activities.

Review

These terms of reference will be reviewed annually or more frequently if necessary. The review process should include the company secretarial team for best practice advice and consistency.

The Committee's next scheduled review of these terms of reference will take place in December 2020 for approval by the Council in January 2021.

Report to:	Council of Governors
Meeting date:	11 January 2021
Agenda item reference no:	10-21
Report from:	Steve Jenkin, Chief Executive
Author:	Clare Pirie, Director of Communications & CA
Date of report:	21 December 2020

Review of governor approval process for possible merger

1 Purpose

The purpose of this paper is to set out the process and timetable to support decision making on the proposed merger of Queen Victoria Hospital NHS Foundation Trust (QVH) with the new organisation formed by the merger of Western Hospitals NHS Foundation Trust (WSHFT) and Brighton and Sussex University Hospitals NHS Trust (BSUH).

2 Background and context

Plans for partnership working with WSHFT/BSUH have been developing since October 2017 when the three Trusts agreed a memorandum of understanding. In November 2019, following an options appraisal, the Board of QVH agreed to progress planning for partnership with WSHFT/BSUH. In January 2020 QVH established a programme board with WSHFT/BSUH and NHSEI to develop a detailed plan for a partnership, however Covid-19 challenges then impacted on the health system and the programme board was paused.

In July 2020, QVH was informed that the Boards of WSHFT and BSUH had agreed to explore a merger to create a new single organisation by April 2021.

Following this decision, QVH is now considering joining the proposed new organisation to be formed by the merger of WSHFT and BSUH.

The case for change in order to secure the long term future of QVH is based around three key challenges:

- Reliance on key individuals – Our size means that in a number of areas we have just one person who is responsible for a role in the organisation. This provides us with challenges to cover periods of work pressure, annual leave, sickness and gaps between members of staff leaving the Trust and new recruits coming in.
- Synergies between services – For some services, particularly those treating very unwell patients, it is important that a wider range of other clinical services are available swiftly if needed. As a small specialist hospital, QVH has high quality, safe services but does not have the full range of clinical services that would be found in a large teaching or general hospital. In planning for the future, we need to consider what services benefit from co-location and how to ensure we meet national clinical quality standards for services.
- Financial sustainability – Our costs exceed our income and we have difficulties in delivering year on year efficiencies. The care we currently provide is outstanding with excellent clinical outcomes. We want to work to protect and maintain that.

This is set out in more detail in the leaflet *Securing the long term future of Queen Victoria Hospital*.

In November 2020 the Board of QVH agreed to proceed to development of a strategic case setting out the rationale for the possible merger, and assessing whether it will address the identified challenges while maintaining or improving quality. The Boards of QVH and the proposed new organisation to be formed by the merger of WSHFT and BSUH expect to consider the strategic case in April 2021.

3 The role of governors

Governors are tasked with approving significant transactions, including mergers (Trust Constitution, paragraphs 54.1 – 54.5).

More than half the members of the council of governors of QVH and of the new organisation formed by the merger of Western and BSUH have to approve the application for the transaction, based on assurance provided by the Board as described below. This means more than half of the total number of governors, not just the number that attends the meeting at which the decision is taken.

The statutory role of the Council of Governors is to seek assurance that the Board of Directors has followed an appropriate process in deciding to undertake the transaction and that it has taken account of the interests of members and of the public in that process in approving such a transaction. Provided appropriate assurance is obtained, governors should not unreasonably withhold their consent for a proposal to go ahead.

3.1 Providing governors with appropriate information, skills and knowledge

Both trusts, QVH and the new organisation formed by the merger of Western and BSUH, will need to help governors by providing appropriate information on proposed decisions and taking steps to ensure that the governors are equipped with the skills and knowledge they require in their capacity as governors.

Building on existing QVH processes and learning from other trusts which have been through a merger process, the following activities/forums are proposed to support new and existing governors.

- **13 January – Results of new governor elections.**
A fully constituted council of governors plays an important part in the merger process. The Trust's constitution allows for 26 governors of which there are 20 elected public members, three elected staff members and three appointed members. Elections for new governors were paused during the first wave of the COVID pandemic as advised. The Trust election process has now recommenced, with nominations opening in November 2020 and results to be declared 13 January. This will support a fully constituted council of governors, with new governors taking up their roles from February 2021.
- **21 and 28 January – Induction.**
New governors will be asked to join an induction session held online on 21 or 28 January (two sessions are being provided and governors can select the one that suits them). This will provide an overview of QVH, our system working context, the role of governor and how it differs from the role of a non-executive director. Existing governors and non-executive directors are encouraged to join one of these sessions too, as a way to meet the new governors.

- **February/March briefing session - The national picture.**
 Briefing on NHS funding and finances, systems transformation and integration. We have asked NHS Providers if they would be able to deliver a session (online) for all our governors setting out the big picture for the NHS.
- **February/March briefing session – Legal requirements of governors in considering a merger.**
 Briefing from external expert (such as legal advisor) on the responsibilities of governors, with a chance to ask questions and engage with the proposed timeline and process.

We may also use this meeting to set up the merger evaluation working group (see below), agreeing terms of reference and membership.

3.2 Governor consideration of possible merger

Consideration of the possible merger will form a key part of the work plan for QVH governors in 2021. The governors of WSHFT, and then the governors of new organisation formed by their merger with BSUH, will also be engaged in this process as needed.

- **April 2021 - First formal council of governors meetings.**
 The new organisation formed by the merger of WSHFT and BSUH will exist from 1 April 2021 and we understand they are likely to hold their first council of governors meeting in this month. The first formal council of governors meeting for the new QVH governors will be 12 April 2021. As well as the normal council of governors business as set out in the work plan, we are planning for QVH governors to be briefed on the strategic case which, on current timelines, will be reviewed by the Boards of both organisations in April. The Boards will be making a decision as to whether to proceed to development of a full business case.
- **April – August 2021 – merger evaluation working group.**
 If there is a decision to proceed to full business case, we plan to establish a small working group of governors determining the criteria for governor assurance that each respective trust has been thorough and comprehensive in reaching its decision to merge, and obtained and considered the interest of members and the public as part of the decision making process. Having set the criteria the working group would then review supporting information provided by the trusts against these criteria.

The purpose of this working group is to support governors in obtaining the necessary assurance that the Boards have followed an appropriate process for merger. The working group will feedback to the Boards on the information provided and request clarification where required. The working group will submit regular reports to the councils of governors of both trusts; additional meetings of the QVH council of governors have been provisionally scheduled in May and June 2021 to receive these reports.

The detail of the terms of reference for this working group are to be agreed. The suggested membership is four governors from each trust, including the lead governor, a staff governor chosen by the staff governors of the trust, and two public or stakeholder governors chosen by the public and stakeholder governors of the trust. It may also be helpful for a non-executive director to join this group as an observer.

Initially this process may be led by QVH governors, with governors from the new organisation formed by the merger of WSHFT and BSUH joining later in the process.

- **26 August – joint council of governors’ informal briefing.**
 This meeting will allow governors from both trusts to consider findings of the merger evaluation working group, questions from governors, clarification of any outstanding issues. Again, this date and process are provisional pending agreement from the new organisation to be formed by the merger of WSHFT and BSUH.
- **14 September – proposed date for governor votes.**
 These would be separate meetings of the two councils in sequence with the results confidential until both have voted. This meeting would simply be the process of seeking the vote of each governor in turn; this would not be an occasion for any further debate or expression of views.

4 Joint executive meetings

Relevant members of the executive teams of QVH and WSHFT/BSUH will be meeting on a monthly basis from early February 2021 to work on the detail needed. These meetings will include the chief executives and directors of finance of both organisations, the QVH director of corporate affairs, the WSHFT/BSUH chief of strategy and deputy chief executive/medical director. Other executive directors will be asked to join specific meetings where their expertise is needed. Terms of reference will be developed.

5 Joint oversight group

The oversight group will meet every other month from late February 2021, terms of reference will be developed. These meetings will include the chair, chief executive, lead governor and one non-executive director from each organisation, as well as the NHSEI locality director for Kent, Surrey, Sussex and the ICS leader for the Sussex Health and Care Partnership.

6 Stakeholder engagement

The Trust has engaged with stakeholders, including staff and governors, about its potential strategic plans for a number of years. In October 2020, a leaflet describing the Trust’s approach to securing its long-term future was circulated to a wide range of external stakeholders and made available on the Trust’s public website. In November and December 2020 QVH has written to all Kent, Surrey and Sussex MPs; NHS provider and commissioner partners; NHSEI; a number of education and charitable stakeholders. Letters to South London MPs will be sent in January 2021. Throughout the autumn and winter of 2020 there have been staff engagement sessions with the chief executive, which will continue.

A formal programme of engagement of external stakeholders will be put in place as part of the preparation of the strategic case. This will be co-ordinated with WSHFT/BSUH.

Should the decision be taken to proceed to full business case, the development of the full business case will be supported by a comprehensive communications and engagement plan, helping to ensure staff, patients, members and other stakeholders are informed and involved in the future organisational arrangements.

7 Strategic case development

To support the Boards of both organisations in making a decision about the future for QVH, a strategic case will be developed. Work on this is planned to take place January to March 2021, with review by the Boards of both organisations in April 2021.

8 Full business case development

If the Boards of both organisations agree to proceed, the next step is to develop a full business case, which would include the long term financial plan; information on transaction risk and mitigation; heads of terms and transaction agreement including staff, assets and liabilities to transfer. We expect to develop the full business case April-July 2021.

The full business case would be presented to the Boards of both QVH and the new organisation formed by the merger of WSHFT/BSUH in August 2021, and a decision would be made on whether to proceed with the transaction.

9 Pre-implementation activities

Consultation with regard to Transfer of Undertakings (Protection of Employment) (TUPE) takes place prior to any decision by the Trust Board or Council of Governors. This allows the transfer of relevant staff to the new organisation once the formal process has been concluded.

10 Submission to NHSEI (Monitor) for approval

Both trusts would make a joint application to NHSEI (Monitor) that includes written confirmation from each trust that the governors have approved making the application by the requisite majority. The application must include a copy of the proposed constitution, which would be the constitution of the new organisation formed by the merger of Western and BSUH, amended on the assumption that the merger will proceed.

Once NHSEI (Monitor) is satisfied that all the above requirements are met, they have a legal duty to grant the merger application.

11 New organisation

On the date agreed, QVH would be merged into the new organisation formed by the merger of WSHFT and BSUH; all property and liabilities of QVH would automatically transfer. The new organisation then has five months to populate any new membership constituencies, hold elections to fill any new governor posts, and appoint any new non-executive or executive directors should any vacancies exist.

12 Potential challenges in this process

A campaign has been launched which seeks to protect QVH's specialist services and expresses concern about their ongoing availability for patients in Kent and Surrey. This campaign is independent of QVH but uses the hospital's logo, which has led to some confusion. The Board of QVH has been clear that we will only merge with other hospitals if it helps us to

- further develop and invest in our services
- maintain and build on our excellent record for patient experience, clinical outcomes and safety
- continue to provide services to patients from the wide area we cover currently
- continue to deliver world class research and innovation
- secure the future of the hospital in East Grinstead providing services such as the minor injuries unit for local people

While much of the content of the campaign is based on positive patient experiences at QVH, there has also been some inaccurate reporting suggesting an intention to restrict these services to Sussex patients only. We have been working through stakeholder

communication, our public website and our social media to set out the criteria the Board will need to see met to support merger, and we have assured staff that the campaigners assertion that they cannot speak out without fear of dismissal is untrue.

The earliest a further transaction can take place following the merger of WSHFT and BSUH is 1 October 2021 and this is the date that we are working towards. There is significant work needed to achieve this, and the leadership and governors of WSHFT and BSUH will be engaged in their own merger transaction through the first few months of 2021. Capacity and timeliness will be kept under review.

Recommendation

The Board is asked to **NOTE** the process and timetable to support decision making on the proposed merger.

Report to: Council of Governors
Meeting date: 11 January 2021
Agenda item reference no: 12-21
Report from: Clare Pirie, Director of Communications & CA
Author: Clare Pirie, Director of Communications & CA
Date of report: 21 December 2020

Board-level governance: engagement with governors

1. Status

- 1.1. The principles of engagement between governor representatives and the Trust's board-level structures and mechanisms were agreed by both the Council of Governors and Board of Directors in 2016 and are reviewed annually. This document has been updated to include the process which has been in place for a number of years for appointment of the lead governor and governor representatives.

2. Background

- 2.1. **Lead governor** – When FTs were originally set up, the regulator asked all NHS foundation trusts to nominate a lead governor to act as a contact between themselves and Council. The role of lead governor does not assume greater power or responsibility than other governors; it is the council of governors as a whole which has the responsibilities and powers in statute, and not any individual governor. **At QVH it has been our practice for the lead governor to also be the governor representative to the Board and we have developed a role description to reflect this.**
- 2.2. **Governor representatives to sub-committees of the Board** - QVH extended this practice to establish governor representatives to the main committees of the Board, who are elected to the role by the Council of Governors.
- 2.3. The role of governor representatives, pioneered by QVH, is appreciated by the Trust as an established and effective means of open and honest engagement between governors and the Board.
- 2.4. Since the Health and Social Care Act 2012, the governor representative roles have become particularly significant as they play an important part in governors' duty to hold non-executive directors (NEDs) to account for the performance of the Board.
- 2.5. The roles foster closer working relationships between governors and NEDs and provide more opportunities for governors to see NEDs at work on a regular basis. As a result, governors are better able to appraise the performance of the NEDs and hold them to account.

3. Guiding principles of engagement

- 3.1. All governor representative positions are available by invitation of the Board of Directors and are not defined or protected by statute. Neither are they defined in the NHS FT *Code of Governance* nor the Trust's constitution, (with the exception of the Lead Governor role).

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- 3.2. The Trust is committed to its governor representative model and will continue to review its effectiveness in the context of routine annual effectiveness reviews, periodic independent reviews as required by the NHS improvement *Well-Led Framework for Governance Reviews* or any other circumstances that make it necessary to do so.
- 3.3. Governor representatives to the Board of Directors and its committees may be invited to give their views at a committee meeting, and are welcome to ask questions of clarification. However, they should not be considered as partners in debate and challenge, and are reminded that they do not share the duties, powers and liabilities of directors.
- 3.4. Governor representatives must observe and maintain confidentiality as directed by the Board of Directors. This will include information that may not be disclosed to other governors and/or to trust staff, foundation trust members and members of the public and press. Advice and support regarding confidentiality can be sought at any time from the Trust Chair/ committee chair(s) and corporate affairs team.
- 3.5. Governor representative roles are a significant commitment for individual governors who volunteer their time and expertise. Therefore:
 - 3.5.1. The Chair should consider, when requested, opportunities for governors to share roles, establish deputies and shadow one-another as a means to share responsibilities and plan for succession.
 - 3.5.2. The Council of Governors should support individual governors to fulfil their duties as representatives and encourage all governors to understand and engage with the representative roles and consider themselves for nomination.
 - 3.5.3. Governors who nominate themselves for governor representative roles should be able to commit to prepare for and attend routine meetings and to engage with fellow governors to represent them and provide feedback.
 - 3.5.4. When requesting additional support from governor representatives, the Trust Chair, committee chairs and the executive and corporate affairs teams should be mindful of the significant commitments inherent in the role and keep additional requests clear and focused.
 - 3.5.5. Methods to help representatives to feedback to governor colleagues will be facilitated by the corporate affairs team and include less formal methods such as the 'Governor Monthly Update' bulletin and formal methods such as reports to Council meetings.

4. Engagement with the Board: principles for governor representatives

- 4.1. Governor representatives are expected to engage with the Board according to the following principles:
 - By committing to the role for the appointed term and attending as many routine meetings of the Board/sub-committee as possible.
 - Giving their views when invited to do so and to ask questions of clarification as appropriate.
 - Acting professionally, collaboratively and in a way which is consistent with the Trust's values and the Council of Governors' code of conduct.

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5. Engagement with the Council: principles for governor representatives

5.1. Governor representatives are expected to engage with the Council according to the following principles:

- By representing the interests of the Council of Governors and members of the Trust faithfully and proportionately
- Feeding back to governor colleagues openly, honestly and regularly to:
 - Inform them of important decisions and developments.
 - Complete the loop of information on matters governors have raised with them as their representatives.
 - Share observations about the effectiveness of the Board and its sub-committees and the performance of the non-executive directors and the Board in order to inform the Council's statutory duties.

6. Engagement with governor representatives: principles for the Board

6.1. The Board of Directors, particularly the Chair and non-executive directors, is expected to engage with governor representatives according to the following principles:

- By engaging openly and honestly.
- Chairing meetings and / or participating in them in ways which are inclusive of and respectful to lay representatives.
- Including governor representatives in all aspects of Board/committee work including Board/committee development and informal or seminar meetings. Exclusion of the governor representative should be by exception.
- Encouraging and supporting governor representatives to share feedback with the Council on the effectiveness of the Board and its sub-committees and the performance of non-executive directors.

7. Process of appointing governor representatives and appointments committee members

- 7.1. Appointments are for a twelve-month period, from the date of appointment.
- 7.2. Governors who hold any of these roles can nominate themselves again if they wish to continue in role
- 7.3. Where more than one governor is nominated for a role all governors, including those due to stand down, will be able to vote. Voting will be organised by the deputy company secretary and will take place by email. Nominees can, if they wish, provide a written statement.
- 7.4. Newly elected / appointed governors are not considered for the governor representative roles in their first year, but can be elected to the appointments committee.
- 7.5. There are no formal prerequisites for any of the roles apart from time commitment.

8. Process of appointing the Lead Governor

- 8.1. This role is the governor representative to the Board, facilitating communication and decision making at a strategic level and ensuring integrated and effective

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governance. The role description was last reviewed and approved by Council of Governors at its meeting on 19 January 2017* (Appendix 1).

- 8.2. This role can only be filled by a public governor, not a staff or stakeholder governor. Newly elected / appointed governors are not considered for the lead governor role in their first year.
- 8.3. This position is reviewed annually, at the time of election of governor representatives to Board sub-committees and the appointments committee. Governors with at least one year's experience are invited to nominate themselves to be considered for this role.
- 8.4. The Chair will speak to any governor on an individual basis who puts him/herself forward for the role of Lead Governor, and make a recommendation for approval to the Council of Governors.

9. Review

- 9.1. This document shall be reviewed by the Council of Governors and Board of Directors annually or more frequently if necessary.

10. Proposed variation to reflect the exceptional circumstances in 2021 only

- 10.1. From February 2021 we will have an unusually small number of public governors with one year's experience as a governor, as required to fill the governor representative roles. It is proposed that for the June 2021 elections, the requirement for a year's service is waived for the governor representative roles. This means the new public governors joining in February 2021 would be eligible to nominate themselves for election to these roles. The roles of lead governor and chair of appointments committee would retain the requirement for one year's service to maintain the level of understanding and experience needed.
- 10.2. This proposed waiver is for the June elections only; the expectation is that there will be sufficient more experienced governors at any future governor representative elections.
- 10.3. Should any of the current governor representatives not be re-elected as governors in January 2021, the process of election to those governor representative roles will take place immediately ensuring governor representation at committees through to end of June 2021.

Recommendation

Governors are asked to:

- Review and approve the document: *Board-level governance: engagement with governors*
- Review and approve the Lead governor role description (appendix 1)
- Consider and approve the proposed variation to the process for governor representatives in 2021 only

* This will be updated following review at CoG January 2021

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Appendix 1

ROLE PROFILE AND PERSON SPECIFICATION

TITLE: Lead governor		
ACCOUNTABLE TO: The Council of Governors		
PURPOSE <p>To facilitate communication and decision making at a strategic level ensuring integrated and effective governance. Key elements of the role involve:</p> <ul style="list-style-type: none"> • Point of contact for the regulator (Monitor, working as NHS Improvement) in the event that it would be inappropriate for the regulator to contact the Chair; point of contact for any governor wishing to raise concerns about the Chair to the regulator; • Attending all Board of Director meetings as Council of Governor's representative on the Board; • Acting as the link between the Board of Directors and the Council of Governors; • Promoting effective communication and decision making; • Providing advice to individual governors and to the Chair as required; • Chairing Council meetings in the event that neither Chair nor Deputy Chair (SID) are available; • Chairing Governors' Steering Group meetings; • Working with the Chair, director of corporate affairs and the deputy company secretary to develop Council governance arrangements, including development of any QVH constitutional amendments; • Providing a statement on the annual report and accounts, and • Actively protecting and enhancing QVH's reputation. 		
NB: <ul style="list-style-type: none"> • This is an ex-officio non-voting member on the Board of Directors. • Attendance by a governor at the Board of Directors, or any of its sub-committees is not an entitlement but at the Board's discretion. 		
	Essential	Desirable
Qualifications and knowledge		<ul style="list-style-type: none"> • Good knowledge and understanding of the principles of corporate governance • Understanding of the principles of the NHS
Skills, special aptitudes	Good presentation and communication skills	<ul style="list-style-type: none"> • Ability to chair meetings in public as appropriate
Experience	Experience of fostering strong working relationships	<ul style="list-style-type: none"> • Board level/Trustee experience • Leadership of a team
Interpersonal skills	Commitment to the role Tactful and diplomatic Team player	<ul style="list-style-type: none"> • Good listener • Confident • Flexible • Self sufficient • Computer literate

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TERMS OF APPOINTMENT

This position is reviewed annually. Each year when governor elections to Committees are held, governors are also invited to nominate themselves to be considered for this role. Nominations are reviewed in consultation with the Chair and Board of Directors and a recommendation is made to the Council of Governors.

This role description was last reviewed and approved by Council of Governors at its meeting on 19 January 2017.

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Report to: Council of governors
Meeting date: 11 January 2021
Reference number: 13-21
Report from: Clare Pirie, Director of Communications and Corporate Affairs
Author: Clare Pirie, Director of Communications and Corporate Affairs
Appendices: NA
Report date: 30 December 2020

Changes to the Trust Constitution

Background

In the context of the pandemic governor elections were paused; a subsequent review of the Constitution highlighted the benefit of additional clarity around governor elections.

The current version of the Constitution can be found on the QVH website.

Section 53 of the Trust's Constitution states that the Trust may make amendments of its Constitution only if:

- a) More than half of the members of the Board of Directors present and voting at a meeting of the Board of Directors approve the amendments
- b) More than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the amendments.

The changes proposed have been approved by the Board of Directors on 7 January 2021. The proposed amendment related to the governor steering group was not reviewed by the Board in January, as it requires consistency with the terms of reference which are under review by the council of governors; should the council of governors approve this change it will be considered for Board approval in March.

Proposed amendment concerning governor elections

Four public governors will cease to hold office on 31 June 2021, having completed a three year term (one of these governors having completed two terms).

The Trust will, in due course, determine whether it is to merge with effect from 1 October 2021. To hold further governor elections would be wasteful of resources prior to the merger of the Trust, as the replacement governors will no longer be in office 3 months after the elections should the merger be approved.

It is proposed that the Constitution is amended to introduce the ability to pause the election of governors.

The existing Constitution makes provision for what can occur in the event of a vacancy arising within a term of a governor. In these circumstances, the council of governors may elect to hold the seat open, hold an election, or appoint a reserve (paragraph 16 of the Constitution). New wording in Annex 3 provides for a similar option where the vacancy arises at the conclusion of the term of office. New paragraph 16.6 notes that there are options on the vacancy of the public governors.

During review, legal advisors noted that paragraphs 17.1 and 17.2 of the constitution appeared potentially inconsistent and an amendment is proposed.

In summary:

- The Constitution now records the usual position - namely that elections to appoint new Governors occur for new governors/re-elected governors to take office as the old term expires, as the default option;
- The Board may, however, make a request to the Council of Governors to delay elections “for good reason” and such a request can be made any time prior to the election date;
- This request is then considered by the Council of Governors and can be approved by a simple majority of those voting;
- Delay is for 12 months, extendable upon a further majority vote by the Governors;
- If an election occurs after such a period of delay, the amendment states that the election for the public constituencies is for a term ending when it would have ended whether or not the delay had happened. This will keep our existing election timetables aligned.
- Governors appointed through the current delayed elections will also have terms ending when they would have ended had there been no delay. This will keep our existing election timetables aligned.
- The delay can only be granted if the majority of Governors in post are still elected public governors.

Legal framework

Schedule 7 of the NHS Act 2006 (NHS Act) contains various rules concerning the appointment and election of Governors. It is not possible to extend the term of office of a public Governor beyond 3 years due to paragraph 10(1) of Schedule 7. Paragraph 10(3) provides that the Governors, other than the appointed Governors, must be elected.

The proposed changes are in line with legal advice. Relevant parts of the NHS Act are set out below.

NHSA	Effect of the provision	Comments
Section 37(1)	Requires the consent of the Board and half the Council of Governors voting on the matter to approve changes to the constitution.	
Section 56A (Acquisition)	This requires that consent for the acquisition of the Trust by another Trust will require the approval of "more than half of the members of the council of governors of each applicant".	The support of half of the then members will not include unfilled posts. As such the majority required will be a majority of Governors in post (12 Governors therefore will need to support the transaction).
Schedule 7- paragraph 9(1)	More than half the members of the Council of Governors must be elected other than those under paragraph 3(1)(b) (the staff constituency)	There are 20 Public Governors. 3 Staff Governors and 3 Appointed Governors. The delay of holding replacement elections for the 4 whose term expires creates no legal issues of quoracy.
Schedule 7- paragraph 14(1)(a)	The constitution must make provision for the conduct of the elections.	The existing constitution makes no provision for delaying elections, so minimal changes have been drafted to permit this for a time limited period.

Proposed amendment concerning processing of membership applications

An addition is proposed to set out time scales for processing membership applications.

As a small organisation with single individuals managing competing tasks, the Trust was challenged in the days before the current election to process membership applications immediately.

While the Trust will continue to endeavor to process all applications at pace, the proposed amendment sets out that in a pre-election period all applications will be processed within a maximum of five working days.

Proposed amendment related to governor steering group

Section 25 has been updated to reflect the updates to the terms of reference of the governor steering group proposed during annual review.

Proposed amendment to paragraph 4.2

During review, it was noted that paragraph 4.2 should read “exercisable” rather than “exercised” as the Trust Board does not exercise all functions of the Trust. It is proposed to amend paragraph 4.2 to read: “All the powers of the Foundation Trust shall be exercisable by the Board of Directors on behalf of the Foundation Trust.”

Recommendation

The council of governors is asked to **approve** these changes to the Constitution.

Next steps

If the council of governors approves the proposed amendment related to the governor steering group, this will be reviewed by the Board in March, and will take effect following Board approval.

If the council of governors approves the other changes set out above, the revised version of the Constitution reflecting these updates will take immediate effect.

Queen Victoria Hospital NHS Foundation Trust

(A Public Benefit Corporation)

Constitution

(updated as per the Health and Social Care Act 2012)

Document control sheet

Document title		Queen Victoria Hospital NHS Foundation Trust Constitution
Version	1	Agreed by the Council of Governors at a meeting held in public on 16 April 2013
Version	2	Amended by the Council of Governors at a meeting held in public on 19 June 2014
Version	3	Amended to incorporate the 2014 Model Election Rules, as notified to the Council of Governors at a meeting held in public on 11 December 2014
Version	4	Amended by the Council of Governors at a meeting held in public on 8 October 2015 <ul style="list-style-type: none"> Provisions 18.1.5 and 18.1.7 Council of Governors – disqualification and removal Provision 38.1 Board of Directors – disqualification
Version	5	Amended by the Council of Governors at a meeting held in public on 21 April 2016 <ul style="list-style-type: none"> Annex 1 – The public Constituency
Version	6	Approved by the Board of Directors at its meeting on 6 July 2017 and by the Council of Governors at the Trust's AGM on 31 July 2017 <ul style="list-style-type: none"> References to Chairman are now shown as Chair Reference to both male and female gender shown throughout the documentation. Following agreement by the Council of Governors at its meeting on 20 October 2016, the title Governor Representative to the Board has been changed to Lead Governor. At the same meeting, Council agreed that the roles of Lead governor and Vice-Chair should be amalgamated; the Constitution has been revised to reflect this change.
Version	7	Approved by the Board of Directors at its meeting on 07 November 2019 and by the Council of Governors at its meeting on 13 January 2020. <ul style="list-style-type: none"> Wording of S18.1 amended to reflect wording of S.11, making it clear that an individual who satisfies criteria for membership of one constituency shall not become or continue as a member of any other constituency
Version	8	Changes to be noted here once latest version has received full approval

Preamble

This document is the Constitution for the Queen Victoria Hospital NHS Foundation Trust.

An NHS Foundation Trust is a Public Benefit Corporation authorised under the National Health Service Act 2006 (the 2006 Act) to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate which is constituted in accordance with Schedule 7 of the 2006 Act. The Constitution provides, inter alia, for the Trust to have Members, Governors and Directors, and determines who may be eligible for Membership and how Governors and Directors are appointed and defines their respective roles and powers. Further, Members of the Trust may attend and participate at public meetings of the Trust, vote in elections of, and stand for election for, the Council of Governors, as provided in this Constitution.

The NHS Constitution is a Department of Health publication and establishes the principles and values for staff and patients. It sets out the rights to which patients, public and staff are entitled, and pledges which the NHS is committed to achieve. It also sets out responsibilities which the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively.

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1 Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act or as amended by the Health and Social Care Act 2012.

References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.

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

Words importing the singular shall import the plural and vice-versa.

All annexes referred to in this Constitution form part of it.

In this Constitution:

the 2006 Act is the National Health Service Act 2006 (as amended);

the 2012 Act is the Health and Social Care Act 2012;

Accounting Officer means the person who, from time to time, discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

Affiliate Member means anyone under the age of 18 or who lives outside the areas specified in Annex 1 as the area for the Public Constituency who shall receive information about the Foundation Trust but who shall not be entitled to vote in Governor elections;

Annual Accounts means those accounts prepared by the Foundation Trust in accordance with paragraph 25 of Schedule 7 to the 2006 Act;

Annual Governors' Meeting is defined in paragraphs 21.3 and 27.1 of this Constitution;

Annual Members' Meeting is defined in paragraph 28 of this Constitution;

Annual Report means a report prepared by the Foundation Trust in accordance with paragraph 26 of Schedule 7 to the 2006 Act;

Appointed Governors means a Local Authority Governor or Partnership Governor;

Appointments Committee means a committee comprised of Governors for the purpose of carrying out activities and functions in accordance with its terms of reference;

Area of the Foundation Trust means an area specified in Annex 1 as an area for a Public constituency;

Audit Committee means a committee of the Board of Directors established in accordance with paragraph 47 of this Constitution;

Auditor means the Auditor of the Foundation Trust appointed by the Council of Governors in accordance with paragraph 46 of this Constitution;

Board of Directors means the Board of Directors of the Foundation Trust, constituted in accordance with this Constitution;

Chair means the person appointed in accordance with this Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Foundation Trust as a whole. The expression “the Chair” shall include the Deputy Chair or any other Non-Executive Director appointed if the Chair or Deputy Chair is absent or is otherwise unavailable;

Chief Executive means the Chief Executive of the Foundation Trust;

Clear Day means a day of the week not including a Saturday, Sunday or public holiday;

Close Family Member means either a:

- a) Spouse;
- b) Person whose status is that of “Civil Partner” as defined in the Civil Partnerships Act 2004 or a co-habitee;
- c) Child, step child or adopted child;
- d) Sibling;
- e) Parent; or
- f) Nephew, niece or cousin;

Conflict shall have the meaning ascribed to “Conflict” in paragraph 40.11.1 of this Constitution;

Constitution means this Constitution and all annexes to it;

Council of Governors means the Council of Governors as constituted in accordance with this Constitution and which has the same meaning as the Council of Governors in paragraph 7 of Schedule 7 to the 2006 Act;

Deputy Chair means the Deputy Chair of the Foundation Trust appointed in accordance with paragraph 36 of this Constitution;

Director means a member of the Board of Directors;

Directors’ Code of Conduct means the Code of Conduct for Directors of the Foundation Trust, as adopted by the Foundation Trust and as amended from time to time by the Board of Directors, to which all Directors must subscribe;

Disclosure and Barring Service means the Executive Agency of the Home Office to which the Secretary of State has delegated his/[her](#) functions under Part V of the Police Act 1977 in relation to applications for criminal records certificates and enhanced criminal record certificates as established by section 87(1) of the Protection of Freedoms Act 2012;

Elected Governor means a Public Governor or a Staff Governor;

Executive Director means an executive member of the Board of Directors of the Foundation Trust;

Financial Year means each successive period of 12 months beginning with 1 April and ending with 31 March;

Forward Plan means the document prepared by the Foundation Trust in accordance with paragraph 27 of Schedule 7 to the 2006 Act;

Foundation Trust means the Queen Victoria Hospital NHS Foundation Trust;

Governor means a member of the Council of Governors;

Governors' Code of Conduct means the Code of Conduct for Governors of the Foundation Trust, as adopted by the Foundation Trust and as amended from time to time by the Council of Governors, to which all Governors must subscribe;

Lead Governor means a Governor recommended by the Chair for approval by the Council of Governors and Board of Directors to attend Board of Directors' meetings to facilitate communication and engagement between the Board of Directors and Council of Governors;

Governors Steering Group means a group of Governors chosen by the Council of Governors and chaired by the Vice-Chair of the Council of Governors that supports the work of the Council of Governors and the phrase "GSG" shall be construed accordingly;

Health Service Body shall have the meaning ascribed to "NHS Body" in Section 275 of the 2012 Act;

Interested Director shall have the meaning ascribed to "Interested Director" in paragraph 40.11.1 of this Constitution;

Licence means the licence granted to the Foundation Trust under Section 88 of the 2012 Act;

Local Authority Governor means a member of the Council of Governors appointed by one or more Local Authorities whose area includes the whole or part of the area of the Foundation Trust;

Meeting Chair means the person presiding over a meeting, committee or event;

Member means a Member of the Foundation Trust and the term "Membership" shall be construed accordingly;

Membership Strategy means the document of that name which describes the Foundation Trust's strategy to set up systems and processes to establish, maintain and develop its Membership;

Model Election Rules means the rules set out in Annex 4 of this Constitution;

Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;

Nomination and Remuneration Committee means a committee constituted in accordance with paragraph 37;

Non-Executive Director means a Non-Executive Director of the Foundation Trust;

Officer means an employee of the Foundation Trust or any other person holding a paid appointment or office with the Foundation Trust;

Partnership Governor means a member of the Council of Governors other than a Public Governor, a Staff Governor or a Local Authority Governor;

Partnership Organisation means an organisation that may appoint a Partnership Governor and which is listed in Annex 3 of this Constitution;

Principal Purpose means the purpose set out in Section 43(1) of the 2006 Act;

Public Constituency is defined in paragraph 8 of this Constitution;

Public Governor means a member of the Council of Governors elected by Members of the Public Constituency;

Registered Dentist means a fully registered person within the meaning of the Dentists Act 1984 who holds a licence to practise under that Act;

Registered Medical Practitioner means a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practise under that Act;

Registered Midwife means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

Registered Nurse means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

Regulatory Framework means the 2006 Act, the Constitution and the Licence;

Replacement Governor is defined in paragraph 16.4 of this Constitution;

Secretary means a person whose function shall be to provide advice on corporate governance issues to the Board of Directors, Council of Governors and the Chair and monitor the Foundation Trust's compliance with the Regulatory Framework. The Secretary shall be appointed and removed by the Chief Executive and Chair of the Foundation Trust acting jointly;

Senior Independent Director means a Non-Executive Director appointed in accordance with paragraph 36 of this Constitution;

Sex Offenders' Order means either:

- a) a Sexual Offences Prevention Order made under Section 104 or Section 105 of the Sexual Offences Act 2003; or
- b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- c) a Foreign Travel Order made under Section 114 of the Sexual Offenders Act; or
- d) a Risk of Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- e) an Interim Risk of Sexual Harm made under Section 126 of the Sexual Offences Act 2003;

Sex Offenders' Register means the notification requirements set out in Part 2 of the Sexual Offences Act 2003, commonly known as the Sex Offenders' Register;

Staff Constituency is defined in paragraph 9 of this Constitution;

Staff Governor means a member of the Council of Governors elected by the Members of the Staff Constituency; and

2 Name

- 2.1** The name of the Foundation Trust is the Queen Victoria Hospital NHS Foundation Trust (the “Foundation Trust”).

3 Principal Purpose

- 3.1** The Principal Purpose of the Foundation Trust is 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 purposes.
- 3.3** The Foundation Trust may provide goods and services for any purposes related to:
- 3.3.1** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2** the promotion and protection of public health.
- 3.4** The 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 to better carry on its Principal Purpose.

4 Powers

- 4.1** The powers of the Foundation Trust are set out in the 2006 Act.
- 4.2** All the powers of the Foundation Trust shall be exercisable by the Board of Directors on behalf of the Foundation Trust.
- 4.3** Any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.4** In performing its NHS functions, the Foundation Trust shall have regard to the NHS Constitution. For the purpose of this paragraph, “NHS functions” means functions under an enactment which is a function concerned with, or connected to, the provision, commissioning or regulation of NHS services and “NHS services” means health services provided in England for the purposes of the health service under Section1(1) of the 2006 Act.

5 Other purposes

- 5.1** The Foundation Trust shall operate for the public benefit and aspire to the highest standards of public service, including respect for the rights of individuals and the environment. The Foundation Trust will operate effectively, efficiently and economically and invest any surpluses in its future.
- 5.2** The Foundation Trust shall, as appropriate, involve itself in education, training and research activities, in furtherance of its Principal Purpose.

6 Membership and constituencies

6.1 The Foundation Trust shall have Members, each of whom shall be a Member of one of the following constituencies:

6.1.1 the Public Constituency; or

6.1.2 the Staff Constituency.

7 Application for Membership

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

7.2 Subject to paragraph 9.5 below, applicants for Membership of the Foundation Trust must complete a form prescribed by the Chief Executive or the Secretary.

7.3 All Members of the Foundation Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

7.4 It shall be the responsibility of Members to ensure their eligibility and not that of the Foundation Trust.

7.5 Anyone under the age of 18 or who lives outside the area specified in Annex 1 as the area for the Public Constituency and who wishes to become a Member of the Foundation Trust shall become an Affiliate Member of the Foundation Trust. An Affiliate Member shall receive information sent to all Members about the Foundation Trust but shall not be entitled to vote in Governor elections.

8 Public Constituency

8.1 An individual who lives in the area specified in Annex 1 as the area for the Public Constituency may become or continue as a Member of the Foundation Trust.

8.2 Those individuals who live in the area specified for the public constituency are referred to collectively as the Public Constituency.

8.3 The minimum number of Members in the Public Constituency is specified in Annex 1.

8.4 The Secretary shall, on receipt of an application and subject to being satisfied that the applicant is eligible, ensure the applicant's name is entered into the Foundation Trust's register of Members at which point they shall become a Member of the Foundation Trust.

8.5 The Secretary may require any individual to supply supporting evidence to confirm eligibility.

8.6 The secretary will endeavour to complete the membership application process within 20 working days; when a governor election has been announced membership applications will be processed within 5 working days of all supporting evidence being made available by the applicant.

9 Staff Constituency

- 9.1** An individual who is employed by the Foundation Trust under a contract of employment with the Foundation Trust may become or continue as a Member of the Foundation Trust provided:
 - 9.1.1** he/she is employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months;
 - 9.1.2** he/she has been continuously employed by the Foundation Trust under a contract of employment for at least 12 months; and
- 9.2** Those individuals who are eligible for Membership of the Foundation Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 9.3** The minimum number of Members in the Staff Constituency is specified in Annex 2.
- 9.4** For the purposes of paragraph 9.1 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Foundation Trust.
- 9.5** An individual who is eligible to become a Member of the Staff Constituency under paragraph 9.1 above, and who is invited by the Foundation Trust to become a Member of the Staff Constituency, shall become a Member of the Staff Constituency without an application being made, unless he/she informs the Foundation Trust that he/she does not wish to do so.

10 Membership

- 10.1** The Foundation Trust shall at all times strive to ensure that, taken as a whole, its actual Membership of the Public Constituency is representative of those eligible for Membership of the Foundation Trust.
- 10.2** The area set out for the Public Constituency shall have regard to the need for those eligible for such Membership to be representative of those to whom the Foundation Trust provides services.

11 Restriction on Membership

- 11.1** An individual who is a Member of a constituency shall not, while Membership of that constituency continues, be a Member of any other constituency.
- 11.2** An individual who satisfies the criteria for Membership of the Staff Constituency shall not become or continue as a Member of any constituency other than the Staff Constituency.
- 11.3** An individual must be at least 18 years old to become a Member of the Foundation Trust.
- 11.4** An individual shall not become or continue as a Member of the Foundation Trust if:
 - 11.4.1** he/she has been confirmed as an habitual and/or vexatious complainant in accordance with the Foundation Trust's policy for handling complaints; or
 - 11.4.2** he/she has been deemed to have acted in a manner detrimental to and contrary to the interests and values of the Foundation Trust or has failed to

agree to and abide by the values of the Foundation Trust.

12 Expulsion from Membership

- 12.1** If a Member is found to be in contravention of paragraph 11 above, a resolution to expel them shall be considered by a committee comprising the Chair, the Lead Governor and the Secretary.
- 12.2** The committee (as set out above) shall consider the complaint, taking such steps as it considers appropriate to ensure that the Member's point of view is heard.
- 12.3** Where a Member is deemed by the committee to be in contravention of paragraph 11, the Member shall be suspended immediately and the committee's recommendation shall be taken to the next general meeting of the Council of Governors for approval. The Member shall be duly informed.
- 12.4** At the general meeting of the Council of Governors at which the committee's recommendation to expel a Member is considered, the Council of Governors shall be at liberty to either:
 - 12.4.1** agree with the committee's recommendation, by a three quarters majority vote of those Governors present, and expel the Member immediately; or
 - 12.4.2** remove the Member's suspension with immediate effect should the Council of Governors not agree with the committee's recommendation.
- 12.5** In either case, the Member shall be duly informed of the decision of the Council of Governors.
- 12.6** No person who has been expelled from Membership in accordance with these provisions shall be re-admitted as a Member except by a resolution carried by the votes of three quarters of the members of the Council of Governors present and voting at a general meeting in favour of the individual concerned being re-admitted.

13 Termination of Membership

- 13.1** A Member shall cease to be a Member on:
 - 13.1.1** death; or
 - 13.1.2** resignation by notice in writing to the Secretary;
 - 13.1.3** ceasing to fulfil the requirements of paragraphs 8, 9 or 11 of this Constitution or being expelled in accordance with in paragraph 12 above.

14 Council of Governors – composition

- 14.1** The Foundation Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 14.2** The composition of the Council of Governors is specified in Annex 3.
- 14.3** The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency.
- 14.4** The number of Governors to be elected by each constituency is specified in Annexes 1

and 2.

- 14.5** More than half of the members of the Council of Governors shall be Governors from the Public Constituency.

15 Council of Governors – election of Governors

- 15.1** Elections for elected members of the Council of Governors shall be conducted using the first past the post method in accordance with the Model Election Rules.
- 15.2** The Model Election Rules, as published from time to time by the Department of Health and which may be varied from time to time, form part of the Constitution. The current Model Election Rules are attached at Annex 4.
- 15.3** A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of the Constitution for the purposes of paragraph 53 of this Constitution (Amendment of the Constitution).
- 15.4** An election, if contested, shall be by secret ballot.
- 15.5** A person may not vote at an election or stand for election as an Elected Governor unless, within the specified period in the Model Election Rules, he/she has made a declaration in the form specified in paragraph 15.6. It is an offence to knowingly or recklessly make a declaration which is false in a material particular.
- 15.6** The specified form of declaration referred to in paragraph 15.5 above regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in rule 12 of the Model Election Rules and shall also state as follows:

“I declare that, to the best of my knowledge, I am eligible to stand for election to the Council of Governors for the seat named in Section 2 of this form. I declare that, to the best of my knowledge, I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any political membership and financial interests I have in the Foundation Trust at Section 4 of this form. I declare that I am a member of the Foundation Trust and that I have attended a pre-election Governor awareness training session or equivalent, as agreed by the Company Secretary. I understand that if any of these declarations are later found to be false, I will, if elected, lose my seat on the Council of Governors and may also have my Membership withdrawn.”

16 Council of Governors – vacancies

- 16.1** Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the provisions set out below will apply.
- 16.2** Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
- 16.2.1** to call an election to fill the remainder of the unexpired term of office where it is in excess of one year; or
 - 16.2.2** to invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, to fill the seat for the remainder of the unexpired term of office where it is in excess of

one year. If that candidate does not accept to fill the vacancy, it may be offered to the next highest polling candidate until the vacancy is filled; or

- 16.2.3** where no reserve candidate is available or willing to fill the vacancy, to call an election; or
 - 16.2.4** to leave the seat vacant until the next scheduled elections are to be held where the unexpired term of office is one year or less.
- 16.3** When deciding on a course of action, the Council of Governors must always ensure that the aggregate number of Governors who are Public Governors on the Council of Governors always remains in the majority.
- 16.4** Where the vacancy arises amongst the Appointed Governors, the Secretary will request the relevant Partnership Organisation to appoint a Replacement Governor, in line with the eligibility criteria set out for Governors at paragraph 18 and Annex 5, to hold office for the remainder of the unexpired term of office. The Partnership Organisation shall agree the appointment of a Replacement Governor with the Secretary within three months of being notified.
- 16.5** The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.
- 16.6** Where a vacancy arises on the Council of Governors amongst the Public Governors for reason of the expiry of a term of office, the provisions relating to such a vacancy set out in Annex 3 will apply.

17 Council of Governors – tenure

- 17.1** All governors may hold office for a term of up to three years
- 17.2** All governors may hold office for a maximum of two terms
- 17.3** A governor shall be eligible for re-election or re-appointment at the end of his/her term subject to 17.2 (above)
- 17.4** An Elected Governor shall cease to hold office if he/she ceases to be a member of the constituency by which he/she was elected.
- 17.5** An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/[her](#).
- 17.6** Any Governor shall cease to hold office if he/she is disqualified for any of the reasons set out in the constitution.

18 Council of Governors – disqualification and removal

- 18.1** In line with section 11.1, an individual who is a member of a constituency shall not, while membership of that constituency continues, be a member of any other constituency. In addition, the following may not become or continue as a member of the Council of Governors:

18.1.1 He/she is a person in relation to whom a moratorium period under a debt relief order

applies (under Part 7A of the Insolvency Act 1986);

- 18.1.2** in the case of an Elected Governor, he/she ceases to be a Member of the relevant constituency by which he/she was elected;
- 18.1.3** in the case of an Appointed Governor, the appointing organisation withdraws their sponsorship of him/[her](#);
- 18.1.4** he/she is under 18 years of age at the date at which he/she is nominated for election or appointment;
- 18.1.5** he/she is a Director of the Foundation Trust, or an executive director, non-executive director or Chair of another NHS foundation trust, or other Health Service Body (unless they are appointed by an appointing organisation which is an NHS body);
- 18.1.6** he/she is a governor of another NHS foundation trust and there presents a conflict of interest with the affairs of the Foundation Trust which cannot be resolved;
- 18.1.7** he/she has been a Director of the Foundation Trust in the preceding five years prior to the date of his/[her](#) nomination to stand as an Elected Governor, or in the case of an Appointed Governor, the date of his/[her](#) appointment;
- 18.1.8** subject to paragraphs 18.7 and 18.8 below, he/she is incapable by reason of his/[her](#) mental disorder, illness or injury of managing and/or administering his/[her](#) property and/or affairs;
- 18.1.9** prior to putting himself/[herself](#) forward for consideration as an Elected Governor or Appointed Governor, he/she has
- failed to register as a member of the Foundation Trust
 - has registered but failed to allow sufficient time for his/her application to be processed (ie. five working days) prior to the date of a governor awareness training session (pre-election event);
 - failed to attend a pre-election or pre-appointment governor awareness training event, the purpose of which is to ensure that prospective Governors are made fully aware of the responsibilities and duties of a Governor and the commitments that the role entails, prior to the individual standing for office as a Governor;
- 18.1.10** he/she has refused, without reasonable cause, to undertake any training which the Foundation Trust and/or Council of Governors requires all Governors to undertake;
- 18.1.11** he/she is a person who, by reference to information revealed by a Disclosure and Barring Service check, is considered by a committee comprising the Chair, Lead Governor and Secretary to be inappropriate on the grounds that his/[her](#) appointment might adversely affect public confidence in the Foundation Trust or

otherwise might bring the Foundation Trust into disrepute;

- 18.1.12** he/she has failed any other relevant identity or other check carried out by the Foundation Trust;
 - 18.1.13** he/she has failed to sign and deliver to the Secretary a statement in the form required by the Foundation Trust confirming acceptance of the Governors' Code of Conduct;
 - 18.1.14** he/she has failed to make, or falsely makes, any declaration required by paragraph 15.6 of this Constitution;
 - 18.1.15** he/she has been declared by the Council of Governors to be an habitual and/or vexatious complainant;
 - 18.1.16** the relevant Partnership Organisation which he/she represents ceases to exist;
 - 18.1.17** he/she has been expelled from the post of governor from another NHS foundation trust; or
 - 18.1.18** he/she is an active member of a body or organisation with policies or objectives such that his/[her](#) membership thereof would likely cause the Foundation Trust to be in breach of its statutory obligations or to bring the Foundation Trust into disrepute.
- 18.2** Further circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 18.3** Where a person has been elected or appointed to be a Governor and he/she becomes disqualified under provisions set out paragraph 18 or Annex 5, he/she shall notify the Secretary in writing of such disqualification as soon as is practicable and, in any event, within ten Clear Days of first becoming aware of those matters which rendered him/[her](#) disqualified.
- 18.4** If it comes to the notice of the Secretary at the time of his/[her](#) taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the Governor in question is disqualified and notify him/[her](#) in writing to that effect as soon as is practicable.
- 18.5** Upon dispatch of any such notification, a Governor's tenure of office, if any, shall be terminated immediately and the Secretary shall cause his/[her](#) name to be removed from the register of members of the Council of Governors. From that point, the individual shall immediately cease to be or act as a Governor.
- 18.6** If a Governor is found to be incapable, by reason of mental disorder, illness or injury, of managing and/or administering his/[her](#) property and/or affairs for the purposes of paragraphs 18.1.8 above, a committee comprising the Chair, Secretary, and Lead Governor shall be convened.
- 18.7** The committee (as set out above) shall consider the Governor's circumstances, taking

such steps as it considers appropriate to ensure that the Governor's views are understood.

- 18.8** Where the committee deems that the Governor is incapable, by reason of mental disorder, illness or injury, of managing and/or administering his/[her](#) property and/or affairs, he/she shall be immediately suspended from office. The Governor shall be duly informed.
- 18.9** The committee shall make a recommendation to the next general meeting of the Council of Governors that the Council of Governors should either:
- 18.9.1** temporarily suspend the Governor from office until such time the Council of Governors, in its absolute discretion, considers the Governor to be capable of managing and/or administering his/[her](#) property and/or affairs; or
- 18.9.2** disqualify the Governor from office where the Council of Governors in its absolute discretion, considers him/[her](#) to be incapable of managing and/or administering his/[her](#) property and affairs.
- 18.10** At the general meeting of the Council of Governors at which the committee's recommendations are considered, a resolution shall be approved by not less than three quarters of the members of the Council of Governors present and voting, to either:
- 18.10.1** temporarily suspend the Governor from office for an agreed, specified period; or
- 18.10.2** disqualify the Governor from office; or
- 18.10.3** remove the suspension of the Governor, should the Council of Governors not agree with the committee's recommendation.
- 18.11** In considering whether an individual is incapable by reason of mental disorder, illness or injury of managing and/or administering his/[her](#) property and/or affairs, the committee (described above) shall take into account the provisions of the Mental Capacity Act 2005, or any statutory modification thereof, and shall be entitled to take appropriate professional advice from internal Foundation Trust advisors and/or external advisors as necessary.
- 18.12** If a Governor fails to attend three consecutive meetings of the Council of Governors in any Financial Year, his/[her](#) tenure of office is to be terminated immediately unless the Council of Governors is satisfied by a three quarters majority of those members of the Council of Governors present and voting at a meeting of the Council of Governors that:
- 18.12.1** the absence was due to a reasonable cause; and
- 18.12.2** the Governor will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.

18.13 Notwithstanding the provisions of paragraph 18.12 above, if a Governor fails to attend three out of four consecutive meetings of the Council of Governors and he/she has previously been the subject of a decision in his/[her](#) favour under paragraph 18.10 above, the Governor's tenure of office is to be terminated immediately.

18.14 A Governor shall vacate his/[her](#) office immediately if:

18.14.1 he/she is considered to have acted in a manner inconsistent with the values of the Foundation Trust or in a manner detrimental to or contrary to:

18.14.1.1 the interests of the Foundation Trust; or

18.14.1.2 the Licence; or

18.14.1.3 the Governors' Code of Conduct; or

18.14.1.4 he/she has failed to declare an interest as required by the Constitution or he/she has spoken or voted at a meeting on a matter in which he/she has an interest contrary to the Constitution. For the purpose of this paragraph, "interest" includes a relevant and material interest, or a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect; or

18.14.1.5 he/she is adjudged to have acted in a manner inconsistent with the values of the Foundation Trust or in a manner detrimental to it by a majority of not less than three quarters of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

18.14.2 A Governor whose office is terminated subject to the paragraphs above shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of three years from the date of his/[her](#) removal from office or the date on which any appeal against his/[her](#) removal from office is disposed of, whichever is the later.

18.14.3 A Governor may resign from office at any time during the term of that office by giving notice in writing to the Secretary. Where possible and appropriate, a resigning Governor should agree a notice period with the Secretary prior to resigning from office.

19 Council of Governors – duties of Governors

19.1 The general duties of the Council of Governors are:

19.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

19.1.2 to represent the interests of the Members of the Foundation Trust as a whole and the interests of the public.

20 Council of Governors – skills and knowledge

- 20.1** The Foundation Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as Governors.

21 Council of Governors – meetings of Governors

Admission of the Public

- 21.1** Meetings of the Council of Governors shall be open to members of the public. Members of the public and representatives of the press may be excluded from a meeting for special reasons as set out in Annex 6.

Calling Meetings

- 21.2** Subject to paragraph 29 below, the Council of Governors is to meet at least four times per year. Meetings are to be held at such times and places as the Council of Governors may determine.
- 21.3** One of the Council of Governors' meetings shall be an annual meeting held no later than 30 September in each year when the Council of Governors is to receive and consider the Annual Accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the Annual Report (the "Annual Governors' Meeting").
- 21.4** 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 of the Council of Governors.
- 21.5** The Council of Governors may invite the Chief Executive, members of the Board of Directors or a representative of the Auditor or other advisors to attend and speak at a meeting of the Council of Governors.
- 21.6** The Chair of the Foundation Trust may call a meeting of the Council of Governors at any time after a requisition for that purpose, signed by at least half of the whole number of Governors, has been presented to him/[her](#) at the Foundation Trust headquarters. If the Chair does not call a meeting within ten Clear Days after such a requisition has been presented to him/[her](#), half the Governors or more may call a meeting.

Notice of meetings and agenda

- 21.7** Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine.
- 21.8** Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every Governor, by post or electronically.
- 21.9** Agendas shall be sent to Governors five Clear Days before the meeting and supporting papers, whenever possible, shall be despatched no later than three Clear Days before the meeting, save in an emergency and with the agreement of the Chair.
- 21.10** In the case of a meeting called by Governors in default of the Chair, the notice shall be

signed by those Governors and no such business shall be transacted at the meeting other than that specified in the notice.

- 21.11** Want of service of the notice on any Governor shall not affect the validity of the meeting. A notice of the meeting shall be presumed to have been served one day after posting or, in the case of a notice being sent electronically, on the date of transmission.
- 21.12** The Council of Governors shall agree the dates of general meetings of the Council of Governors in advance which shall be publicised through reasonable and appropriate means.

Conduct of meetings

- 21.13** The Chair of the Foundation Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 34 below) or, in his/her absence the Deputy Chair (appointed in accordance with the provisions of paragraph 36 below), or in his/her absence one of the Non-Executive Directors shall preside at meetings of the Council of Governors and be the Meeting Chair.
- 21.14** If the Meeting Chair has a conflict of interest in relation to the business being discussed, then the Lead Governor shall chair that part of the meeting. Should the Lead Governor not be present, a Public Governor, chosen by the majority of Governors present and voting, shall chair that part of the meeting.
- 21.15** Governors' behaviour at meetings (and generally as a representative of the Foundation Trust) is expected to be exemplary. Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion and the decision of the Meeting Chair on questions of order, relevancy, regularity and any other matters shall be final.
- 21.16** The names of the Meeting Chair and Governors present at the meeting shall be recorded in the minutes.

Voting

- 21.17** Every question at a meeting of the Council of Governors shall be determined by a majority of votes of the Governors present and qualified to vote. In the case of the number of votes for and against a motion being equal, the Meeting Chair shall have a casting vote.
- 21.18** Every Governor must make an annual declaration that he is qualified to vote at meetings of the Council of Governors. He/she will do so in the form specified below:

Declaration to the Secretary of the Queen Victoria Hospital NHS Foundation Trust

Elected Governors

"I hereby declare that I am, at the date of this declaration, a member of the [Public / Staff] Constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution."

Appointed Governors

“I hereby declare that I am at the date of this declaration a properly Appointed Governor and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.”

- 21.19** A Governor may not vote at a meeting of the Council of Governors unless, prior to the meeting, he/she has made the declaration referred to in paragraph 21.19 above.
- 21.20** Each Governor must also notify the Secretary as soon as possible and provide a further declaration at any subsequent meeting if his/[her](#) circumstances have changed.
- 21.21** All Governors 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 Governors.
- 21.22** All questions put to the vote shall, at the discretion of the Meeting Chair, be determined by oral expression or by a show of hands. A paper ballot may be used if the majority of Governors present so request.
- 21.23** If half of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 21.24** If a Governor so requests, his/[her](#) vote shall be recorded by name upon any vote (other than by paper ballot).
- 21.25** In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

Electronic Communication

- 21.26** The Council of Governors may agree that Governors can participate in its meetings by telephone, video or computer link or other such agreed means. Participation in a meeting in this manner shall be deemed exceptional but shall constitute presence in person at the meeting. Express approval from the Meeting Chair must be sought in advance.
- 21.27** Further provisions which apply in these circumstances are set out in Annex 7.

Content and length of speeches

- 21.28** Approval to speak at meetings shall be given by the Meeting Chair. This includes Governors, Members, members of the public or press, Officers or any other person in attendance at a meeting.
- 21.29** Speeches must be directed to the matter, motion or question under discussion or to a point of order.
- 21.30** Unless, in the opinion of the Meeting Chair, it would not be desirable or appropriate to limit speeches on any topic to be discussed, having regard to its nature complexity or importance, no proposal, speech nor any reply, may exceed three minutes.
- 21.31** In the interests of time, the Meeting Chair may, in his/[her](#) absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.

Quorum

- 21.32** Any meeting of the Council of Governors requires a quorum of at least half of the total

number of Governors to be present, with a majority of those present being Public Governors.

- 21.33** No business shall be carried out at a meeting which is not quorate.
- 21.34** If the Meeting Chair or a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (paragraphs 22, 40 and Annex 8), he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next agenda item.
- 21.35** If at any meeting of the Council of Governors, there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a period of at least five Clear Days. The Secretary shall give notice of the date, time and place of the adjourned meeting and, notwithstanding paragraph 21.34 above, upon re-convening, those present shall constitute a quorum.

Committees and groups

- 21.36** The Council of Governors may appoint committees or groups consisting of its members to assist it in carrying out its functions but may not delegate any of its powers or functions to them. A committee or group so appointed may appoint its own working groups.
- 21.37** These committees or groups may include Directors or Officers of the Foundation Trust and/or outside advisors to help them in their tasks.

22 Council of Governors – Conflicts of interest of Governors

- 22.1** If a Governor has a relevant and material interest, or a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose the nature and extent of that interest to the members of the Council of Governors as soon as he/she becomes aware of it.
- 22.2** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, the Governor must make a further declaration before the Foundation Trust enters into the transaction or arrangement.
- 22.3** This paragraph does not require a declaration of an interest of which the Governor is not aware or where the Governor is not aware of the transaction or arrangement in question.
- 22.4** A Governor need not declare an interest if:
- 22.4.1** it cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 22.4.2** to the extent that the Governors are already aware of it.
- 22.5** Any interests raised by the Governors in this way shall be recorded in the register of interests of the Governors.

- 22.6 Further provisions as to the circumstances in which a Governor must declare a conflict of interest are set out in Annex 8.

23 Council of Governors – remuneration, travel and other expenses

- 23.1 Governors are not to receive remuneration from the Foundation Trust provided that this shall not prevent remuneration of Governors by their employer.
- 23.2 Subject to any Foundation Trust policy on the payment of expenses, the Foundation Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Foundation Trust. These shall be published in the Annual Report.

24 Referral to Monitor's panel for advising Governors

- 24.1 In this paragraph, the "Panel" means a panel of persons appointed by Monitor to which a Governor of the Foundation Trust may refer a question as to whether the Foundation Trust has failed or is failing:
- 24.1.1 to act in accordance with the Constitution; or
- 24.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 24.2 A Governor may refer a question to the panel only if more than half of the members of the Council of Governors present and voting approve the referral at a general meeting of the Council of Governors.

25 Governors' Steering Group (GSG)

- 25.1 The purpose of the Governors' Steering Group is to:
- 25.1.1 support and facilitate the work of the Council of Governors ~~and make recommendations to it on any aspects of its work;~~
- ~~25.1.2 facilitate communication between the Council of Governors and the Board of Directors;~~
- ~~25.1.3 provide advice and support to the Chair, Chief Executive and the Secretary;~~
- ~~25.1.4~~ 25.1.2 initiate appropriate reviews and reports on matters within the remit of the Council of Governors; and
- ~~25.1.5 actively engage the Governors in adding value to the Foundation Trust.~~
- 25.2 The GSG shall have authority to form working groups to facilitate the work of the GSG and to support any recommendations it may make to the Council of Governors.
- 25.3 The GSG shall meet as regularly as it considers necessary to fulfil its obligations. It shall report to the Council of Governors as required.
- 25.4 ~~Members of the GSG shall be chosen by the Council of Governors and t~~The GSG shall be chaired by the Vice-Chair of the Council of GovernorsLead governor. In addition to the Lead governor, members of the GSG will be the governor representatives to the committees of the Board of Directors as elected by the Council of Governors, nominated stakeholder governor as elected by the Council of Governors, Trust Chair as Chair of

the Council of Governors.

- 25.5** The GSG shall invite others to attend its meetings as it considers appropriate and as the need arises.

26 Lead Governor

- 26.1** Following the recommendation of the Chair and approval of the Board of Directors, the Council of Governors may appoint a Lead Governor to attend meetings of the Board of Directors to facilitate communication and engagement between the Board of Directors and the Council of Governors. Although an observer at meetings of the Board of Directors with no voting status, the Lead Governor may participate in discussion.

- 26.2** A Lead Governor shall:

26.2.1 attend all parts of all formal meetings of the Board of Directors as the Council of Governors' representative and provide a report to the Council of Governors; and

26.2.2 act as the link between the Board of Directors and the Council of Governors ensuring effective communication and decision making.

- 26.3** The Lead Governor shall not disclose any matters which are discussed in confidence at meetings of the Board of Directors.

27 Meeting of the Council of Governors to consider the Annual Accounts and Reports

- 27.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors (the "Annual Governors' Meeting"):

27.1.1 the Annual Accounts;

27.1.2 any report of the Auditor on them; and

27.1.3 the Annual Report.

28 Annual Members' Meeting

- 28.1** The Foundation Trust shall hold an annual meeting of its Members (the "Annual Members' Meeting"). The Annual Members' Meeting shall be open to all members of the public.

- 28.2** In addition to the obligations set out in paragraph 28.3 below, the Council of Governors shall present to each Annual Members' Meeting:

28.2.1 a report on steps taken to secure that, taken as a whole, the actual Membership of the Public Constituency is representative of those eligible for such Membership;

28.2.2 the progress of the Membership Strategy; and

28.2.3 any changes to the Membership Strategy.

- 28.3** At least one member of the Board of Directors must attend each Annual Members' Meeting and present the following documents:

- 28.3.1 the Annual Accounts;
- 28.3.2 any report of the Auditor on them;
- 28.3.3 the Annual Report.

29 Combined Meetings of Members and Governors

- 29.1 The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 27.1 above with the Annual Members' Meeting (paragraph 28).

30 Special Members' Meetings

- 30.1 Notwithstanding any provisions contained in this Constitution regarding meetings of the Council of Governors, the Annual Members' Meetings or meetings of the Board of Directors, the Board of Directors or the Council of Governors may resolve to call special meetings of the Foundation Trust for the benefit of its Members (a "Special Members' Meeting") for the purpose of providing Members with information and to offer Members an opportunity to provide feedback to the Foundation Trust.
- 30.2 Special Members' Meetings are open to all Members of the Foundation Trust, Governors, Directors and representatives of the Auditor and any external consultant as well as members of the general public and representatives of the press unless determined otherwise.
- 30.3 Notwithstanding the provisions of paragraph 30.2 above, the Board of Directors or Council of Governors may invite to attend a Special Members' Meeting any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust.
- 30.4 Arrangements for the Special Members' Meeting shall be carried out in accordance with arrangements for meetings of the Council of Governors except that the quoracy shall be as follows:
 - 30.4.1 Chair (or Deputy Chair);
 - 30.4.2 at least one Member from the Staff Constituency; and
 - 30.4.3 at least one Member from the Public Constituency.

31 Board of Directors – composition

- 31.1 The Trust is to have a Board of Directors. It shall comprise both Executive Directors and Non-Executive Directors, at least half of which, excluding the Chair, should comprise Non-Executive Directors determined by the Board to be independent.
- 31.2 The Board of Directors is to comprise:
 - 31.2.1 the following Non-Executive Directors:
 - 31.2.1.1 a Chair; and
 - 31.2.1.2 at least four other Non-Executive Directors.

31.2.2 the following Executive Directors:

31.2.2.1 a Chief Executive (who shall be the Accounting Officer);

31.2.2.2 a Finance Director; and

31.2.2.3 at least two other Executive Directors.

31.3 One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist.

31.4 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

31.5 Subject to the provisions of paragraphs 31.3 and 31.4 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number shall be in the range set out at paragraph 31.2 above, and that the number of Non-Executive Directors (including the Chair) shall always be greater than the number of Executive Directors. The Council of Governors shall be consulted if the changes relate to the Non-Executive Directors.

31.6 The validity of any act of the Foundation Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Directors.

32 Board of Directors – general duty

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

33 Board of Directors – qualification for appointment as a Non-Executive Director

33.1 A person may be appointed as a Non-Executive Director only if he/she:

33.1.1 is a Member of the Public Constituency, and

33.1.2 he/she is not disqualified by virtue of paragraph 38 or Annex 5 below.

34 Board of Directors – appointment of the Chair and other Non-Executive Directors

34.1 The Council of Governors at a general meeting of the Council of Governors shall appoint the Chair of the Foundation Trust and the other Non-Executive Directors, taking into account the views of the Board of Directors on the qualities, skills and experience required for each position.

34.2 The Chair and the Non-Executive Directors shall be appointed for a period of office of up to three years. Any term beyond six years will be subject to annual re-appointment.

34.3 Non-Executive Directors shall be appointed in accordance with a process agreed by the Appointments Committee on behalf of the Council of Governors.

34.4 An existing Non-Executive Director, nearing the end of his/[her](#) term, shall be considered for a further term of office, subject to the following:

34.4.1 a satisfactory appraisal that he/she continues to be effective;

34.4.2 he/she continues to demonstrate commitment to the role;

34.4.3 he/she is willing to complete a further term of office;

34.4.4 he/she is not precluded by paragraph 34.2 by virtue of time already served as a Non-Executive Director.

34.5 Should the Appointments Committee decide to advertise externally for a Non-Executive Director, a specification shall be drawn up and approved by the Appointments Committee that shall set out the personal and professional qualities needed.

34.6 Where paragraph 34.5 applies, the Appointments Committee shall follow a process which involves advertising for the vacancy, shortlisting against the specification and interviewing candidates. In the case of appointing a Non-Executive Director, the interview panel will include at least one Public Governor and the Chair. In the case of appointing the Chair, the interview panel will include at least one Public Governor and the Senior Independent Director.

34.7 Recommendations for appointment shall be taken to the next general meeting of the Council of Governors for formal appointment.

35 Board Directors – suspension and removal of the Chair and other Non-Executive Directors

35.1 Removal of the Chair or another Non-Executive Director shall require the approval of three quarters of the members of the Council of Governors.

35.2 During any meeting of the Council of Governors at which the Chair may be suspended or removed, the Senior Independent Director shall preside, or if the Senior Independent Director is absent from the meeting or is absent temporarily on the grounds of a conflict of interest, another Non-Executive Director shall preside.

35.3 Suspension or removal of the Chair or another Non-Executive Director shall require a resolution to be submitted by three quarters of the members of the Council of Governors and sponsored by at least one Governor.

35.4 The Governor sponsoring the resolution shall set out in writing the reasons in support of the resolution. At the meeting of the Council of Governors where the resolution is to be considered and voted upon, the Chair or other Non-Executive Director, who is the subject of the resolution, shall be given the opportunity to respond to the reasons given. If the individual fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances shall be at the sole discretion of the Meeting Chair.

35.5 In making the decision to remove the Chair or another Non-Executive Director, the Council of Governors shall take into account the results of the annual appraisal concerning the individual in question. The Council of Governors shall also remove or suspend a Non-Executive Director in consultation with the Chair (if the matter concerns another Non-Executive Director) or the Senior Independent Director (if the matter concerns the Chair).

35.6 If any resolution to suspend or remove either the Chair or another Non-Executive Director is not approved at the meeting of the Council of Governors where the matter was considered, no further resolution can be put forward to suspend or remove such Non-Executive Director, or the Chair, which is based on the same reasons, within twelve calendar months of the date of the meeting at which the resolution was considered.

- 35.7** Suspension is a temporary measure which shall be used to prevent the Chair or a Non-Executive Director from exercising his or her functions pending the completion of an investigation or removal from office.
- 35.8** The Council of Governors may use the power of suspension in the following circumstances:
- 35.8.1** where the Foundation Trust is in receipt of information which gives cause for concern about the Chair or a Non-Executive Director continuing to hold office because of its effect on the reputation of the Trust or on the integrity of the individual in question;
 - 35.8.2** where there is sufficient evidence to warrant removal from office but before removal takes effect; or
 - 35.8.3** where there is an allegation of fraud or other impropriety or other alleged misconduct that would require the Chair or a Non-Executive Director to be suspended to protect patients, staff or public funds.

36 Board of Directors – appointment of the Senior Independent Director and Deputy Chair

- 36.1** A Senior Independent Director shall be appointed by the Board of Directors in consultation with the Council of Governors.
- 36.2** A Non-Executive Director appointed as the Senior Independent Director shall be the Senior Independent Director for a period consistent with his/[her](#) existing term of office as a Non-Executive Director.
- 36.3** Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Secretary.
- 36.4** The Senior Independent Director may also fulfil the role of the Deputy Chair.
- 36.5** The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive Directors as Deputy Chair, who may be the Senior Independent Director.
- 36.6** If the Chair is unable to discharge his/[her](#) functions as a Chair of the Foundation Trust, the Deputy Chair will be the “acting Chair” until such time as the Chair is able to discharge his/[her](#) functions as Chair or a new Chair is appointed by the Council of Governors in accordance with paragraph 34 above.

37 Board of Directors – appointment and removal of the Chief Executive and other Executive Directors

- 37.1** The Non-Executive Directors shall appoint or remove the Chief Executive.
- 37.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 37.3** A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.
- 37.4** The Foundation Trust shall establish a committee of Non-Executive Directors and the Chief Executive to decide the remuneration and allowances, and the other terms and

conditions of office, of the Executive Directors (the “Nomination and Remuneration Committee”). When deciding the remuneration and allowances, and the other terms and conditions of office of the Chief Executive, the membership of the Nomination and Remuneration Committee shall not include the Chief Executive.

38 Board of Directors - disqualification

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

38.1.1 either:

- a.** an executive or non-executive director or governor of another NHS foundation trust, or
- b.** an executive or non-executive director of another Health Service Body, or
- c.** an executive or non-executive director of a body corporate

which presents a conflict of interest with the affairs of the Foundation Trust which cannot be resolved;

38.1.2 someone who is incapable by reason of his/[her](#) mental disorder, illness or injury of managing and/or administering his/[her](#) property and/or affairs. In considering whether an individual is incapable by reason of mental disorder, illness or injury of managing and/or administering his/[her](#) property and/or affairs, the provisions of the Mental Capacity Act 2005, or any statutory modification thereof, shall be taken into account. Further internal or external advice shall be sought where necessary;

38.1.3 an individual who has refused, without reasonable cause, to fulfil any training requirement established by the Board of Directors;

38.1.4 a person who is the subject of a disqualification order made under the Company Directors’ Disqualification Act 1986;

38.1.5 on the basis of disclosures obtained through an application to the Disclosure and Barring Service, he/she is not considered suitable by the Chair; or

38.1.6 someone who has failed to sign and deliver to the Secretary a statement in the form required by the Foundation Trust confirming acceptance of the Directors’ Code of Conduct.

38.2 Further circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 5.

39 Board of Directors – meetings

39.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public and representatives of the press may be excluded from a meeting for special reasons as set out in Annex 6.

39.2 The Board of Directors may agree that Directors can participate in its meetings by telephone, video or computer link or other such agreed means. Participation in a meeting in this manner shall be deemed exceptional but shall constitute presence in

person at the meeting.

- 39.3** Further provisions which apply in these circumstances are set out in Annex 7.
- 39.4** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 39.5** In the case of an equality of votes at a meeting of the Board of Directors, the Chair (or Meeting Chair as may be) shall have a casting vote.
- 39.6** The Lead Governor will be invited to attend the Board of Directors' meetings. The Lead Governor shall be entitled to attend all parts of the meeting, even when members of the public and press have been excluded.

40 Board of Directors – Conflicts of interests of Directors

- 40.1** The duties that a Director of the Foundation Trust has by virtue of being a Director include in particular:
- 40.1.1** a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Foundation Trust;
 - 40.1.2** a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 40.2** The duty referred to in sub-paragraph 40.1.1 is not infringed if:
- 40.2.1** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 40.2.2** the matter has been authorised in accordance with the Constitution.
- 40.3** The duty referred to in sub-paragraph 40.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 40.4** In sub-paragraph 40.1.2, "third party" means a person other than:
- 40.4.1** the Foundation Trust; or
 - 40.4.2** a person acting on its behalf.
- 40.5** If a Director of the Foundation Trust has in any way a relevant and material interest or a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors. This shall be recorded in the register of interests of the Directors.
- 40.6** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

- 40.7** Any declaration required by this paragraph must be made before the Foundation Trust enters into the transaction or arrangement.
- 40.8** This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 40.9** A Director need not declare an interest:
- 40.9.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 40.9.2** if, or to the extent that, the Directors are already aware of it;
 - 40.9.3** if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered by:
 - 40.9.3.1** a meeting of the Board of Directors; or
 - 40.9.3.2** a committee of the Directors appointed for the purpose under the Constitution.
- 40.10** Any interests raised by the Directors in this way shall be recorded in the register of interests of the Directors.
- 40.11** A matter shall have been authorised for the purposes of paragraph 40.2.2 if:
- 40.11.1** The Directors, in accordance with the requirements set out in this paragraph [40.11], authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his/[her](#) duty under paragraph 40.1.1 above to avoid conflicts of interest (a "Conflict").
 - 40.11.2** Any authorisation under this paragraph will be effective only if:
 - 40.11.2.1** the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution or in such other manner as the Directors may determine;
 - 40.11.2.2** any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and
 - 40.11.2.3** the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
 - 40.11.3** Any authorisation of a Conflict under this paragraph may (whether at the time of giving the authorisation or subsequently):
 - 40.11.3.1** extend to any actual or potential conflict of interest which may

reasonably be expected to arise out of the Conflict so authorised;

40.11.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;

40.11.3.3 provide that the Interested Director shall or shall not be an eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;

40.11.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit

40.11.3.5 provide that, where the Interested Director obtains, or has obtained (through his/[her](#) involvement in the Conflict and otherwise than through his/[her](#) position as a Director of the Foundation Trust) information that is confidential to a third party, he/she will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Foundation Trust's affairs where to do so would amount to a breach of that confidence; and

40.11.3.6 permit the Interested Director to absent himself/[herself](#) from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters. Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself/[herself](#) in accordance with any terms imposed by the Directors in relation to the Conflict.

40.11.4 Where the Directors authorise a Conflict, the Interested Director shall be obliged to conduct himself/[herself](#) in accordance with any terms imposed by the Directors in relation to the Conflict.

40.11.5 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.

40.11.6 A Director is not required, by reason of being a Director to account to the Foundation Trust for any remuneration, profit or other benefit which he/she derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

40.12 Subject to paragraph 40.13 below 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.

- 40.13** 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 (other than the Chair) 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.
- 40.14** Further provisions as to the circumstances in which a Director must declare a conflict of interest are set out in Annex 8.

41 Board of Directors – remuneration and terms of office

- 41.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors. These shall be published in the Annual Report.
- 41.2** Subject to any Foundation Trust policy on the payment of expenses, the Foundation Trust may pay travelling and other expenses to members of the Board of Directors at rates determined by the Foundation Trust.

42 Registers

- 42.1** The Foundation Trust shall have:
- 42.1.1** a register of Members showing, in respect of each Member, the constituency to which he/she belongs;
 - 42.1.2** a register of members of the Council of Governors;
 - 42.1.3** a register of interests of the Governors;
 - 42.1.4** a register of Directors; and
 - 42.1.5** a register of interests of the Directors.
- 42.2** The Secretary shall be responsible for compiling and maintaining the registers which may be kept in either paper or electronic form. Admission to or removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update registers with new or amended information as soon as is practical.

43 Admission to and removal from the registers

Register of Members

- 43.1** The Secretary shall maintain a register of Members in two parts.
- 43.2** Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the Constituency to which they belong and this shall be open to inspection by the public in accordance with paragraph 45 below.
- 43.3** Part two shall contain all the information from the application referred to in paragraph 7 and shall not be open to inspection by the public nor may copies or extracts from it be available to any third party (save to the extent that copies or extracts from it be made

available to any third party appointed to the Foundation Trust to maintain the register of the Members and to conduct elections in accordance with the provisions of paragraph 15).

- 43.4** Notwithstanding the provisions of paragraphs 44.1 to 44.3 (inclusive), the Foundation Trust shall extract such information as it needs in aggregate to satisfy itself that the actual Membership of the Foundation Trust's Public Constituency is representative of those eligible for Membership and for the administration of the provisions of this Constitution.

Register of members of the Council of Governors

- 43.5** The register of members of the Council of Governors shall list:
- 43.5.1** the name of each Governor;
 - 43.5.2** their category of membership of the Council of Governors (Public, Staff, Local Authority or Partnership Governor);
 - 43.5.3** an address through which they can be contacted, which may be the Secretary;
 - 43.5.4** the dates of his/[her](#) terms of office including start and end date, or date of his/[her](#) resignation/removal.

Register of interests of the Governors

- 43.6** The register of interests of the Governors shall contain:
- 43.6.1** the names of each Governor;
 - 43.6.2** whether he/she has declared any interests and, if so, the interests declared in accordance with this Constitution;
 - 43.6.3** the dates of his/[her](#) terms of office including start and end date, or date of his/[her](#) resignation/removal.

Register of Directors

- 43.7** The register of Directors shall list:
- 43.7.1** the name of each Director;
 - 43.7.2** their capacity on the Board of Directors;
 - 43.7.3** address through which they can be contacted, which may be the Secretary;
 - 43.7.4** the dates of his/[her](#) terms of office including start and end date, or date of his/[her](#) resignation/removal.

Register of interests of the Directors

- 43.8** The register of interest of the Directors shall contain:

- 43.8.1** the name of each Director;
- 43.8.2** whether he/she has any declared any interests and, if so, if the interests declared in accordance with this Constitution;
- 43.8.3** the dates of his/[her](#) terms of office including start and end date, or date of his/[her](#) resignation/removal.

44 Registers – inspection and copies

- 44.1** The Foundation Trust shall make the registers specified in paragraph 43 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations, including, for the avoidance of doubt, the Public Benefit Corporation (Register of Members) Regulations 2004 (SI2004/539).
- 44.2** The Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Foundation Trust, if the Member so requests.
- 44.3** So far as the registers are required to be made available:
 - 44.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 44.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 44.4** If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

45 Documents available for public inspection

- 45.1** The Foundation Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times and on its website:
 - 45.1.1** a copy of the current Constitution;
 - 45.1.2** a copy of the latest Annual Accounts and of any report of the Auditor on them; and
 - 45.1.3** a copy of the latest Annual Report.
- 45.2** The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times and on its website:
 - 45.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 45.2.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 45.2.3** a copy of any information published under section 65D (appointment of trust

special administrator) of the 2006 Act;

- 45.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 45.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 45.2.6** a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- 45.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 45.2.8** a copy of any final report published under section 65I (administrator's final report);
- 45.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;
- 45.2.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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

46 Auditor

46.1 The Foundation Trust shall have an Auditor.

46.2 The Audit Committee shall make recommendations to the Council of Governors on the appointment of the Auditor.

46.3 In appointing the Auditor, the Council of Governors shall have regard to the recommendations of the Audit Committee.

46.4 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

46.5 The Accounting Officer shall ensure that the Auditor carries out his/[her](#) duties in accordance with Schedule 10 to the 2006 Act.

47 Audit Committee

47.1 The Foundation Trust shall establish a committee of Non-Executive Directors as an Audit Committee to review the establishment of an effective system of internal control and risk management, and to perform such monitoring and reviewing and to carry out other such functions as are appropriate.

48 Accounts

- 48.1** The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 48.2** 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.
- 48.3** The accounts are to be audited by the Foundation Trust's Auditor.
- 48.4** 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.
- 48.5** The functions of the Foundation Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

49 Annual Report, Forward Plans and other non-NHS work

- 49.1** The Foundation Trust shall prepare an Annual Report and send it to Monitor.
- 49.2** Each Annual Report shall give:
 - 49.2.1** information on any steps taken by the Foundation Trust to ensure that (taken as a whole) the actual Membership of the Public Constituency is representative of those eligible for such Membership;
 - 49.2.2** information on the remuneration of the Directors and on the expenses of the Governors and the Directors;
 - 49.2.3** the information on the impact that income received by the Trust, otherwise than from the fulfilment of the Principal Purpose, has had on the provision of goods and services for those purposes; and
 - 49.2.4** such other information as may be prescribed by Monitor.
- 49.3** The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 49.4** The Forward Plan shall be prepared by the Board of Directors.
- 49.5** In preparing the Forward Plan, the Directors shall have regard to the views of the Council of Governors.
- 49.6** Each Forward Plan shall include information about:
 - 49.6.1** 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
 - 49.6.2** the income it expects to receive from doing so.
- 49.7** Where a Forward Plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in sub-paragraph 49.6.1, the Council of Governors must:
 - 49.7.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its

Principal Purpose or the performance of its other functions; and

49.7.2 notify the Directors of the Foundation Trust of its determination.

49.8 The Trust's total income in any financial year is made up of: (a) income attributable to its principal purpose as provided in paragraph 3.1 above; plus (b) income attributable to the provision of goods and services for any other purposes ("non NHS income"). If the Trust in any Financial Year proposes to increase its non NHS income and this would result in the non NHS income as a proportion of its total income increasing by 5% or more, then the Trust may implement the proposal only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve its implementation.

50 Instruments

50.1 The Foundation Trust shall have a seal.

50.2 The seal shall not be affixed except under the authority of the Board of Directors.

51 Indemnity

51.1 Members of the Council of Governors, the Board of Directors, the Secretary and other Officers of the Foundation Trust who act honestly and in good faith shall not have to meet out of their own 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 shall be met by the Foundation Trust.

51.2 The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, Board of Directors, Secretary and other Officers.

51.3 The Foundation Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors' and Officers' liability, including liability arising by reason of the Foundation Trust acting as a corporate trustee of an NHS charity.

52 Disputes between the Council of Governors and the Board of Directors

52.1 Subject to paragraph 24 above, in the event of a dispute between the Council of Governors and the Board of Directors:

52.1.1 in the first instance, the Chair, on the advice of the Secretary and other such advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

52.1.2 if the Chair is unable to resolve the dispute, he/she shall appoint and chair a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;

52.1.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

52.2 The dispute resolution procedures set out in this paragraph do not preclude the Governors from referring the matter to a panel of persons appointed by Monitor as set

out in paragraph 24 (above). In these circumstances, the dispute must relate to a question about the Trust failing or failure to act in accordance with the Constitution or in accordance with provision made by or under Chapter 5 of the 2006 Act and must otherwise satisfy the conditions set out in paragraph 24.

53 Amendment of the Constitution

- 53.1** The Trust may make amendments of its Constitution only if:
- 53.1.1** more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the amendments;
 - 53.1.2** more than half of the members of the Board of Directors present and voting at a meeting of the Board of Directors approve the amendments.
- 53.2** Amendments made under paragraph 53.1 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.
- 53.3** Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust):
- 53.3.1** at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment to the Members; and
 - 53.3.2** the Foundation Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 53.4** If more than half of the Members present and 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.
- 53.5** 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.

54 Mergers etc.. and Significant Transactions

- 54.1** 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.
- 54.2** 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 present and voting approve entering into the transaction.
- 54.3** A "Significant Transaction" is a transaction which meets any of the following criteria:

Ratio	Description	Percentage
Assets	The Gross Assets subject to the transaction divided	>25

by the gross assets of the Trust.

Income	<p>The income attributable to:</p> <ul style="list-style-type: none"> • the assets; or • the contract associated with the transaction divided by the income of the Trust. 	>25
Consideration to total Trust Capital	The Gross Capital of the company or business being acquired/divested divided by the Total Capital of the Trust following completion, or the effects on the Total Capital of the Trust resulting from a transaction.	>25

For the purposes of this paragraph:

“Gross Assets” is the total of fixed assets and current assets;

“Gross Capital” equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets; and

“Total Capital” of the Trust equals taxpayers’ equity.

54.4 Notwithstanding the above provisions and for the avoidance of doubt, a Significant Transaction does not include:

54.4.1 a transaction pursuant to: Sections 56, 56A 56B and 57A of the 2006 Act; or

54.4.2 any contracts in place from time to time with Horsham and Mid Sussex Clinical Commissioning Group (or its successor organisation) on behalf of Kent Surrey and Sussex Clinical Commissioning Groups (or their successor organisations), any other Clinical Commissioning Groups and/or the NHS Commissioning Board.

54.5 Any transaction which meets any of the criteria set out in paragraph 54.3 shall be notified to the Council of Governors if the percentage is in excess of 10% but less than 25%.

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraph 8)

PUBLIC CONSTITUENCY OF THE FOUNDATION TRUST

NAME OF CONSTITUENCY	AREA	MINIMUM NO. OF MEMBERS	NO. OF GOVERNORS
Kent, Surrey, East and West Sussex and South London	The electoral wards of: Kent County Council West Sussex County Council East Sussex County Council Surrey County Council Medway Unitary Authority Brighton and Hove City Council London Borough of Croydon London Borough of Kingston London Borough of Merton London Borough of Richmond London Borough of Sutton London Borough of Bexley London Borough of Bromley London Borough of Greenwich London Borough of Lambeth London Borough of Lewisham London Borough of Southwark London Borough of Wandsworth	200	20

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 9)

STAFF CONSTITUENCY OF THE FOUNDATION TRUST

DESCRIPTION OF MEMBERS	MINIMUM NO. OF MEMBERS	NO. OF GOVERNORS
Staff employed by Queen Victoria Hospital NHS Foundation Trust as set out in paragraph 9.1 of the Constitution	50	3

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 14)

COMPOSITION OF THE COUNCIL OF GOVERNORS OF THE FOUNDATION TRUST

Governor Type	Governor Description	No. of Governors
Elected	Public	20
Elected	Staff	3
Total of Elected Governors		23
Appointed (Local Authority)	Local Authority – West Sussex County Council	1
Appointed (Partnership Organisation)	East Grinstead Town Council	1
Appointed (Partnership Organisation)	The League of Friends	1
Total of Appointed Governors		3
Total Number of Governors		26

VACANCIES ARISING ON THE EXPIRY OF A GOVERNOR TERM OF OFFICE

Where a term of office for a Public Governor expires, the Trust will ordinarily hold an election for the relevant public constituency with the duly elected Public Governor for that constituency taking office on the expiry of the existing Public Governor's term of office.

Where requested by the Board for good reason, the Council of Governors shall consider a request to delay such an election for a period of 12 months. Any further period of delay shall only be with the further approval of the Council of Governors and for such period as they may determine. Any votes on such proposals to be by a majority of the Council of Governors voting. Good reasons for a delay include, but are not limited to, the following:

- The effects of a pandemic or other health or civil emergency (or government guidance on the holding of elections for foundation trusts); or
- Anticipated transactions involving the Trust under any of sections 56 (mergers), 56A (Acquisitions) or 57A (dissolution) of the 2006 Act within the forthcoming 12 months.

The request for a delay by the Board and the approval by the Council of Governors may occur at any time prior to the expiry of any relevant existing Public Governor's term of office.

When considering such a request, the Council of Governors must take into account that the Trust must always ensure that the aggregate number of Governors who are Public Governors on the Council of Governors always remains the majority of Governors on the Council of Governors. The request shall be granted where a majority of the Council of Governors voting approve.

Where an election for a Public Governor constituency occurs following any period of delay approved by the Council of Governors, the election thereafter will be for a term ending on the date that the term would have ended but for the delay to the election.

In the case of elections delayed in 2020 by virtue of the pandemic (and prior to these provisions appearing in the Constitution), the election for each Public Governor constituency will be for a term ending on the date that the term would have ended but for the delay to the election.

The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

ANNEX 4 – THE MODEL ELECTION RULES

(Paragraph 15)

MODEL ELECTION RULES FOR ELECTIONS TO THE COUNCIL OF GOVERNORS

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1. Interpretation

PART 2 TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3 RETURNING OFFICER

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

PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

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19. Poll to be taken by ballot
20. The ballot paper
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22. List of eligible voters
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Queen Victoria Hospital NHS Foundation Trust Constitution
Version 7 - with addition of proposed changes shown in red, January 2021

The poll

- 27. Eligibility to vote
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- 29. Spoilt ballot papers and spoilt text message votes
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- 31. Issue of replacement voting information
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- 33. Procedure for remote voting by internet
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Procedure for receipt of envelopes, internet votes, telephone vote and text message votes

- 36. Receipt of voting documents
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PART 6 COUNTING THE VOTES

STV41. Interpretation of Part 6

- 42. Arrangements for counting of the votes
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- STV44. Rejected ballot papers and rejected text voting records
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- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
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- STV51. Order of election of candidates
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PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

- FPP52. Declaration of result for contested elections
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PART 8 DISPOSAL OF DOCUMENTS

- 54. Sealing up of documents relating to the poll

- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
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PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

- FPP59. Countermand or abandonment of poll on death of candidate
- STV59. Countermand or abandonment of poll on death of candidate

PART 10 ELECTION EXPENSES AND PUBLICITY

Expenses

- 60. Election expenses
- 61. Expenses and payments by candidates
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Publicity

- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
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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

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

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

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

“telephone voting facility” has the meaning set out in rule 26.2; “telephone voting record” has the meaning set out in rule 26.5 (d); “text message voting facility” has the meaning set out in rule 26.3; “text voting record” has the meaning set out in rule 26.6 (d);

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

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

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

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

PART 2 TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

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 e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) The date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
- (b) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

12.1 The nomination form must include a declaration made by the candidate:

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

13. Signature of candidate

13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

- (a) they wish to stand as a candidate,
- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will

need to be complied with by the candidate.

14. Decisions as to the validity of nomination

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination form is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10; (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

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

15.2 The statement must show:

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

(b) the declared interests of each candidate standing, as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

19. Poll to be taken by ballot

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
 - (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-

voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

constituency or class within the constituency for which the election is being held.

("declaration of identity")

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

- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
 - (b) the member's e-mail address, if this has been provided to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from

- that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
 - (b) the ID declaration form (if required),
 - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
 - (d) a covering envelope; (“postal voting information”).
- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the

following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

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

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

- (a) only be sent postal voting information; or
 - (b) only be sent e-voting information; or
 - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.

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

24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

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

26. E-voting systems

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
 - (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
 - (b) specify:
 - (i) the name of the corporation
 - (ii) the constituency, or class within a constituency, for which the election is being held.
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
 - (viii)
 - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;

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

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

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

- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
 - (f) prevent any voter from voting after the close of poll.
- 26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:
- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
 - (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (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

patient constituencies)

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

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

37. Validity of votes

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

- (a) put the ID declaration form if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
 - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
 - (c) place the document or documents in a separate packet.
38. Declaration of identity but no ballot paper (public and patient constituency)¹
- 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

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

(b) “next available preference” means a preference which is the second, or

as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

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

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

“surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“stage of the count” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) The use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and

- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

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

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

STV44 Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other

mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty, shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

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

FPP44.8 A text voting record on which a vote is marked:

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45 First stage

- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.
- STV46. The quota
- STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47 Transfer of votes

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule

- STV47.1 (a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-paragraph of transferred votes which was last received by that candidate into separate sub-paragraphs 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-paragraph of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-paragraph of ballot documents referred to in rule STV47.5 (a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at: a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
 - (c) whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote when credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

STV48. Supplementary provisions on transfer

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

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

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

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

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

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall

treat any vote on that ballot document as a non- transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49 Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

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

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

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

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

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next

available preferences given on those ballot documents, (thereby passing over candidates who are deemed to be elected or are excluded).

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

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

STV50. Filling of last vacancies

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

STV51 Order of election of candidates

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

FPP51 Equality of votes

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

PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
 - (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation; and
 - (c) give public notice of the name of each candidate whom he or she has declared elected.
- FPP52.2 The returning officer is to make:
- (a) the total number of votes given for each candidate (whether elected or not), and
 - (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
 - (c) the number of rejected text voting records under each of the headings in rule FPP44.10, available on request.

STV52. Declaration of result for contested elections

- STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS

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

STV52.2 The returning officer is to make:

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

53. Declaration of result for uncontested elections

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

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

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

FPP59. Countermand or abandonment of poll on death of candidate

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone

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

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

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the Chair of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10 ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

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

- (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- 63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.
64. Information about candidates for inclusion with voting information
- 64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 64.2 The information must consist of:
- (a) a statement submitted by the candidate of no more than 250 words,
 - (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
 - (c) a photograph of the candidate.
- 65. Meaning of “for the purposes of an election”**
- 65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11 QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

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.

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

election.

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

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

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers,

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

ANNEX 5 – ELIGIBILITY AND DISQUALIFICATION CRITERIA FOR GOVERNORS AND DIRECTORS

(Paragraphs 18 and 38)

- 1.1 A person may not become or continue as a member of the Council of Governors or the Board of Directors if:
- a) he/she has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - b) he/she has made a composition or arrangement with, or granted a trust deed for, his/[her](#) creditors and has not been discharged in respect of it;
 - c) he/she has within the preceding five years has been convicted anywhere in the world of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/[her](#);
 - d) he/she has, within the preceding two years, been dismissed (otherwise than by reason of redundancy or ill health) from any paid employment within a Health Service Body;
 - e) his/[her](#) tenure of office as the Chair or director of a Health Service Body has been terminated on grounds that his/[her](#) appointment is not in the interest of the health service, for non-attendance at meetings or for non-disclosure of a material interest;
 - f) he/she is a member of a Local Authority Health Overview and Scrutiny Committee;
 - g) he/she is a member of a Health and Wellbeing Board;
 - h) he/she is a member of Health Watch (nationally or locally);
 - i) he/she is the subject of a Sex Offenders' Order and/or his/[her](#) name is included in the Sex Offenders' Register;
 - j) he/she is a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006;
 - k) he/she is a Close Family Member of a Governor or Director of the Foundation Trust;
 - l) he/she has failed to repay (without good cause) monies properly owed to the Foundation Trust;
 - m) he/she has demonstrated aggressive or violent behaviour (such as verbal assault, physical assault, violence or harassment) at any NHS hospital, NHS premises or NHS establishment, or against the Foundation Trust's employees or other persons who exercise functions for purposes of the Foundation Trust whether or not in circumstances leading to his/[her](#) removal or exclusion from any NHS hospital, premises or establishment.

ANNEX 6 – CONDUCT OF MEETINGS OF THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

(Paragraphs 21 and 39)

- 1.1 Members of the public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors and the Board of Directors except in circumstances where a special resolution is passed that members of the public and representatives of the press shall be excluded from a meeting.
- 1.2 The reasons for passing such a resolution shall be due to the sensitive or confidential nature of the discussion which might include information relating to:
 - a) employees, former employees or applicants;
 - b) occupiers or former occupiers of accommodation provided by or at the expense of the Foundation Trust;
 - c) patients or service users;
 - d) information relating to the financial or business affairs of a particular person.
- 1.3 Further, the Council of Governors or the Board of Directors, as the case may be, may resolve that:
 - a) in the interests of public order, the meeting should be adjourned, for a reasonable, specified period, to enable the meeting to complete business without the presence of the public or the press; or
 - b) publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - c) there is another special reason, which shall be stated in the resolution, which requires that members of the public and representatives of the press be excluded.
- 1.4 Matters to be dealt with, following the exclusion of the public and representatives of the press, shall be confidential to the Governors or the Directors as the case may be. Members of the Council of Governors, Board of Directors, Officers and/or others in attendance at the request of the Chair shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chair.
- 1.5 The Chair may exclude any member of the public or representative of the press from a meeting of the Council of Governors or the Board of Directors, as the case may be, if he/she considers that they are interfering with or preventing the proper conduct of the meeting.
- 1.6 Nothing in this Constitution requires the Council of Governors or the Board of Directors, as the case may be, to allow members of the public and representatives of the press to record proceedings in any manner whatsoever other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chair or the Meeting Chair.

ANNEX 7 – MEETINGS OF THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS
ANNEX 7 – ELECTRONIC COMMUNICATION

(Paragraphs 21 and 39)

- 1.1 In exceptional cases, arrangements can be made for Governors or Directors to participate in meetings of the Council of Governors or the Board of Directors, as the case may be, by telephone, video or computer link or other such agreed means.
- 1.2 In these circumstances the following provisions apply:
- a) “Communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
 - b) A Governor or Director, as the case may be, in electronic communication with the Chair and all other parties to a meeting of the Council of Governors or the Board of Directors or of a committee thereof shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he/she has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
 - c) A meeting at which one or more of the Governors or Directors, as the case may be, attends by way of electronic communication is deemed to be held at such a place as the Governors or Directors, as the case may be, shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Governors or Directors, as the case may be, attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
 - d) Meetings held in accordance with this paragraph are subject to paragraph 21.32. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
 - e) The minutes of a meeting held in this way must state that it was held by electronic communication and that the Governors or Directors, as the case may be, were all able to hear each other and were present throughout the meeting.

ANNEX 8 – CONFLICTS OF INTEREST OF GOVERNORS AND DIRECTORS

(Paragraphs 22 and 40)

- 1.1 Interests which should be regarded as “relevant and material” for Governors and Directors are set out below:
- a) directorships, including non-executive directorships, held in private companies or public limited companies (with the exception of dormant companies); or
 - b) ownership, part ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Foundation Trust; or
 - c) significant or controlling share in organisations likely or possibly seeking to do business with the NHS or the Foundation Trust; or
 - d) a position of authority in a charity or voluntary organisation in the field of health or social care; or
 - e) any connection with a voluntary or other organisation contracting for NHS or Foundation Trust services or commissioning NHS or Foundation Trust services; or
 - f) any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Foundation Trust, including but not limited to lenders of banks.
- 1.2 For the avoidance of doubt, they shall be included in the relevant register of interests of the Governors or the Directors, as the case may be.
- 1.3 A "family interest" is an interest of a Close Family Member of a Governor or Director which, if it were the interest of that Governor or Director, would be a personal or pecuniary interest of his/[hers](#).
- 1.4 If Governors or Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. Influence rather than immediacy of the relationship is more important in assessing the relevance of an interest.
- 1.5 There shall be arrangements for excluding Governors and Directors from discussion or consideration of matters in which they have a “relevant or material” interest.

Report to: Council of Governors
Agenda item: 14-21
Date of meeting: 11 January 2021
Report from: Clare Pirie, Director of communications and corporate affairs
Report author: Clare Pirie, Director of communications and corporate affairs
Date of report: 04 January 2021
Appendices: None

Proposal to postpone 2021 governor elections

Four public governors will cease to hold office on 31 June 2021, having completed a three year term (one of these governors having completed two terms).

The Trust will, in due course, determine whether it is to merge with effect from 1 October 2021. To hold further governor elections would be wasteful of resources prior to the merger of the Trust, as the replacement governors will no longer be in office 3 months after the elections should the merger be approved.

Amendments to the Constitution have been approved by the Board and considered earlier in this meeting by the council of governors, introducing the ability to pause the election of governors. In making this change to the Constitution existing provision in the event of a vacancy arising within a term of a governor was mirrored, to provide a similar option where the vacancy arises at the conclusion of the term of office.

The request to delay elections is made by the Board for approval by the council of governors. This would mean that governor elections to fill the four posts vacant from 1 June 2021 would be postponed and the council of governors would continue its work with 16 public governors, 3 staff governors and 3 stakeholder governors.

Constitution - Vacancies arising on the expiry of a governor term of office

The amended wording of the Constitution is set out in full below

Where a term of office for a Public Governor expires, the Trust will ordinarily hold an election for the relevant public constituency with the duly elected Public Governor for that constituency taking office on the expiry of the existing Public Governor's term of office.

Where requested by the Board for good reason, the Council of Governors shall consider a request to delay such an election for a period of 12 months. Any further period of delay shall only be with the further approval of the Council of Governors and for such period as they may determine. Any votes on such proposals to be by a majority of the Council of Governors voting. Good reasons for a delay include, but are not limited to, the following:

- *The effects of a pandemic or other health or civil emergency (or government guidance on the holding of elections for foundation trusts); or*
- *Anticipated transactions involving the Trust under any of sections 56 (mergers), 56A (Acquisitions) or 57A (dissolution) of the 2006 Act within the forthcoming 12 months.*

The request for a delay by the Board and the approval by the Council of Governors may occur at any time prior to the expiry of any relevant existing Public Governor's term of office.

When considering such a request, the Council of Governors must take into account that the Trust must always ensure that the aggregate number of Governors who are Public Governors on the Council of Governors always remains the majority of Governors on the Council of Governors. The request shall be granted where a majority of the Council of Governors voting approve.

Where an election for a Public Governor constituency occurs following any period of delay approved by the Council of Governors, the election thereafter will be for a term ending on the date that the term would have ended but for the delay to the election.

In the case of elections delayed in 2020 by virtue of the pandemic (and prior to these provisions appearing in the Constitution), the election for each Public Governor constituency will be for a term ending on the date that the term would have ended but for the delay to the election.

The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

Recommendation

Council is asked to **APPROVE** a delay of 12 months in holding elections to the council of governors for the public governor vacancies which will arise in June 2021.

Report to: Council of Governors
Meeting date: 11 January 2021
Agenda item: 21-21
Report from: Kevin Gould, Audit Committee chair and
Michelle Miles, Director of finance & performance
Report authors: Kevin Gould, Audit Committee chair and
Michelle Miles, Director of finance & performance
Report date: 30 December 2020

External auditor appointment

Background

The current contract with KPMG for the Trust's external audit service is due to expire 31/09/2021, on completion of the 2020/21 audit. The contract was originally agreed in 2016 from 1st October to run for three years, with the option to extend for a further two years up to 2021. As by the end of September 2021 the Trust will have fully utilised the extension period allowed, the contract will expire with no further extensions being permitted.

Due to the current discussions around a potential merger with Brighton & Sussex University Hospitals NHS Trust and Western Sussex University Hospitals NHS Trust which could complete in October 2021, it is felt that tendering for a new external audit service is not in the Trust's best interest. If the merger goes ahead then the new contract would only be able to serve the Trust for 1 year. This is therefore an inefficient option due to the amount of work that goes in to tendering and setting up a new contract and the time it takes for a provider to learn about the organisation it is auditing. Given the uncertainty around a potential merger, it is also considered unlikely that there would be interest from providers in tendering.

Recommendation

The Audit Committee proposes an extension to the existing contract for one year with the option to extend for a further year. This allows for all three potential scenarios; a merger in October 2021, a merger with a delayed timeframe, and no merger. One of the statutory duties of the Council of governors is to approve the appointment of the external auditor. In 2018, the Council reappointed KPMG until 2020/21.