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All staff |
FOREWORD

University Hospitals Birmingham NHS Foundation Trust (the Trust) has Standing Orders (SOs) for the regulation of its proceedings and business.

Meetings and proceedings of the Trust need to be conducted in accordance with the rules set out in the Trust’s Constitution and these SOs. Codes of best practice in Corporate Governance require boards also to adopt Standing Financial Instructions (SFIs).

These documents provide a comprehensive regulatory framework for the internal control of the business conducted by the Trust. They fulfil the dual role of protecting the Trust’s interests and protecting staff from any possible accusation that they have acted less than properly.

All executive and non-executive directors, governors and all members of staff should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.
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1 INTRODUCTION

1.1 Statutory Framework

1.1.1 NHS Foundation Trusts are governed by statute, mainly the National Health Service Act 2006, as amended by the Health and Social Care Act 2012, (the 2006 Act) and the National Health Service Act 1977 (the 1977 Act and, together with the 2006 Act, the NHS Acts).

1.1.2 University Hospitals Birmingham NHS Foundation Trust (the Trust) is a body corporate and its principal purpose is the provision of goods and services for the purposes of the health service in England.

1.1.3 Other purposes of the Trust (as required by the 2006 Act) shall be to provide goods and services for any purposes related to:

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

   b) the promotion and protection of public health.

1.1.4 The Trust may also carry on activities other than those mentioned above. These activities shall be for the purpose of making additional income or other resources available in order to carry on the Trust’s principal purpose better.

1.1.5 In accordance with the Constitution of the Trust, the Board of Directors shall adopt Standing Orders for the regulation of its proceedings and business.

1.2 Corporate Governance Framework

1.2.1 Monitor’s Code of Governance for Foundation Trusts (the Code) requires that, inter alia, boards draw up a schedule of decisions reserved to the Board of Directors, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The Code also requires the establishment of audit and remuneration committees with formally agreed terms of reference. The 2006 Act (as amended) and the Code set out certain requirements concerning possible conflicts of interest of board directors and their declaration.
1.3 **Delegation of Powers**

Under the Standing Orders relating to the ‘Arrangements for the Exercise of Functions’ (SO 5), the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by an Executive Director, a committee or sub-committee appointed by virtue of SO 6 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as the Regulator may direct. Those powers delegated by the Chief Executive are covered in a separate document (Scheme of Authority and Delegation). That document has effect as if incorporated into the Standing Orders.

2 **INTERPRETATION**

2.1 Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive and Foundation Secretary).

2.2 Any expression to which a meaning is given in the NHS Acts, or in the Regulations or Orders made under the NHS Acts, shall have the same meaning in these Standing Orders and in addition:

'ACCOUNTING OFFICER' shall be the Officer responsible and accountable to Parliament for public funds entrusted to the Trust. He/she shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust, the Accounting Officer is the Chief Executive;

‘TRUST’ means University Hospitals Birmingham NHS Foundation Trust;

‘MONITOR’ means the body corporate known as the Independent Regulator of NHS Foundation Trusts;

‘BOARD of DIRECTORS’ means the board of executive and non-executive directors as constituted in accordance with the Trust’s Constitution;

‘COUNCIL OF GOVERNORS’ means the Council of Governors as constituted in accordance with the Trust’s Constitution;

‘BUDGET’ shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

‘CHAIRMAN’ is the Chairman of the Board of Directors and the Council of Governors;

‘CHIEF EXECUTIVE’ shall mean the Chief Executive of the Trust;

CHIEF FINANCIAL OFFICER’ shall mean the Executive Director of Finance of the Trust.
‘COMMITTEE’ shall mean a committee of the Board of Directors;

'COMMITTEE MEMBERS' shall be persons formally appointed by the Trust to sit on or to chair specific committees;

'DIRECTOR' means a member of the Board of Directors;

'DIRECTOR OF FINANCE' shall mean the Director of Finance of the Trust.

‘GOVERNOR’ means a Public Governor, Patient Governor, Staff Governor or Stakeholder Governor;

‘GOVERNOR VICE-CHAIR’ means a Governor appointed as Governor Vice-Chair in accordance with the Constitution;

‘MOTION’ means a formal proposition to be discussed and voted on during the course of a meeting;

‘NOMINATED OFFICER’ means an Officer charged with the responsibility for discharging specific tasks as detailed the SOs, SFIs and Scheme of Accountability and Delegation;

‘OFFICER' means an employee of the Trust;

‘FOUNDATION SECRETARY means the person appointed by the Trust to act independently of the Board and monitor the Trust's compliance with the law, SOs and best practice in respect of Corporate Governance;

SENIOR INDEPENDENT DIRECTOR (SID); means the Non-Executive Director appointed as Senior Independent Director by the Board of Directors;

'SFIs' means Standing Financial Instructions;

'SOs' means these Standing Orders; and

'DEPUTY CHAIRMAN' means the Non-Executive Director appointed to take on the Chairman's duties if the Chairman is absent.

3 THE TRUST

3.1 All business shall be conducted in the name of the University Hospitals Birmingham NHS Foundation Trust.

3.2 The Trust has the functions conferred on it by the 2006 Act and by its Establishment Order.

3.3 The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board of Directors. These powers and decisions are set out in the Corporate Governance Policy and have effect as if incorporated into the Standing Orders.
3.4 Composition of the Board of Directors

3.4.1 In accordance with the Constitution, the composition of the Board of Directors of the Trust shall be:

a) The Chairman of the Trust who will be a Non-Executive Chairman;

b) At least six other Non Executive Directors;

c) The following Executive Directors provided that one is a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and another is a registered nurse or a registered midwife:

(i) A Chief Executive;

(ii) A Director of Finance; and

(iii) At least three other Executive Directors,

subject to there being one but no more than two Non-Executive Directors more than there are Executive Directors.

3.4.2 The Trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the Trust, but such persons will not be Directors of the Trust for the purposes of the 2006 Act (“statutory directors”) unless their title is that of “Executive Director” or “Non-Executive Director”. Such additional directors may be invited to attend the meetings of the Board of Directors but will not have the voting rights of statutory directors or any power to bind the Trust.

3.4.3 Associate Non-Executive Directors: The Board may appoint Associate Non-Executive Directors on terms and conditions to be specified by the Board to provide additional advice and expertise to the Board. Associate Non-Executive Directors will not be Directors of the Trust for the purposes of the 2006 Act and thus will be non-voting appointees without executive or delegated executive functions or any power to bind the Trust. Associate Non-Executive Directors will be accountable to the Board for the responsibilities specified in the terms and conditions relating to their appointment, the term of which shall not exceed 3 years, but may be renewed by the Board.

3.5 Terms of Office of the Chairman and Directors

Regulations governing the period of tenure of office of the Chairman and Directors and the termination or suspension of office of the Chairman and Directors are set out in the Constitution.
3.6 Appointment of Deputy Chairman

3.6.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Non-Executive Directors of the Trust shall appoint a Non-Executive Director from amongst themselves to be Deputy Chairman for such a period, not exceeding the remainder of his/her term as Non-Executive director of the Trust, as they may specify on appointing him/her.

3.6.2 Any Non-Executive Director so elected may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman and the Non-Executive Directors of the Trust may thereupon appoint another Non-Executive Director as Deputy Chairman in accordance with the above paragraph of this SO.

3.7 Powers of Deputy Chairman

Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his/her duties as Chairman owing to illness, or absence for any other cause, references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman of the Board of Directors or Governors according to context.

4 MEETINGS OF THE BOARD OF DIRECTORS

4.1 Calling Meetings

4.1.1 Meetings of the Board of Directors shall be held at such times and places as the Board may determine.

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

4.1.3 The Chairman shall give such Directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:
‘That in the interest of public order the meeting adjourn for up to 6 hours to enable the Board to complete business without the presence of the public’.

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

4.2 Notice of Meetings

4.2.1 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an Officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least five days before the meeting.

4.2.2 Lack of service of the notice on any Director shall not affect the validity of a meeting.

4.2.3 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice. Failure to service such a notice on more than three directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.3 Setting the Agenda

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

4.3.2 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 clear days before the meeting, subject to Standing Order 4.8. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.

4.4 Chairman of Meeting

4.4.1 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the
4.4.2 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, such non-executive director as the non-Executive Directors present shall choose shall preside.

4.5 Notices of Motion

A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 4.11.

4.6 Withdrawal of Motion or Amendments

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

4.7 Motion to Rescind a Resolution

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the director(s) who gives it and also the signature of three other directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any director other than the Chairman to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate.

4.8 Motions

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

4.8.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

a) An amendment to the motion;

b) The adjournment of the discussion or the meeting;

c) That the meeting proceed to the next business; (*)
d) The appointment of an ad hoc committee to deal with a specific item of business; or

e) That the motion be now put. (*)

*In the case of sub-paragraphs denoted by (*) above (to ensure objectivity) motions may only be put by a Director who has not previously taken part in the debate.

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

4.9 Written Motions

4.9.1 In urgent situations and with the consent of the Chairman, business may be affected by a Directors’ written motion to deal with business otherwise required to be conducted at general meetings.

4.9.2 If all Directors entitled to attend and vote at a general meeting of the Board of Directors sign and return a copy of a written motion then that motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.

4.9.3 The effective date of the resolution shall be the date the last copy is signed and, until that date a Director who has previously indicated acceptance can withdraw and the motion shall fail.

4.9.4 Once the resolution is passed, a copy certified by the Foundation Secretary shall be recorded in the Minute Book and signed by the Chairman.

4.10 Chairman's Ruling

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

4.11 Voting

4.11.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

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

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

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

4.11.5 An absent Director may not vote by proxy. Absence is defined as being absent at the time of the vote.

4.11.6 An Officer who has been appointed formally by the Board of Directors to act up for a Executive Director during a period of incapacity or temporarily to fill a Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent a Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

4.12 Minutes

4.12.1 The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting.

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

4.12.3 The Chairman shall sign a final and accurate set of the minutes and for those minutes, where it was agreed that amendments needed to be made to them, the Chairman’s initials will be placed next to each amendment.

4.12.4 Minutes shall be circulated in accordance with Directors’ wishes. Where providing a record of a public meeting, the minutes shall be made available to the public.

4.13 Joint Directors

4.13.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which a statutory Executive Director is to be appointed, those persons shall become appointed as an
Executive Director jointly, and shall count for the purpose of these Standing Orders as one person.

4.13.2 Where a post of Executive Director is shared by more than one person:

a) both persons shall be entitled to attend meetings of the Board of Directors;

b) either of those persons shall be eligible to vote in the case of agreement between them;

c) in the case of disagreement between them no vote shall be cast;

d) the presence of either or both of those persons shall count as one person for the purposes of Standing Order 4.17.

4.14 Suspension of Standing Orders

4.14.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting of the Board of Directors, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

4.14.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

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

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

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

4.15 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

4.15.1 Relevant notice of a meeting has been served in accordance with SO 4.2; and

4.15.2 a notice of motion under Standing Order 4.8 has been given; and
4.15.3 no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and

4.15.4 at least two-thirds of the directors are present; and

4.15.5 the variation proposed does not contravene a statutory provision or direction made by Monitor.

4.16 Record of Attendance

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

4.17 Quorum

4.17.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the total number of the directors is present including at least one Executive Director and one Non-Executive Director.

4.17.2 An officer in attendance for a statutory Director but without formal acting up status shall not count towards the quorum.

4.17.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 7 and 8) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The requirement in 4.17.1 for at least one Executive Director will not apply to part of a meeting where a conflict of interest exists (for example, when the Board considers the recommendations of the Executive Appointments and Remuneration Committee).

4.18 Admission of the Public and the Press

4.18.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board of Directors, but shall be required to withdraw upon the Board of Directors resolving as follows:

'That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest'.
4.18.2 The Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

'That in the interest of public order the meeting adjourn for up to 6 hours to enable the Board of Directors to complete business without the presence of the public'.

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

5 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1 The Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a Committee or sub-Committee, appointed by virtue of SO 6.1 below or by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

5.2 Delegation to Committees

5.2.1 Any power which the Board of Directors has reserved to itself may, in circumstances where it is important, in order to promote or protect the Trust's best interests, that the power is exercised as a matter of urgency and without waiting for the next meeting of the Board of Directors, be exercised jointly by the Chairman and the Chief Executive. Whenever this occurs, an information report must be presented to the next meeting of the Board of Directors providing full details of how the power has been exercised and explaining why it was considered necessary to proceed under this Standing Order.

5.2.2 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by Committees or sub-Committees, which it has formally constituted in accordance with SO 6. The constitution and terms of reference of these Committees, or sub-Committees, and their specific executive powers shall be approved by the Board of Directors.
5.3  **Delegation to Officers**

5.3.1 Those functions of the Trust which have not been retained or reserved by the Board of Directors or delegated to an Executive Director, a Committee or sub-Committee of the Board of Directors shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which of such functions s/he will perform personally and shall nominate Officers to undertake the remaining functions for which s/he will still retain accountability to the Board of Directors.

5.3.2 A Scheme of Accountability and Delegation shall be considered and approved by the Chief Executive. The Chief Executive may periodically propose amendments to the Scheme of Accountability and Delegation.

5.3.3 Nothing in the Scheme of Accountability and Delegation shall impair the discharge of the direct accountability to the Board of any Executive Director to provide information and advise the Board in accordance with any statutory requirements.

5.3.4 The arrangements made by the Chief Executive as set out in the ‘Scheme of Accountability and Delegation’ shall have effect as if incorporated in these Standing Orders.

6  **COMMITTEES AND SUB-COMMITTEES**

6.1  **Appointment of Committees of the Board of Directors**

6.1.1 The Board of Directors may appoint and delegate its powers to Committees consisting of its members to assist it in carrying out its function. A Committee appointed under this section may appoint a sub-Committee.

6.1.2 Any Committees or sub-Committees established in accordance with Standing Order 6.1 may appoint outside advisers, where appropriate, to help them in their tasks.

6.1.3 Committees of the Board of Directors will include, but need not be limited to:

a) an Audit Committee; and

b) an Executive Appointments and Remuneration Committee.

6.2  **Standing Orders Relating to all Committees/Sub-Committees**

6.2.1 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any
Committees or sub-Committee established by the Board of Directors.

6.2.2 Each such Committee or sub-Committee shall have such terms of reference and powers and be subject to such as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

6.2.3 The Board shall approve the appointments to each of the Committees which it has formally constituted. Where the Board determines that persons, who are neither Directors nor Officers, shall be appointed as advisors to a Committee, the terms of such appointment shall be determined by the Board of Directors subject to the payment of travelling and other allowances being in accordance with such sum as may be determined by the Board of Directors.

6.3 Confidentiality

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

6.3.2 A Director of the Trust or a member of a Committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the Committee, notwithstanding that either matter has been reported or action has been concluded, if the relevant Board or Committee shall resolve that it is confidential.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of Interests

7.1.1 The Constitutiony requires Directors:

a) to avoid situations in which they have (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and

b) not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.

7.1.2 The duty referred to in SO 7.1.1a) above is not infringed if:

a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

b) the matter has been duly authorised.
7.1.3 The duty referred to in SO 7.1.1b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

7.1.4 A “third party” means a person other than:

a) the Trust; or

b) a person acting on its behalf.

7.1.5 All Directors must declare interests which are relevant and material to the Trust on appointment and if they arise during their term of office. In addition, all staff that have delegated responsibility from the Board should also declare those interests that are relevant and material. SO 7 shall also equally apply to these staff, together with SO 8 (Disability of Directors in proceedings on account of pecuniary interest).

7.1.6 Without limitation, the following interests should be declared by Directors:

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

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

c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

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

e) Any connection with a voluntary or other organisation contracting for NHS services.

7.1.7 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other directors before the Trust enters into the transaction or arrangement.

7.1.8 If a declaration under SO 7.1.7 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

7.1.9 A declaration of an interest is not required when a Director is not aware of the interest or where the Director is not aware of the transaction or arrangement in question.

7.1.10 Further, a Director need not declare an interest:
a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

b) if, or to the extent that, the Directors are already aware of it; or

c) if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:

(i) by a meeting of the Board of Directors; or

(ii) by a committee of the directors appointed for that purpose under the Constitution.

7.1.11 If Directors or staff have any doubt about the relevance of an interest, this should be discussed with the Chairman or Foundation Secretary.

7.1.12 As soon as possible following the declaration of Directors' interests they should be recorded in the relevant board minutes. Any changes in interests should be declared at the next board meeting following the change occurring.

7.1.13 Directors' directorships of companies likely or possibly seeking to do business with the Trust should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

7.1.14 During the course of a board meeting, if a conflict of interest is established, the Director concerned should immediately declare the conflict.

7.1.15 If a Board of Directors' or Committee meeting, or part of such a meeting, is concerned with an actual or proposed transaction or arrangement in which a Director is interested, that Director is not to be counted as participating in that meeting, or part of a meeting, for quorum or voting purposes.

7.1.16 There is no requirement for the interests of board directors' spouses or partners to be declared. (Note however that SO 8 requires that the interest of directors' spouses, if living together, in contracts should be declared).

7.2 Register of Interests

7.2.1 The Director of Corporate Affairs will ensure that a Register of Interests is established to record formally declarations of interests of directors or governors. In particular, the Register will include details of all directorships and other relevant and material interests that have been declared by Executive and Non-Executive Directors and Governors as defined in SO 7.
7.2.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

7.2.3 The Register will be available to the public.

8 DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

8.1 Subject to the following provisions of this Standing Order, if a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at the meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

8.2 The Chairman may exclude a director from any meeting of the Trust while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.

8.3 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 9 of Schedule 2 to the NHS & Civil Contingency Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.4 For the purpose of this Standing Order the Chairman or Director shall be treated, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

8.4.1 he, or a nominee of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

8.4.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

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

8.5 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
8.5.1 of his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body; or

8.5.2 of an interest in any company, body or person with which he is connected as mentioned in SO 7 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director or governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

8.6 Where a Director:

8.6.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

8.6.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

8.6.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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

8.7 This Standing Order applies to a Committee or sub-Committee of the Board as it applies to the Trust and applies to any member of any such committee or sub-Committee (whether or not he is also a Director of the Trust) as it applies to a director of the Trust.

9 STANDARDS OF BUSINESS CONDUCT

9.1 Interests of Officers in Contracts

9.1.1 If it comes to the knowledge of a Director or an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust s/he shall, at once, give notice in writing to the Chief Executive of the fact that s/he is interested therein. In the case of married person or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
9.1.2 An Officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting partner or other close relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

9.1.3 The Trust requires that interests, employment or relationships so declared by staff to be entered in a register of interest of staff.

9.2 Canvassing of, and Recommendations by, Directors in Relation to Appointments

9.2.1 Canvassing of Directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

9.2.2 A Director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

9.2.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

9.3 Relatives of Directors, Governors or Officers

9.3.1 Candidates for any staff appointment shall when making application disclose in writing whether they are related to any Director, Governor or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

9.3.2 The Directors and every Officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.

9.3.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other Director or Governor or holder of any office under the Trust.
9.3.4 Where the relationship of an Officer or another Director to a Director or Governor of the Trust is disclosed, the Standing Order headed ‘Disability of directors in proceedings on account of pecuniary interest’ (SO 8) shall apply.

10 TENDERING AND CONTRACT PROCEDURE

10.1 Duty to comply with Standing Orders

The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 4.14 (Suspension of SOs) is applied) and the Procurement Policy. All tendering and quotation procedures shall be administered by the Trust procurement department.

10.2 EU Directives Governing Public Procurement

10.2.1 Directives by the Council of the European Union for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.

10.2.2 The Trust shall comply as far as is practicable with the requirements of the NHS ‘Capital Investment Manual’ and with guidance ‘The Procurement and Management of Consultants within the NHS’.

10.3 Single Tender Action

A single tender action is only permitted if one or more of the circumstances set out in SO 10.4.2 applies. All such actions must be reported to the Audit Committee on a quarterly basis and must be authorised by the Director of Finance up to £250,000, up to £500,000 by the Chief Financial Officer and up to £1,000,000 by the Chief Executive in consultation with the Chief Financial Officer. Any single tenders over £1,000,000 must be authorised by the Board of Directors.

10.4 Formal Competitive Tendering

10.4.1 The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services; for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.

10.4.2 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in c) to i) below) where:
a) the estimated expenditure or income does not, or is not reasonably expected to exceed £50,000 per annum (this figure to be reviewed annually); or

b) the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with; or

c) there is no competition in the marketplace;

d) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or

e) specialist expertise is required and is available from only one source; or

f) the task is essential to complete the project, AND arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or

g) there is a clear benefit to be gained from maintaining continuity with an earlier project. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or

h) provided for in the Capital Investment Manual; or

i) the proposal is novel and better suited to a partnership arrangement - such proposals must be agreed by the Chief Financial Officer and reported to the Board of Directors in accordance with the Corporate Governance Policy.

10.4.3 The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

10.4.4 Where it is decided that competitive tendering is not applicable and should be waived by virtue of 10.4.2c) to 10.4.2i) above the fact of the waiver and the reasons should be documented and must be authorised as in SO 10.3.

10.4.5 Where less than three suppliers are available to prepare tenders/quotes then the process is as indicated in SO 10.3, i.e. approval must be obtained to obtain quotes from the available suppliers.
10.4.6 Except where SO 10.3, or an exemption under SO 10.4, applies, the Board of Directors shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms or individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.

10.4.7 A list of all approved firms for works contracts shall be maintained by the Director of Finance.

10.4.8 The Board of Directors shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists for works contracts. Where, in the opinion of the Director of Finance, it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive.

10.4.9 Quotations are required where formal tendering procedures are waived under SO 10.4.2a) or 10.4.4 and where the intended expenditure or income is reasonably expected to be between £10,000 and £50,000 per annum.

10.4.10 Where quotations are required under 10.4.9 they should be obtained from at least three firms/individuals based on specifications and terms and conditions as required by the Procurement Policy.

10.4.11 Quotations should be in writing (including email) unless the Chief Executive or his/her nominated officer identify that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.

10.4.12 All quotations should be treated as confidential and should be retained for inspection. The Chief Executive shall nominate one or more officers to be responsible for the receipt and custody of tenders before opening. Tenders shall be opened in accordance with the Procurement Policy.

10.4.13 Quotations should be evaluated and selected in accordance with the Procurement Policy. Selection should be on the basis of best value for money and, where the selected quotation is not the lowest priced, then this fact and the reasons why the lowest quotation was not chosen shall be recorded in accordance with the Procurement Policy.

10.4.14 Non-competitive quotations in writing may be obtained for the following purposes:
a) the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or his/her nominated officer, possible or desirable to obtain competitive quotations; or

b) the goods/services are required urgently.

10.5 Where tendering or competitive quotation is not required

10.5.1 The Trust shall use the Procurement Department for procurement of all goods and services unless the Director of Finance deems it inappropriate. The decision to use alternative sources must be documented. A competitive quote under £10,000 may be entered into under the discretion of the Procurement Department.

10.5.2 The Chief Financial Officer shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board of Directors may also determine from time to time that in-house services should be market tested by competitive tendering (SO 13).

10.6 Private Finance

When the Board of Directors proposes, or is required, to use finance provided by the private sector the following should apply:

10.6.1 The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector;

10.6.2 The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to vires; and

10.6.3 The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

10.7 Contracts

10.7.1 The Trust may only enter into contracts within its statutory powers and shall comply with:

a) These Standing Orders;

b) The Trust’s SFIs;

c) The Trust’s Procurement Policy; and

d) EU Directives and other statutory provisions;
10.7.2 Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

10.7.3 In all contracts made by the Trust, the Board shall endeavour to obtain best value. The Director of Finance shall oversee and manage each service contract on behalf of the Trust and the Director of Projects shall oversee and manage each contracted services contract on behalf of the Trust.

10.8 Personnel and Agency or Temporary Staff Contracts

10.8.1 The Chief Executive shall nominate officers with delegated authority to enter into contracts for employment of other officers, to authorise regrading of staff, and enter into contracts for the employment of agency staff or temporary staff.

10.8.2 The Chief Executive shall delegate to the Director of Finance the power to negotiate for the provision of healthcare services with purchasers of healthcare.

10.9 Cancellation of Contracts

Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.

10.10 Determination of Contracts for Failure to Deliver Goods or Material

There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good a) such default, or b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the
amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

10.11 **Competitive Tenders Procedure**

The Director of Finance shall prescribe procedures for competitive tendering and quotations, which shall be read and followed as Standing Orders and which will cover the following:

10.11.1 Competitive Tenders

10.11.2 Competitive Quotations

10.11.3 Negotiations

10.11.4 Post Tender/Quotations Negotiations

10.11.5 Regulations Relating to Works Contracts

10.11.6 Regulations Relating to Service and Supplies Contracts

10.11.7 Conditions of Contracts

10.11.8 Technical Specifications

10.11.9 Form of Contract

10.11.10 Dispute Resolution

10.11.11 Power to Act

11 **DISPOSALS**

11.1 Competitive Tendering or Quotation procedures shall not apply to the disposal of:

11.1.1 Any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or predetermined in a reserve) by the Director of Finance.

11.1.2 Obsolete or condemned articles and stores, which may be disposed of in accordance with the Procurement policy of the Trust;

11.1.3 Items to be disposed of with an estimated sale value of less than £10,000, this figure to be reviewed annually;

11.1.4 Items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
11.1.5 Land or buildings concerning which DoH guidance has been issued, but subject to compliance as far as is practicable with such guidance.

12 **JOINT VENTURES**

Foundation Trusts are permitted to enter into Joint Venture arrangements with other parties. Where appropriate, tendering rules should be complied with to ensure that the Trust has achieved best value and legal advice obtained. The Board of Directors shall approve Joint Venture arrangements in accordance with Annex A to the Corporate Governance Policy.

13 **IN-HOUSE SERVICES**

13.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering, the following groups shall be set up:

13.1.1 Specification group, comprising Nominated Officer(s) and specialist(s) agreed by the relevant Executive Director;

13.1.2 In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support; and

13.1.3 Evaluation group, comprising normally a specialist officer, a Procurement officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £1,000,000, a non-executive director should be a member of the evaluation team.

13.2 All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house group may, however, participate in the evaluation of tenders.

13.3 The evaluation group shall make recommendations to the Board of Directors for approval where the likely annual expenditure exceeds £1,000,000.

13.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

14 **CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

14.1 **Custody of Seal**

The Common Seal of the Trust shall be kept by the Foundation Secretary in a secure place.
14.2 Deeds

14.2.1 Deeds (contracts under seal) are required for:

a) All freehold land property transactions;

b) For all leases that extend for three years or more; or

c) For any ‘gratuitous promise’ i.e. a transaction in which there is no consideration for the value being given.

14.2.2 For a deed the limitation period is 12 years rather than the usual six.

14.3 Sealing of Documents

14.3.1 The Seal of the Trust shall only be used by the authority of a minimum of two Officers of the Trust designated by a resolution of the Board of Directors or where the Chairman and Chief Executive have authorised such sealing as an urgent action between meetings. All such items sealed between meetings will be reported at the next Board Meeting. The Common Seal shall be affixed in the presence of any two Directors or any Director and the Foundation Secretary.

14.3.2 Every 12 months, the Board will approve or renew a resolution authorising specified Officers to authorise use of the Seal.

14.4 Register of Sealing

An entry of every Sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust at least once each twelve months. (The report shall contain details of the seal number, the description of the document and date of sealing). The register will be kept securely. Entries will be made only (but always) when the seal is used.

15 SIGNATURE OF DOCUMENTS

15.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive or the Director of Corporate Affairs, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

15.2 The Chief Executive or Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust 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,
Committee, sub-Committee or officer to which the Board of Directors has delegated appropriate authority.

16 MISCELLANEOUS

16.1 Standing Orders to be given to Directors and Officers

It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders, SFIs, Scheme of Accountability and Delegation and the Corporate Governance Policy. Updated copies shall be made available to staff designated by the Chief Executive.

16.2 Documents having the standing of Standing Orders

Standing Financial Instructions and the Scheme of Accountability and Delegation together with Trust Competitive Tendering and Quotation Procedures shall have effect as if incorporated into SOs.

16.3 Review of Standing Orders

Standing Orders shall be reviewed regularly by the Trust. The requirement for review extends to all documents having the effect as if incorporated in the SOs.