
CONSTITUTION OF

WRIGHTINGTON, WIGAN AND LEIGH

NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

Constitution of Wrightington, Wigan and Leigh

NHS Foundation Trust

TABLE OF CONTENTS

<i>Paragraph</i>		<i>Page</i>
1.	Name	4
2.	Principal purpose	4
3.	Powers.....	4
4.	Membership and constituencies	4
5.	Application for membership	4
6.	Public constituency	4
7.	Staff constituency	5
8.	Restriction on membership	5
9.	Board of Governors – composition	6
10.	Board of Governors – election of governors	6
11.	Board of Governors – tenure	6
12.	Board of Governors – disqualification and removal	7
13.	Board of Governors – meeting of governors	8
14.	Board of Governors – standing orders.....	8
15.	Board of Governors – conflicts of interest of governors	8
16.	Board of Governors – travel expenses	9
17.	Board of Governors – further provisions	9
18.	Board of Directors – composition.....	10
19.	Board of Directors – qualification for appointment as non-executive	10
20.	Board of Directors – appointment and removal	10
21.	Board of Directors – appointment of initial chairman etc.....	11
22.	Board of Directors – appointment of deputy chairman.....	11
23.	Board of Directors – appointment and removal	11
24.	Board of Directors – appointment and removal of initial Chief Executive.....	12
25.	Board of Directors – disqualification	12
26.	Board of Directors – standing orders	12
27.	Board of Directors – conflicts of interest of directors	12
28.	Board of Directors – remuneration and terms of office	13
29.	Registers	14
30.	Admission to and removal from the registers.....	14
31.	Registers – inspection and copies	14
32.	Documents available for public inspection.....	15
33.	Auditor	15
34.	Audit committee.....	15
35.	Annual accounts	15
36.	Annual report and forward plans.....	16
37.	Meeting of Board of Governors to consider annual accounts and reports	16
38.	Instruments.....	16
39.	Amendment of the Constitution	16

40.	Mergers	17
41.	Interpretation and definitions	17

<i>Paragraph</i>	<i>Page</i>
ANNEX 1 – THE PUBLIC CONSTITUENCY	20
ANNEX 2 – THE STAFF CONSTITUENCY	21
ANNEX 3 – COMPOSITION OF BOARD OF GOVERNORS	22
ANNEX 4 – THE MODEL RULES FOR ELECTIONS	24
ANNEX 5 – ADDITIONAL PROVISIONS – BOARD OF GOVERNORS	58
ANNEX 6 – ADDITIONAL PROVISIONS – BOARD OF DIRECTORS	61
ANNEX 7 – STANDING ORDERS – BOARD OF GOVERNORS	64
ANNEX 8 – STANDING ORDERS – BOARD OF DIRECTORS	71
ANNEX 9 – ADDITIONAL PROVISIONS – MEMBERS	74
ANNEX 10 – FURTHER PROVISIONS	79

1. **Name**

The name of the foundation trust is Wrightington, Wigan and Leigh NHS Foundation Trust (“the Foundation Trust”).

2. **Principal purpose**

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

3. **Powers**

- 3.1 The powers of the Foundation Trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 3.2 The powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.
- 3.3 Any of these powers may be delegated to a committee of directors or to an executive director.

4. **Membership and constituencies**

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

- 4.1 a public constituency; or
- 4.2 a staff constituency

Further provisions as to members meetings are set out in Annex 9.

5. **Application for membership**

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

6. **Public Constituency**

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

7. **Staff Constituency**

7.1 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:

7.1.1 he 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; or

7.1.2 he has been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.

7.2 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.

7.3 The Staff Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

7.4 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

7.5 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.

Automatic membership by default – staff

7.6 An individual who is:

7.6.1 eligible to become a member of the Staff Constituency, and

7.6.2 invited by the Foundation Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a member of the Foundation Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Foundation Trust that he does not wish to do so.

8. **Restriction on membership**

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

- 8.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Foundation Trust are set out in Annex 9.

9. **Board of Governors – composition**

- 9.1 The Foundation Trust is to have a Board of Governors, which shall comprise both elected and appointed Governors.
- 9.2 The composition of the Board of Governors is specified in Annex 3.
- 9.3 The members of the Board of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

10. **Board of Governors – election of governors**

- 10.1 Elections for elected members of the Board of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time using the single transferable vote method of voting.
- 10.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.
- 10.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Foundation Trust cannot amend the Model Rules.
- 10.4 An election, if contested, shall be by secret ballot.

11. **Board of Governors - tenure**

- 11.1 An elected Governor shall normally hold office for a period of 3 years commencing immediately after the annual members meeting at which his election is announced.
- 11.2 An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 11.3 An elected Governor shall be eligible for re-election at the end of his term.

- 11.4 An elected Governor may not hold office for more than nine consecutive years, and shall not be eligible for re-election if he has already held office for more than six consecutive years.
- 11.5 For the purposes of these provisions concerning terms of office for elected Governors, “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting, provided that an elected Governor may not hold office for more than three calendar years.
- 11.6 Further provisions as to tenure for appointed Governors are set out at Annex 5.

12. **Board of Governors – disqualification and removal**

- 12.1 The following may not become or continue as a member of the Board of Governors:
 - 12.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 12.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 12.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 12.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 12.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Governors are set out in Annex 5.

13. **Board of Governors – meetings of Governors**

- 13.1 The Chairman of the Foundation Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1 or paragraph 21.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 22 below) or, in his absence, one of the non-executive directors, shall preside at meetings of the Board of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Vice Chairman of the Board of Governors (appointed in accordance with the provisions of paragraph 6 of Annex 5) will chair that part of the meeting.
- 13.2 Meetings of the Board of Governors shall be open to members of the public unless the Board of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

14. **Board of Governors – standing orders**

The standing orders for the practice and procedure of the Board of Governors, as may be varied from time to time, are attached at Annex 7.

15. **Board of Governors - conflicts of interest of Governors**

- 15.1 Members of the Board of Governors shall disclose to the Board of Governors any material interests (as defined below) held by a Governor, their spouse or partner, which shall be recorded in the register of interests of Governors.
- 15.2 Subject to the exceptions below a material interest is:
- 15.2.1 any directorship of a company;
 - 15.2.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Foundation Trust;
 - 15.2.3 any interest in an organisation providing health and social care services to the National Health Service;
 - 15.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 15.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

- 15.3 The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:
- 15.3.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 15.3.2 an employment contract with the Foundation Trust held by a Staff Governor;
 - 15.3.3 an employment contract with a PCT held by a PCT Governor;
 - 15.3.4 an employment contract with a local authority held by a Local Authority Governor;
 - 15.3.5 an employment contract with a university held by a University Governor;
 - 15.3.6 an employment contract with or other position of authority within a partnership organisation held by a Partnership Governor.
- 15.4 Any Governor who has an interest in a matter to be considered by the Board of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his spouse or partner has a material interest or otherwise) shall declare such interest to the Board of Governors and:
- 15.4.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 15.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 15.5 Details of any such interest shall be recorded in the register of interests of Governors.
- 15.6 Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.

16. **Board of Governors – travel expenses**

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

17. **Board of Governors – further provisions**

Further provisions with respect to the Board of Governors are set out in Annex 5.

18. **Board of Directors – composition**

18.1 The Foundation Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

18.2 The Board of Directors is to comprise:

18.2.1 a non-executive Chairman

18.2.2 not less than five but not more than eight other non-executive directors; and

18.2.3 not less than five but not more than eight executive directors;

provided always that at least half of the Board of Directors, excluding the Chairman, should comprise non-executive directors determined by the Board of Directors to be independent.

18.3 One of the executive directors shall be the Chief Executive.

18.4 The Chief Executive shall be the Accounting Officer.

18.5 One of the executive directors shall be the finance director.

18.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

18.7 One of the executive directors is to be a registered nurse or a registered midwife.

19. **Board of Directors – qualification for appointment as a non-executive director**

A person may be appointed as a non-executive director only if –

19.1 he is a member of the Public Constituency, or

19.2 where any of the Foundation Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

19.3 he is not disqualified by virtue of paragraph 25 below or Annex 6.

20. **Board of Directors – appointment and removal of Chairman and other non-executive directors**

20.1 The Board of Governors at a general meeting of the Board of Governors shall appoint or remove the chairman of the Foundation Trust and the other non-executive directors.

- 20.2 Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the members of the Board of Governors.
- 20.3 The initial Chairman and the initial non-executive directors are to be appointed in accordance with paragraph 21 below.
- 20.4 Further provisions as to the appointment and removal of the Chairman and other non-executive directors are set out at Annex 6.

21. **Board of Directors – appointment of initial chairman and initial other non-executive directors**

- 21.1 The Chairman of the applicant NHS Trust shall be appointed as the initial Chairman of the Foundation Trust if he wishes to be appointed.
- 21.2 The power of the Board of Governors to appoint the other non-executive directors of the Foundation Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Foundation Trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.
- 21.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 19 above (other than disqualification by virtue of paragraph 25 below or Annex 6) do not apply to the appointment of the initial Chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 21.4 An individual appointed as the initial Chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

22. **Board of Directors – appointment of Deputy Chairman**

The Board of Governors at a general meeting of the Board of Governors shall appoint one of the non-executive directors as a Deputy Chairman. If the Chairman is unable to discharge his office as Chairman of the Foundation Trust the Deputy Chairman of the Board of Directors shall be acting Chairman of the Foundation Trust.

23. **Board of Directors - appointment and removal of the Chief Executive and other executive directors**

- 23.1 The non-executive directors shall appoint or remove the Chief Executive.

- 23.2 The appointment of the Chief Executive shall require the approval of the Board of Governors.
- 23.3 The initial Chief Executive is to be appointed in accordance with paragraph 24 below.
- 23.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.
- 23.5 The Board of Directors shall appoint one of the executive directors as Deputy Chief Executive.

24. **Board of Directors – appointment and removal of initial Chief Executive**

- 24.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the Foundation Trust if he wishes to be appointed.
- 24.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the Foundation Trust shall not require the approval of the Board of Governors.

25. **Board of Directors – disqualification**

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

- 25.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 25.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 25.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out at Annex 6.

26. **Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 8.

27. **Board of Directors - conflicts of interest of directors**

- 27.1 Members of the Board of Directors shall disclose to the Board of Directors any material interests (as defined below) held by a Director, their spouse or partner, which shall be recorded in the register of interests of the Directors.
- 27.2 A material interest is:
- 27.2.1 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Foundation Trust;
 - 27.2.2 any interest in an organisation providing health and social care services to the National Health Service;
 - 27.2.3 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 27.2.4 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 27.3 Any Director who has an interest in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or his spouse or partner has a material interest or otherwise) shall declare such interest to the Board of Directors and:
- 27.3.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 27.3.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 27.4 Details of any such interest shall be recorded in the register of interests of the Directors.
- 27.5 Any Director who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by a majority of the Board of Governors.

28. **Board of Directors – remuneration and terms of office**

- 28.1 The Board of Governors at a general meeting of the Board of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

28.2 The Foundation Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

29. **Registers**

The Foundation Trust shall have:

29.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

29.2 a register of members of the Board of Governors;

29.3 a register of interests of governors;

29.4 a register of directors; and

29.5 a register of interests of the directors.

30. **Admission to and removal from the registers**

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

30.2 The Secretary is to send to Monitor a list of persons who were first elected or appointed as Governors and Directors.

31. **Registers – inspection and copies**

31.1 The Foundation Trust shall make the registers specified in paragraph 29 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

31.2 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.

31.3 So far as the registers are required to be made available:

31.3.1 they are to be available for inspection free of charge at all reasonable times; and

31.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

- 31.4 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.

32. **Documents available for public inspection**

- 32.1 The Foundation Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

- 32.1.1 a copy of the current constitution;
- 32.1.2 a copy of the current authorisation;
- 32.1.3 a copy of the latest annual accounts and of any report of the auditor on them;
- 32.1.4 a copy of the latest annual report;
- 32.1.5 a copy of the latest information as to its forward planning;
- 32.1.6 a copy of any notice given under section 52 of the 2006 Act;
- 32.1.7 a copy of the Foundation Trust's membership strategy;
- 32.1.8 a copy of the Foundation Trust's policy for the composition of the Board of Governors and of the non-executive directors.

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

- 32.3 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.

33. **Auditor**

- 33.1 The Foundation Trust shall have an auditor.
- 33.2 The Board of Governors shall appoint or remove the auditor at a general meeting of the Board of Governors.
- 33.3 Further provisions as to the auditor are set out at Annex 10.

34. **Audit committee**

The Foundation Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

35. **Accounts**

- 35.1 The Foundation Trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.
- 35.2 The accounts are to be audited by the Foundation Trust's auditor.
- 35.3 The Foundation Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.
- 35.4 The functions of the Foundation Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 35.5 Further provisions as to accounts are set out at Annex 10.

36. **Annual report and forward plans**

- 36.1 The Foundation Trust shall prepare an Annual Report and send it to Monitor. Further provisions as to Annual Reports are set out at Annex 10.
- 36.2 The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 36.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 36.4 In preparing the document, the directors shall have regard to the views of the Board of Governors.

37. **Meeting of Board of Governors to consider annual accounts and reports**

The following documents are to be presented to the Board of Governors at a general meeting of the Board of Governors:

- 37.1 the annual accounts
- 37.2 any report of the auditor on them
- 37.3 the annual report.

38. **Instruments**

- 38.1 The Foundation Trust shall have a seal.
- 38.2 The seal shall not be affixed except under the authority of the Board of Directors.

39. **Amendment of the constitution**

- 39.1 No amendment shall be made to this constitution (including its Annexes, save as otherwise specified) unless:
- 39.1.1 it has been approved by a majority of members of the Foundation Trust present and voting at a members meeting duly called by order of the Board of Directors in accordance with this constitution; and
 - 39.1.2 it has been approved by Monitor.
- 39.2 No amendment shall be made to the provisions of this constitution concerning the Public Constituency unless it has also been approved by a majority of the members of the Public Constituency as may have voted at the members meeting.
- 39.3 No amendment shall be made to the provisions of this constitution concerning the Staff Constituency or the classes of the Staff Constituency unless it has also been approved by a majority of the members of all of the classes of the Staff Constituency as may have voted at the members meeting.

40. **Mergers**

The Foundation Trust may in accordance with section 56 of the 2006 Act apply to Monitor jointly with another NHS Foundation Trust or an NHS Trust for authorisation of the dissolution of the Foundation Trust and the transfer of some or all of their property and liabilities to a new NHS Foundation Trust established under that section. Such application shall only be made if it is approved by a majority of members of the Foundation Trust present and voting at a members meeting duly called by order of the Board of Governors in accordance with this constitution.

41. **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 National Health Service Act 2006.

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

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

“the 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;

“appointed Governors”	means those Governors appointed by the appointing organisations;
“appointing organisations”	means those organisations named in this constitution who are entitled to appoint Governors;
“Director”	means a member of the Board of Directors;
“elected Governors”	means those Governors elected by the Public constituency and the classes of the Staff Constituency;
“Financial Year”	means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April;
“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of an area for a public constituency of the Foundation Trust;
“Monitor”	means the Independent Regulator of NHS Foundation Trusts, established under Section 31 of the 2006 Act;
“partner”	means, in relation to another person, a member of the same household living together as a family unit;
“Partnership Governor”	means a Governor appointed by a partnership organisation;
“PCT Governor”	means a Governor appointed by a Primary Care Trust for which the Foundation Trust provides goods or services;
“Public Governor”	means a Governor elected by the members of one of the areas of the Public Constituency;
“Secretary”	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;

“Staff Governor”	means a Governor elected by the members of one of the classes of the Staff Constituency;
“terms of Authorisation”	means the terms of authorisation issued by Monitor under Section 35 of the 2006 Act;
“the 2006 Act”	means the National Health Service Act 2006;
“voluntary organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit;

ANNEX 1 – THE PUBLIC CONSTITUENCY
(Paragraphs 6.1 and 6.3)

The areas of the Public Constituency will be:

- Wigan
- Leigh
- Makerfield
- Worsley
- the rest of England and Wales

The minimum number of members of each of the areas of the Public Constituency is to be four

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.4 and 7.5)

- 2 The classes within the Staff Constituency shall be:
 - 2.1 registered medical and dental practitioners
 - 2.2 registered nurses and midwives
 - 2.3 all other staff

The minimum number of members of each class of the Staff Constituency is to be four

ANNEX 3 – COMPOSITION OF BOARD OF GOVERNORS

(Paragraphs 9.2 and 9.3)

- 1 The aggregate number of Public Governors is to be more than half of the total number of members of the Board of Governors.
- 2 The Board of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Board of Governors:
 - 2.1 the interests of the community served by the Foundation Trust are appropriately represented;
 - 2.2 the level of representation of the Public Constituency, the classes of the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs;and to this end, the Board of Governors:
 - 2.3 shall at all times maintain a policy for the composition of the Board of Governors which takes account of the membership strategy, and
 - 2.4 shall from time to time and not less than every three years review the policy for the composition of the Board of Governors, and
 - 2.5 when appropriate shall propose amendments to this constitution.
- 3 The Board of Governors of the Foundation Trust is to comprise:
 - 3.1 16 Public Governors from the following areas of the Public Constituency:
 - 3.1.1 Wigan – 4 Public Governors
 - 3.1.2 Leigh – 4 Public Governors
 - 3.1.3 Makerfield– 4 Public Governors
 - 3.1.4 Worsley – 2 Public Governors
 - 3.1.5 the rest of England and Wales – 2 Public Governors
 - 3.2 4 Staff Governors from the following classes;
 - 3.2.1 Medical and dental – 1 Staff Governor
 - 3.2.2 Nursing and midwifery – 2 Staff Governors
 - 3.2.3 all other staff – 1 Staff Governor

- 3.3 2 PCT Governors to be appointed by Ashton, Leigh and Wigan PCT;
 - 3.4 1 Local Authority Governor to be appointed by Wigan Council;
 - 3.5 6 Partnership Governors to be appointed by partnership organisations.
- 4 The partnership organisations that may appoint a Partnership Governor are:
- 4.1 1 Partnership Governor to be appointed by the Foundation Trust's Local Involvement Network or its successor organisation;
 - 4.2 1 Partnership Governor to be appointed by the Foundation Trust's Staff Side Committee;
 - 4.3 1 Partnership Governor to be appointed by Wigan and Leigh Council for Voluntary Services;
 - 4.4 1 Partnership Governor to be appointed by Age Concern Wigan Borough;
 - 4.5 1 Partnership Governor to be appointed by the University of Central Lancashire;
 - 4.6 1 Partnership Governor to be appointed by 5 Boroughs Mental Health NHS Trust

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 10.2)

Part 1 - Interpretation

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 consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

Part 5 – Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers

- 30. Issue of replacement ballot paper
- 31. Declaration of identity for replacement ballot papers
 - Procedure for receipt of envelopes*
- 32. Receipt of voting documents
- 33. Validity of ballot paper
- 34. Declaration of identity but no ballot paper
- 35. Sealing of packets

Part 6 - Counting the votes

- 36. Interpretation of Part 6
- 37. Arrangements for counting of the votes
- 38. The count
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates
- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
- 48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

- 49. Sealing up of documents relating to the poll
- 50. Delivery of documents
- 51. Forwarding of documents received after close of the poll
- 52. Retention and public inspection of documents
- 53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- fpp54. Countermand or abandonment of poll on death of candidate
- stv54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
- 59. Information about candidates for inclusion with voting documents

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

Part 11 – Questioning elections and irregularities

61. Application to question an election

Part 12 – Miscellaneous

62. Secrecy

63. Prohibition of disclosure of vote

64. Disqualification

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

Part 1 - Interpretation

1. Interpretation – (1) In these rules, unless the context otherwise requires -

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

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

“the regulator” means the Independent Regulator for NHS foundation trusts; and

“the 2006 Act” means the National Health Service Act 2006.

(2) Other expressions used in these rules and in Schedule 7 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than 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 - (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.

(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 – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff – Subject to rule 64, 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 - 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 – 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 – 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 board of governors to be elected from that constituency, or class within that constituency,

- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

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

but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the board 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 – The nomination paper must be signed and dated by the candidate, indicating that –

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

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -

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

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

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(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 paper.

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

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

16. Inspection of statement of nominated candidates and nomination papers –

(1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates - 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 – (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 board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(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 board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(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 board of governors, then –

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

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

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

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(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 board 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,
- (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.

(3) Each ballot paper must have a unique identifier.

(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) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - 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 board 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 address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (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.

(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.

(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 declaration of identity if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

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

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(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.

28. Spoilt ballot papers (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 a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(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.

(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 declaration of identity, if required, has not been returned.

(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. Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper, and
 - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(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.

- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

- (2) The declaration of identity is to include a declaration –
- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
 - (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter’s signature, and

- (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a

–

- (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper – (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 a declaration of identity if required that has been correctly completed, signed, and dated.

- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –
- (a) put the declaration of identity if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –
- (a) mark the ballot paper “disqualified”,
 - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,

- (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency)

– Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “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 declaration of identity in a separate packet.

35. Sealing of packets – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

“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 paper –

- (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 stv44(4) below,

“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 stv41 below,

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

38. The count – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers 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.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

Stv39. Rejected ballot papers – (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.

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

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

fpp39. Rejected ballot papers – (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 paragraphs (2) and (3) below, be rejected and not counted.
- (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.
- (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.

- (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 paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- (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.

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (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”).

(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 paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of nontransferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was

last received by that candidate into separate sub-parcels so that they are grouped

–

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

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

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

whichever is the less.

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

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

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

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

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

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –
- (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.
- (3) All ballot papers transferred under rule stv42 or stv44 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 paper or, as the case may be, all the papers in that sub-parcel.
- (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a nontransferable vote; and votes on a ballot paper 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.

stv44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-paragraph of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

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

(9) After the returning officer has completed the transfer of the ballot papers in the sub-paragraph of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-paragraph of ballot papers with the next highest value and so on until he has dealt with each sub-paragraph of a candidate excluded under paragraph (1) above.

(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.

(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 paragraphs (5) to (10) of rule stv42 and rule stv43.

(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.

(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.

stv45. Filling of last vacancies – (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.

(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.

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

stv46. Order of election of candidates – (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 stv42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(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.

(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.

fpp46. Equality of votes – 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

fpp47. Declaration of result for contested elections – (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 board 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 Wrightington, Wigan and Leigh NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(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 fpp39(5), available on request.

stv47. Declaration of result for contested elections – (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 Wrightington, Wigan and Leigh NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.
- (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 stv39(1), available on request.

48. Declaration of result for uncontested elections – 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 chairman 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

49. Sealing up of documents relating to the poll – (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(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 declarations of identity,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(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.

50. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

51. Forwarding of documents received after close of the poll – 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 ballot papers are made too late to enable new ballot papers to be issued,

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(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.

(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.

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

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(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

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

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

(4) On an application to inspect any of the documents listed in paragraph (1), –

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

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

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

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (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 ballot papers have 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.

(2) Where a new election is ordered under paragraph (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.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

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

- (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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate –

(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 papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses – 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 to the regulator under Part 11 of these rules.

56 Expenses and payments by candidates - 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.

57. Election expenses incurred by other persons – (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.

(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 58 and 59.

Publicity

58. Publicity about election by the corporation – (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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

(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.

59. Information about candidates for inclusion with voting documents -

(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.

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than 250 words, and

(b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” - (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.

(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

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

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

(3) An application may only be made to the Regulator by

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

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

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

- a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- b. The determination by the person or persons nominated in accordance with Rule 61(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.
- c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (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 a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

(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.

(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.

63. Prohibition of disclosure of vote – 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.

64. Disqualification – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or

(d) employed by or on behalf of a person who has been nominated for election.

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

– 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 and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 5 – ADDITIONAL PROVISIONS – BOARD OF GOVERNORS

(Paragraphs 11.6, 12.3, 15 and 17)

Elected Governors

1. A member of the Public Constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant area of the Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Appointed Governors

2. The Secretary, having consulted Ashton, Leigh and Wigan PCT, is to adopt a process for agreeing the appointment of PCT Governors with the Primary Care Trust.
3. The Secretary, having consulted Wigan Council is to adopt a process for agreeing the appointment of the Local Authority Governor with the local authority.
4. The Secretary, having consulted the partnership organisations, is to adopt a process for agreeing the appointment of the Partnership Governors with those partnership organizations.

Appointment of Vice Chairman of the Board of Governors

5. The Board of Governors shall appoint one of the Governors to be Vice Chairman of the Board of Governors.

Tenure for appointed Governors

6. An appointed Governor:
 - 6.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which his appointment is announced;
 - 6.2 shall be eligible for re-appointment at the end of his term;
 - 6.3 may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if he has already held office for more than six consecutive years.
7. For the purposes of these provisions concerning terms of office for appointed Governors, “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

8. An appointed Governor shall cease to hold office if the appointing organisation which appointed him terminates the appointment.

Further provisions as to eligibility to be a Governor

9. A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:
 - 9.1 they are a Director of the Foundation Trust or a governor or director of an NHS body (unless they are appointed by an appointing organisation which is an NHS body);
 - 9.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
 - 9.3 they are a member of a local authority's Scrutiny Committee covering health matters;
 - 9.4 they are a member of a Local Involvement Network unless that Local Involvement Network is a partnership organisation which has appointed them as a Partnership Governor;
 - 9.5 they have been previously removed as a Governor pursuant to paragraph 12 of this Annex 5.
 - 9.6 being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Board of Governors;
 - 9.7 they are subject to a sex offender order;
 - 9.8 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
 - 9.9 they are a person whose tenure of office as the Chairman or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
10. A person holding office as a Governor shall immediately cease to do so if:
 - 10.1 they resign by notice in writing to the Secretary;
 - 10.2 they fail to attend three consecutive meetings of the Board of Governors, unless the other Governors are satisfied that:
 - 10.2.1 the absences were due to reasonable causes; and

- 10.2.2 they will be able to start attending meetings of the Board of Governors again within such a period as the other Governors consider reasonable;
 - 10.3 they have refused without reasonable cause to undertake any training which the Board of Governors requires all Governors to undertake;
 - 10.4 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;
 - 10.5 they are removed from the Board of Governors under the following provisions.
11. A Governor may be removed from the Board of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:
- 11.1 they have committed a serious breach of the code of conduct; or
 - 11.2 they have acted in a manner detrimental to the interests of the Foundation Trust; and
 - 11.3 the Board of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

Vacancies amongst Governors

12. Where a vacancy arises on the Board of Governors for any reason other than expiry of term of office, the following provisions will apply.
13. Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
14. Where the vacancy arises amongst the elected Governors, the Board of Governors shall be at liberty either:
- 14.1 to call an election within three months to fill the seat for the remainder of that term of office; or
 - 14.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office; or
 - 14.3 if the unexpired period of the term of office is less than six months, to leave the seat vacant until the next elections are held.

Further provisions as to meetings of Governors

15. The Board of Governors is to meet at least three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Board of Governors together with an agenda and any supporting papers to all Governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Foundation Trust, and on the Foundation Trust's website.
16. Meetings of the Board of Governors may be called by the Secretary, or by the Chairman, or by ten Governors (including at least two elected Governors and two appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or ten Governors, whichever is the case, shall call such a meeting.
17. Twelve Governors including not less than four Public Governors, not less than one Staff Governor and not less than two appointed Governors shall form a quorum.
18. The Board of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Board of Governors.
19. The Board of Governors may agree that its members can participate in its meetings by telephone, other form of audio, or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
20. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Governors shall be decided by a majority of votes.
 - 20.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.
 - 20.2 No resolution of the Board of Governors shall be passed if it is opposed by all of the Public Governors present.
21. The Board of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Board of Governors in carrying out its functions. The Board of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
22. All decisions taken in good faith at a meeting of the Board of Governors or of any committee shall be valid even if it is discovered subsequently that

there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

Declaration

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

Initial Governors

24. Not less than one third of the initial Public Governors who polled the highest votes will serve a term of office ending at the conclusion of the annual members meeting in 2011; not less than one third of the initial Public Governors who polled the next highest number of votes will serve a term of office ending at the conclusion of the annual members meeting in 2010; the remaining initial Public Governors will serve a term of office ending at the conclusion of the annual members meeting in 2009. For the purposes of this paragraph any Public Governor who is elected unopposed, or elected pursuant to a subsequent election to fill a seat left empty at or after the initial elections, shall be deemed to have received no votes.
25. Not less than one third of the initial Staff Governors who polled the highest votes will serve a term of office ending at the conclusion of the annual members meeting in 2011; not less than one third of the initial Staff Governors who polled the next highest number of votes will serve a term of office ending at the conclusion of the annual members meeting in 2010; the remaining initial Staff Governors will serve a term of office ending at the conclusion of the annual members meeting in 2009. For the purposes of this paragraph any Staff Governor who is elected unopposed, or elected pursuant to a subsequent election to fill a seat left empty at or after the initial elections, shall be deemed to have received no votes.
26. There will be no elections or appointments to take effect at the conclusion of the annual members meeting in 2008, unless any of the places on the Board of Governors remain unfilled following the initial elections held before the Foundation Trust was authorised.
27. For the purposes of eligibility to seek re-election or to be re-appointed as Governors under this constitution, the period between their election or appointment as initial Governors and the conclusion of the annual members meeting in 2009 shall be ignored.

ANNEX 6 - ADDITIONAL PROVISIONS – BOARD OF DIRECTORS

(Paragraphs 19.3, 20.4, 21.3, 25 and 27)

Appointment and Removal of Chairman and other Non-executive directors

1. Non-executive Directors are to be appointed by the Board of Governors using the following procedure.
 - 1.1 The Board of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
 - 1.2 The Board of Directors will work with external organisations recognised as expert at appointments to identify the skills and experience required for non-executive Directors.
 - 1.3 Appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Board of Governors and the skills and experience required.
 - 1.4 The Nominations Committee will comprise the Chairman of the Foundation Trust (or, when a Chairman is being appointed, the Deputy Chairman unless he is standing for appointment, in which case another non-executive director), two elected Governors and one Appointed Governor. The chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee.
2. The removal of the Chairman or another non-executive Director shall be in accordance with the following procedures.
 - 2.1 Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors.
 - 2.2 Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.
 - 2.3 In making any decision to remove a non-executive Director, the Board of Governors shall take into account the annual appraisal carried out by the Chairman.
 - 2.4 If any proposal to remove a non-executive Director is not approved at a meeting of the Board of Governors, no further proposal can be

put forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

Further provisions as to disqualification of Directors

3. A person may not become or continue as a Director of the Foundation Trust if:
 - 3.1 they are a member of the Board of Governors or a governor or director of an NHS body;
 - 3.2 they are a member of the Foundation Trust's Local Involvement Network;
 - 3.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
 - 3.4 they are a member of a local authority's Scrutiny Committee covering health matters;
 - 3.5 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 3.6 they are a person whose tenure of office as a Chairman or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 3.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
 - 3.8 in the case of a non-executive Director they have refused without reasonable cause to fulfill any training requirement established by the Board of Directors; or
 - 3.9 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

Meetings of the Board of Directors

4. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
5. Two times in every Financial Year, the meeting of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of such meeting for reasons of commercial confidentiality or on other proper grounds. Other meetings of the Board of Directors shall be held in private. The Chairman may exclude

any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.

6. Meetings of the Board of Directors may be called by the Secretary, or by the Chairman or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.
7. Six Directors including not less than three executive Directors (one of whom must be the Chief Executive or another executive director nominated by the Chief Executive), and not less than three non-executive Directors (one of whom must be the Chairman or the Deputy Chairman of the Board of Directors) shall form a quorum.
8. The Board of Directors may agree that its members can participate in its meetings by telephone, other form of audio, or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
9. The Chairman of the Foundation Trust or, in their absence, the Deputy Chairman of the Board of Directors, is to chair meetings of the Board of Directors.
10. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
 - 10.1 In case of an equality of votes the Chairman shall have a second and casting vote.
 - 10.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive Directors present or by all of the executive Directors present.

Expenses

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

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF GOVERNORS

(Paragraph 14)

1 INTERPRETATION

In these Standing Orders:

- (a) unless the context otherwise requires, the following expressions have the following meanings:

“the Board of Directors”	means the board of directors of the Foundation Trust from time to time;
“the Board of Governors” “the Chair”	means the board of governors of the Foundation Trust from time to time; means the Chair of the Foundation Trust, or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution, such person;
“the Constitution”	means the constitution of the Foundation Trust as amended from time to time;
“the Foundation Trust”	means Wrightington, Wigan and Leigh NHS Foundation Trust;
“Meeting”	means a duly convened meeting of the Board of Governors;
“Motion”	means a formal proposition (either with or without notice pursuant to Standing Orders 10 and 11) to be discussed and voted on during the course of a Meeting about a matter for which the Board of Governors have responsibility or which affects the services provided by the Foundation Trust;
“Question on Notice”	means a question from a Governor or Governors (notice of which has been given pursuant to Standing Order 7) about a matter for which the Board of Governors has responsibility or which affects the services provided by the Foundation Trust;
“the Secretary”	means the Secretary appointed under the Constitution;

- (b) other terms defined in the Constitution shall have the same meaning in these Standing Orders.

2 **THESE STANDING ORDERS**

These Standing Orders for the Practice and Procedures of the Board of Governors are the standing orders referred to in paragraph 14 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 19 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

3 **MEETINGS**

Meetings of the Board of Governors shall be held at regular intervals (normally no less than four times in each year) at such times and places as the Chair may determine from time to time. The Secretary will publish the dates, times and locations of meetings of the Board of Governors for the year 6 months in advance. Other, or emergency, meetings of the Board of Governors may be called in accordance with the Constitution.

4 **AGENDAS AND PAPERS**

An agenda, copies of any Questions on Notice and/or motions on notice to be considered at the relevant Meeting and any supporting papers shall be sent to each Governor so as to arrive with each Governor normally no later than 7 days in advance of each Meeting. Minutes of the previous Meeting will be circulated with these papers for approval and this will be a specific agenda item.

5 **REPORTS FROM THE EXECUTIVE DIRECTORS**

At any Meeting a Governor may ask any question through the Chair without notice on any report by an executive director, or other officer of the Foundation Trust, after that report has been received by or while such report is under consideration by the Board of Governors at the Meeting. Unless the Chair decides otherwise no statements will be made other than those which are strictly necessary to define any question posed and in any event no statements will be allowed to last longer than 3 minutes each. A Governor who has put such a question may also put one supplementary question if the supplementary question arises directly out of the reply given to the initial question. The Chair may, in its absolute discretion, reject any question from any Governor if in the opinion of the Chair the question is substantially the same and relates to the same subject matter as a question which has already been put to that Meeting or a previous Meeting. At the absolute discretion of the Chair, questions may, at any Meeting which is held in public, be asked of the executive directors present by

members of the Foundation Trust or any other members of the public present at the Meeting.

6 QUESTIONS ON NOTICE AT MEETINGS

Subject to the provisions of Standing Order 7, a Governor may ask a Question on Notice of:

- (a) the Chair;
- (b) another Governor;
- (c) an executive director of the Foundation Trust;
- (d) the chair of any sub-committee or working group of the Board of Governors.

7 NOTICE OF QUESTIONS

Notice of a Question on Notice must be given in writing to the Secretary at least 14 days prior to the relevant Meeting. For the purposes of this Standing Order 7, receipt of any such Questions on Notice via electronic means is acceptable.

8 RESPONSE TO A QUESTION ON NOTICE

An answer to a Question on Notice may take the form of:

- (a) a direct oral answer at the relevant Meeting (which may, where the desired information is in a publication of the Foundation Trust or other published work, take the form of a reference to that publication);
- (b) where the reply cannot conveniently be given orally at the relevant Meeting, a written answer which will be circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the next Meeting; or
- (c) a brief oral answer at the relevant Meeting supplemented by a written answer circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the next Meeting.

9 SUPPLEMENTARY QUESTIONS IN RESPECT OF A QUESTION ON NOTICE

Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Chair.

10 **MOTIONS ON NOTICE**

(a) Notice

Subject to Standing Order 11, a motion may only be submitted by Governors and must be received by the Secretary in writing at least 14 days prior to the Meeting at which it is proposed to be considered, together with any relevant supporting papers. Except for motions which can be moved without notice under Standing Order 11, the notice of every motion must be signed or transmitted by at least two Governors. For the purposes of this Standing Order 10, receipt of any such motions via electronic means is acceptable. All motions received by the Secretary will be acknowledged by the Secretary in writing to the Governors who have signed or transmitted the same.

(b) Scope

Motions may only be about matters for which the Board of Governors has a responsibility or which affect the services provided by the Foundation Trust.

11 **MOTIONS WITHOUT NOTICE**

The following motions may be moved at any Meeting without notice:

- (a) in relation to the accuracy of the minutes of the previous Meeting;
- (b) to change the order of business in the agenda for the Meeting;
- (c) to refer a matter discussed at a Meeting to an appropriate body or individual;
- (d) to appoint a working group arising from an item on the agenda for the Meeting;
- (e) to receive reports or adopt recommendations made by the Board of Directors;
- (f) to withdraw a motion;
- (g) to amend a motion;
- (h) to proceed to the next business on the agenda;

- (i) that the question be now put;
- (j) to adjourn a debate;
- (k) to adjourn a Meeting;
- (l) to suspend a particular Standing Order contained within these Standing Orders (provided that any Standing Order may only be suspended if at least one half of the aggregate number of Governors are present at the Meeting in question and provided also that the Standing Order in question may only be suspended for the duration of the Meeting in question);
- (m) to exclude the public and press from the Meeting in question (the motion shall be “To exclude the press and public from the remainder of the Meeting, owing to the confidential nature of the business to be transacted.”);
- (n) to not hear further from a Governor, or to exclude them from the Meeting in question (if a Governor persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in its absolute discretion, may move that the Governor in question be not heard further at the Meeting in question. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the Meeting in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion);
- (o) to give the consent of the Board of Governors to any matter where its consent is required pursuant to the Constitution.

12 **URGENT MOTIONS OR QUESTIONS**

Urgent motions or questions may only be submitted by a Governor and must be received by the Secretary in writing before the commencement of the Meeting in question. The Chair shall decide whether the motion or question in question should be tabled.

13 **ANY OTHER BUSINESS**

There will not be an agenda item entitled “Any Other Business”. Instead, there will be an item for “Motions or Questions on Notice”, (which are subject to the other provisions of these Standing Orders). There will be another item for “Urgent Motions or Questions”, (which are subject to Standing Order 12).

14 **SPEAKING**

This Standing Order applies to all forms of speech/debate by Governors or members of the Foundation Trust and the public in relation to the motion or question under discussion at a Meeting.

(a) Content and Length of Speeches

Any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Chair it would not be desirable or appropriate to time 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. In the interests of time the Chair may, in its absolute discretion, limit the number replies questions or speeches which are heard at any one Meeting.

(b) When a person may speak again

A person who has already spoken on a matter at a Meeting may not speak again at that Meeting in respect of the same matter, except:

- (i) in exercise of a right of reply;
- (ii) on a point of order.

(c) Identification

All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

15 **VOTING**

All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the Governors present so request.

16 **ATTENDANCE**

Governors who are unable to attend a Meeting shall notify the Secretary in writing in advance of the Meeting in question so that their apologies may be submitted.

17 **QUORUM**

The quorum for a Meeting will be as set out in the Constitution.

18 **CHAIR**

The arrangements for presiding at or chairing meetings of the Board of Governors are set out in the Constitution.

19 **AMENDMENTS TO STANDING ORDERS**

These Standing Orders may only be amended in accordance with paragraph 39 of the Constitution. A motion to change the Standing Orders must be signed by five Governors and submitted to the Secretary in writing at least 21 days before the Meeting at which the motion is intended to be proposed.

20 **DISPUTE BETWEEN THE BOARD OF GOVERNORS AND THE BOARD OF DIRECTORS**

In the event of any unresolved dispute between the Board of Governors and the Board of Directors, the Chair or the Secretary may arrange for independent professional advice to be obtained for the Foundation Trust. The Chair may also initiate an independent review to investigate and make recommendations in respect of how the dispute may be resolved.

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

(Paragraph 26)

1. INTERPRETATION

In these Standing Orders:

- (a) unless the context otherwise requires, the following expressions have the following meanings:

“the Board of Directors”	means the board of directors of the Foundation Trust from time to time;
“the Board of Governors” “the Chair”	means the board of governors of the Foundation Trust from time to time; means the Chair of the Foundation Trust, or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution, such person;
“the Chief Executive” “the Constitution”	means the chief officer of the Trust means the constitution of the Foundation Trust as amended from time to time;
“the Foundation Trust”	means Wrightington, Wigan and Leigh NHS Foundation Trust;
“Meeting”	means a duly convened meeting of the Board of Directors;
“the Secretary”	means the Secretary appointed under the Constitution;

- (b) other terms defined in the Constitution shall have the same meaning in these Standing Orders.

2. THESE STANDING ORDERS

These Standing Orders for the Practice and Procedures of the Board of Directors are the standing orders referred to in paragraph 26 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 13 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

3. MEETINGS

Ordinary meetings of the Board of Directors shall be held at regular intervals, normally no less than 4 times in each year, at such times and in such places as the Board of Directors may determine from time to time.

4. AGENDAS AND PAPERS

An agenda and any supporting papers shall be sent to each Director so as to arrive with each Director normally no later than 7 days in advance of each Meeting. Minutes of the previous Meeting will be circulated with these papers for approval and this will be a specific agenda item.

5. VOTING

All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the Board of Directors present so request.

6. ATTENDANCE

Directors who are unable to attend a Meeting shall notify the Secretary in writing in advance of the Meeting in question so that their apologies may be submitted.

7. QUORUM

The quorum for a Meeting will be as set out in Annex 7.

8. CHAIR

The arrangements for presiding at or chairing a Meeting are set out in the Constitution and Annex 7. The Chair may, in his/her absolute discretion:

8.1 exclude the press and public from a Meeting owing to the confidential nature of the business to be transacted;

8.2 exclude a Director from a Meeting if a Director persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business.

9. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

9.1 The Board of Directors may make arrangements on behalf of the Foundation Trust for the exercise of any of its powers by a formally constituted committee of Directors or the Chief Executive, subject to such restrictions and conditions as the Board of Directors thinks fit.

9.2 The powers which the Board of Directors has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-executive

Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

10. COMMITTEES

10.1 The Board of Directors may appoint committees with a membership wholly of Directors to exercise any of its powers.

10.2 The Board of Directors may appoint committees consisting wholly or partly of members who are not Directors for any purpose which is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to such a committee.

11. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

The provisions relating to the formal declaration of interests by Directors (namely direct or indirect pecuniary and other interests which are relevant and material to the business of the Foundation Trust) and the register of such interests maintained by the Foundation Trust are set out in the Constitution.

12. SIGNATURE OF DOCUMENTS

The Chief Executive or other nominated officer of the Chief Executive shall be authorised by resolution of the Board of Directors to sign any agreement or other document not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee with delegated authority, on behalf of the Foundation Trust.

13. AMENDMENTS TO STANDING ORDERS

These Standing Orders may only be amended in accordance with paragraph 39 of the Constitution, and if the following requirements are also met:

- 13.1 the variation proposed does not contravene a statutory provision; and
- 13.2 at least two-thirds of the Directors are present; and
- 13.3 no fewer than half the total of the Foundation Trust's non-executive directors vote in favour of amendment.

14. DISPUTE BETWEEN THE BOARD OF GOVERNORS AND THE BOARD OF DIRECTORS

In the event of any unresolved dispute between the Board of Governors and the Board of Directors, the Chair or the Secretary may arrange for independent professional advice to be obtained for the Foundation Trust. The Chair may also initiate an independent review to investigate and make recommendations in respect of how the dispute may be resolved.

ANNEX 9 – ADDITIONAL PROVISIONS – MEMBERS

(Paragraphs 4 and 8.3)

1. DISQUALIFICATION FROM MEMBERSHIP

- 1.1 An individual may not become a member of the Foundation Trust if:
 - 1.1.1 they are under 16 years of age; or
 - 1.1.2 within the last five years they have been involved as a perpetrator in a serious incident of aggression at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer.

2. TERMINATION OF MEMBERSHIP

- 2.1 A member shall cease to be a member if:
 - 2.1.1 they resign by notice to the Secretary;
 - 2.1.2 they die;
 - 2.1.3 they are expelled from membership under this constitution;
 - 2.1.4 they cease to be entitled under this constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency;
 - 2.1.5 it appears to the Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Board of Governors, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust.
- 2.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.
 - 2.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.
 - 2.2.2 If a complaint is made, the Board of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:

- 2.2.2.1 dismiss the complaint and take no further action; or
 - 2.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
 - 2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Board of Governors.
- 2.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Board of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 2.2.4 At the meeting the Board of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 2.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 2.3 A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 2.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Board of Governors present and voting at a General Meeting.

3. **MEMBERS MEETINGS**

- 3.1 The Foundation Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each financial year.
- 3.2 All members meetings other than annual meetings are called special members meetings.
- 3.3 Members meetings are open to all members of the Foundation Trust, Governors and Directors, and representatives of the auditor, but not to members of the public unless the Board of Directors decides otherwise. The Board of Directors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.

- 3.4 All members meetings are to be convened by the Secretary by order of the Board of Directors.
- 3.5 The Board of Directors may decide where a members meeting is to be held and may also for the benefit of members:
 - 3.5.1 arrange for the annual members meeting to be held in different venues each year:
 - 3.5.2 make provisions for a members meeting to be held at different venues simultaneously provided that the different venues are connected with each other by audio or video link. In making such provision the Board of Directors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 3.6 At the annual members meeting:
 - 3.6.1 the Board of Directors shall present to the members:
 - 3.6.1.1 the annual accounts;
 - 3.6.1.2 any report of the auditor;
 - and
 - 3.6.1.3 forward planning information for the next Financial Year
 - 3.6.2 the Board of Governors shall present to the members a report on:
 - 3.6.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
 - 3.6.2.2 the progress of the membership strategy; and
 - 3.6.2.3 any proposed changes to the policy for the composition of the Board of Governors and of the non-executive Directors
 - 3.6.3 the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 3.7 Notice of a members meeting is to be given:

- 3.7.1 by notice to all members;
- 3.7.2 by notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and
- 3.7.3 by notice on the Foundation Trust's website

at least 14 clear days before the date of the meeting. The notice must:

- 3.7.4 be given to the Board of Governors and the Board of Directors, and to the auditor;
 - 3.7.5 state whether the meeting is an annual or special members meeting;
 - 3.7.6 give the time, date and place of the meeting; and
 - 3.7.7 indicate the business to be dealt with at the meeting.
- 3.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
- 3.9 The Foundation Trust may make arrangements for members to vote by post, or (except with regard to elections to the Council of Governors, which are subject to Annex 4) by using electronic communications.
- 3.10 It is the responsibility of the Board of Directors, the Chairman of the meeting and the Secretary to ensure that at any members meeting:
- 3.10.1 the issues to be decided are clearly explained;
 - 3.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 3.11 The Chairman of the Foundation Trust, or in their absence the Deputy Chairman of the Board of Directors, shall act as chairman at all members meetings of the Foundation Trust. If neither the Chairman nor the Deputy Chairman of the Board of Directors is present, the members of the Board of Governors present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act they shall be Chairman.
- 3.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board of Directors determine. If a quorum is not present within half an hour of the time fixed for the start of the

adjourned meeting, the number of members present during the meeting is to be a quorum.

- 3.13 A resolution put to the vote at a members meeting shall be decided upon by a show of hands unless a poll is requested by the Chairman of the meeting.
- 3.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a second and casting vote.
- 3.15 The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

ANNEX 10 – FURTHER PROVISIONS

1. COMMITMENTS

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

Representative membership

- 1.2 The Foundation Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:

1.2.1 the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Board of Governors, and shall be reviewed by them from time to time, and at least every three years,

1.2.2 the Board of Governors shall present to each annual members meeting a report on:

1.2.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;

1.2.2.2 the progress of the membership strategy;

1.2.2.3 any changes to the membership strategy.

Co-operation with NHS bodies and local authorities

- 1.3 In exercising its functions the Foundation Trust shall co-operate with NHS bodies and local authorities.

Openness

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

Prohibiting distribution

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

2. FRAMEWORK

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

Members

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

Board of Governors

- 2.3 The roles and responsibilities of the Board of Governors, which are to be carried out in accordance with this constitution and the Foundation Trust's terms of Authorisation, are:

2.3.1 at a General Meeting:

- 2.3.1.1 to appoint or remove the Chairman and the other non-executive Directors;
 - 2.3.1.2 to approve an appointment (by the non-executive Directors) of the Chief Executive;
 - 2.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
 - 2.3.1.4 to appoint or remove the Foundation Trust's auditor;
 - 2.3.1.5 to be presented with the annual accounts, any report of the auditor on them and the annual report;
- 2.3.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;
- 2.3.3 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
- 2.3.4 to undertake such functions as the Board of Directors shall from time to time request;

- 2.3.5 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Board of Governors and of the non-executive Directors and when appropriate to make recommendations for the revision of this constitution.

Board of Directors

- 2.4 The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.

3. SECRETARY

- 3.1 The Foundation Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
- 3.1.1 acting as Secretary to the Board of Governors and the Board of Directors, and any committees;
 - 3.1.2 summoning and attending all members meetings, meetings of the Board of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 3.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
 - 3.1.4 having charge of the Foundation Trust's seal;
 - 3.1.5 publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs;
 - 3.1.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made.
- 3.2 Minutes of every members meeting, of every meeting of the Board of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 3.3 The Secretary is to be appointed and removed by the Board of Directors, in consultation with the Board of Governors. The Board of Directors may appoint a deputy Secretary who shall be entitled to fulfill the functions of the Secretary in their absence.
- 3.4 The Board of Directors of the applicant NHS Trust shall appoint the first Secretary of the Foundation Trust.

4. FURTHER PROVISIONS AS TO AUDITOR

- 4.1 A person may only be appointed as the auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 4.2 An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission. Where an officer of the Audit Commission is appointed as auditor, the Commission is to charge the Foundation Trust such fees for their services as will cover the full cost of providing them.
- 4.3 The auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

5. FURTHER PROVISIONS AS TO ACCOUNTS

- 5.1 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
 - 5.1.1 the accounts;
 - 5.1.2 any records relating to them; and
 - 5.1.3 any report of the auditor on them.
- 5.2 In preparing its annual accounts, the Accounting Officer shall cause the Foundation Trust to comply with any directions given by Monitor with the approval of the Treasury as to:
 - 5.2.1 the methods and principles according to which the accounts are to be prepared;
 - 5.2.2 the information to be given in the accounts;and shall be responsible for the functions of the Foundation Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.
- 5.3 The Accounting Officer shall cause the Foundation Trust to:
 - 5.3.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
 - 5.3.2 once it has done so, send copies of those documents to Monitor.

6. FURTHER PROVISIONS AS TO ANNUAL REPORTS

- 6.1 The annual reports are to give:

- 6.1.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership; and
- 6.1.2 any other information Monitor requires.
- 6.2 The Foundation Trust is to comply with any decision Monitor makes as to:
 - 6.2.1 the form of the reports;
 - 6.2.2 when the reports are to be sent to it;
 - 6.2.3 the periods to which the reports are to relate.

7. INDEMNITY

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

8. DISPUTE RESOLUTION PROCEDURES

- 8.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:
 - 8.1.1 a member; or
 - 8.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
 - 8.1.3 any person bringing a claim under this constitution; or
 - 8.1.4 an office-holder of the Foundation Trustis to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Health Authority. The arbitrator's decision will be binding and conclusive on all parties.
- 8.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Board of Governors and approved by the

Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

9. **DISSOLUTION**

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

10. **HEAD OFFICE**

The Foundation Trust's head office is at Royal Albert Edward Infirmary, Trust Head Quarters, The Elms, Wigan Lane, Wigan WN1 2NN or such other place as the Board of Directors shall decide.

11. **NOTICES**

11.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

11.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

12. **FURTHER PROVISIONS AS TO TRANSITION**

12.1 The Board of Directors of the applicant NHS Trust shall prepare and approve the first membership strategy and the first policy for the composition of the Board of Governors and of the non-executive Directors.

12.2 These will be reviewed by the Board of Governors following the election and appointment of the initial Governors.

12.3 For the purposes of the period before the applicant NHS Trust becomes the Foundation Trust:

12.3.1 elections shall be carried out in accordance with the Model Rules for Elections set out at Annex 4, using the single transferable vote method of voting;

12.3.2 the Chief Executive of the applicant NHS Trust will approve

12.3.2.1 a membership application form;

12.3.2.2 a form of declaration required by section 60 (1) of the 2006 Act;

- 12.3.2.3 a form of declaration required by section 60 (2) of the 2006 Act;
- 12.3.2.4 a form of declaration required by section 60 (3) of the 2006 Act;
- 12.3.2.5 a form confirming acceptance of a code of conduct for Governors;
- 12.3.3 the Chief Executive of the applicant NHS Trust will consult and agree arrangements with the appointing organisations for the appointment of appointed Governors;
- 12.3.4 the Chief Executive of the applicant NHS Trust shall make a final decision about the class of the Staff Constituency of which an individual is eligible to be a member.