

# **STANDING ORDERS** (v12)

(As adopted 1<sup>st</sup> April 2018)

**EFFECTIVE FROM 1 APRIL 2018  
TO BE REVIEWED BY 1 APRIL 2021**

## 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<sup>1</sup> 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) and a 'Corporate Governance Policy' document .

These documents provide a comprehensive regulatory framework for the internal control of the business conduct of 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, 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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<sup>1</sup> The Council of Governors has its own Standing Orders, set out in Annex 6 of the Constitution  
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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<sup>2</sup> (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 the purposes related to the provision of health care in accordance with its statutory duties and the terms of the Independent Regulator's licence.

1.1.4 The Trust may also carry on activities other than those mentioned above subject to any restrictions in the Independent Regulator's licence. 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 (8.9.3), the Board of Directors shall adopt Standing Orders for the regulation of its proceedings and business.

### 1.2 Foundation Trust Code of Governance

The NHS Foundation Trust Code of Governance 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 and officers of the Trust. The Code also requires the establishment of audit and remuneration committees with formally agreed terms of reference.

### 1.3 Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 6), 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-

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<sup>2</sup> The original "Foundation Trust" Act, the Health and Social Care (Community Health and Standards) Act 2003, was incorporated into the 2006 Act. The 2006 Act was amended by, amongst others, the Health and Social Care Act 2012

committee appointed by virtue of SO 7 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. Delegated Powers are covered in a separate document (Scheme of Delegation).

## 2. Interpretation

2.1 Save as permitted by law, at any meeting the Chair 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 the 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;

BOARD of DIRECTORS means the board of executive and non-executive directors 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;

'CHAIR' means the Chair of the Trust;

'CHIEF EXECUTIVE' shall mean the Chief Executive of the Trust;

'CHIEF FINANCIAL OFFICER' shall mean the executive director with responsibility for the finances 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;

COUNCIL of GOVERNORS means the council of governors as constituted in accordance with the Trust's Constitution;

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

'DEPUTY CHAIR' means the non-executive director appointed to take on the Chair's duties if the Chair is absent;

'FOUNDATION SECRETARY' means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust. For this Trust, the Foundation Secretary is the Director of Corporate Affairs;

'GOVERNOR' means a Public Governor, Staff Governor or Stakeholder Governor;

'GOVERNOR VICE-CHAIR' means a Governor appointed as Governor Vice-Chair in accordance with SO 3.7;

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

'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 within SOs and SFIs;

'OFFICER' means an employee of the Trust;

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

'TRUST' means University Hospitals Birmingham NHS Foundation Trust;

### **3. The Trust**

- 3.1 All business shall be conducted in the name of University Hospitals Birmingham NHS Foundation Trust.
- 3.2 The Trust has the functions conferred on it by the National Health Act 2006 (as amended) and by its Provider Licence.
- 3.3 The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. 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 The composition of the Board of Directors of the Trust shall be as set out in the Constitution.

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 and/or its committees. 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 Chair and Directors

Regulations governing the period of tenure of office of the Chair and directors and the termination or suspension of office of the Chair and Directors are set out in paragraph 8.6 of the Constitution.

### 3.6 Appointment of Deputy Chair

3.6.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Non-Executive Directors of the Trust shall appoint a Non-Executive Director from amongst themselves to be Deputy Chair 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 Chair by giving notice in writing to the Chair and the Non-Directors of the Trust may thereupon appoint

another non-executive director as Deputy Chair in accordance with the above paragraph of this SO.

3.6.3 The Council of Governors shall appoint a Governor Vice-Chair, who shall be a governor, for the purpose of enabling the proceedings of the Council of Governors, when the Council of Governors is discussing issues related to the non-executive directors or Chair.

### 3.7 Powers of Deputy Chair

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

### 3.8 Joint Directors

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 Standing Order 3.1 as one person.

## 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 Chair may call a meeting of the Board at any time. If the Chair 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 Chair does not call a meeting within seven days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more directors may forthwith call a meeting.

4.1.3 The Chair shall give such directions as he/she 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:

- 4.1.4 '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'.
- 4.1.5 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 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 Chair, 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 Chair 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 Chair.

#### 4.4 Chair of Meeting

4.4.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy-Chair, if there is one and he/she is present, shall preside. If the Chair and Deputy-Chair are absent, such non-executive director as the Non-Executive Directors present shall choose shall preside.

4.4.2 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair 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 Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 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 Chair.

#### 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 6 calendar months shall bear the signature of the director(s) who gives it and also the signature of 3 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 Chair to propose a motion to the same effect within 6 months; however the Chair 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 Chair of the meeting, the amendment negates the substance of the motion.

#### 4.9 Written Resolutions

4.9.1 In urgent situations and with the consent of the Chair, business may be effected by a Directors' written resolution 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 resolution then that resolution will be deemed to have been made 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 resolution 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 Chair.

#### 4.10 Chair'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 Chair 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 Save where the Chair is satisfied that a consensus of the meeting has been reached, and no member of the board has requested that the matter be put to a vote, 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 Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the 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 an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board of Directors to represent an 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 Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.12.3 The Chair shall sign a final and accurate set of the minutes.

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

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 4.20 [Quorum].

#### 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 SO4.4; and

4.15.2 no fewer than half the total of the Trust's non-executive directors vote in favour of amendment; and

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

4.15.4 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 Orders 8 and 9) 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 Remuneration and Review Committee).

### **5. Annual General Meeting**

The Trust shall hold an annual general meeting of all members and Governors in accordance with the provisions of Annex 7 of the Trust's Constitution.

## **6. Arrangements for the Exercise of Functions by Delegation**

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 7.2 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.

### **6.1 Urgent Actions**

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 Chair 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.

### **6.2 Delegation to Committees**

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 8.2. 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.

### **6.3 Delegation to Officers**

6.3.1 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.

6.3.2 A Scheme of Delegation shall be considered and approved by the Chief Executive, who may periodically approve amendments to the Scheme of Delegation.

6.3.3 Nothing in the Scheme of 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.

## **7. Committees and Sub-Committees**

### **7.1 Appointment of Committees of the Board of Directors**

7.1.1 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.

7.1.2 Any committees or sub-committees established in accordance with paragraph 8.2.1 may appoint outside advisers, where appropriate, to help them in their tasks.

7.1.3 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.

### **7.2 Standing Orders Relating to all Committees/Sub-Committees**

7.2.1 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board of Directors.

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

7.2.3 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are not 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.

### **7.3 Confidentiality**

7.3.1 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.

7.3.2 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 Board or committee shall resolve that it is confidential.

## **8. Declarations of Interests and Register of Interests**

### **8.1 Declaration of Interests**

8.1.1 Directors and governors must declare interests which are relevant and material to the Trust board of which they are a director or governor. All existing directors and governors should declare such interests. Any board directors and governors appointed subsequently should do so on appointment. In addition, all staff that have delegated responsibility from the Board should also declare those interests that are relevant and material.

8.1.2 When making these declarations, all directors, officers, staff and agents of the Trust shall comply with the Trust's Staff Code of Conduct which shall be read and followed as Standing Orders.

8.1.3 The declarations of governors shall comply with Annex 4 of the Trust Constitution.

8.1.4 SO 8 shall also equally apply to these staff, together with SO 10 (Disability of Directors in proceedings on account of pecuniary interest) and paragraph 4 of Annex 6 of the Trust Constitution (Disability of governors in proceedings on account of pecuniary interest).

8.1.5 If directors have any doubt about the relevance of an interest, this should be discussed with the Chair, Foundation Secretary or the Corporate Affairs Team.

8.1.6 As soon as possible following the declaration of directors' and governors' 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.

8.1.7 Directors' and governors' 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.

8.1.8 During the course of a board meeting, if a potential conflict of interest is identified the Chair (or, in the case of the potential

conflict of interest relating to the Chair, the Deputy Chair), acting on the advice of the Board, shall decide whether:

- a) A conflict exists, and it is substantial enough to act upon;
- b) Whether the member needs to step out from the meeting discussion and/or or refrain from voting; and
- c) Any other appropriate action.

Actions must be documented in the Minutes for transparency.

8.1.9 There is no requirement for the interests of board director spouses or partners to be declared. However, in accordance with the Staff Code of Conduct, a declaration should be made if there is a close family connection with a named company with which the Trust does business. (Note however that SO 10 which is based on the Membership and Procedure regulations requires that the interest of directors' spouses, if living together, in contracts should be declared).

## 8.2 Register of Interests

8.2.1 In accordance with the Staff Code of Conduct, a Register of Interests will be maintained.

8.2.2 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

## 9. **Disability of Directors in Proceedings on Account of Pecuniary Interest**

9.1 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.

9.2 The Chair 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.

9.3 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.

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

9.4.1 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

9.4.2 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.

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

9.5.1 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

9.5.2 of an interest in any company, body or person with which he is connected as mentioned in SO 9 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.

9.6 Where a director:

9.6.1 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

9.6.2 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

9.6.3 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.

- 9.7 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.

## **10. Standards of Business Conduct**

### **10.1 Duty to comply with the Staff Code of Conduct**

All directors, officers, staff and agents of the Trust shall comply with the Trust's Staff Code of Conduct which shall be read and followed as Standing Orders.

### **10.2 Interests of Officers in Contracts**

10.2.1 If it comes to the knowledge of a director or an officer of the Trust that a contract in which s/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.

10.2.2 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.

### **10.3 The Trust requires that interests, employment or relationships so declared by staff to be entered in a register of interest of staff in accordance with the Staff Code of Conduct. Canvassing of, and Recommendations by, Directors or Governors in Relation to Appointments.**

10.3.1 Canvassing of directors or governors 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.

10.3.2 A director or governor 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 or governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

#### 10.4 Relatives of Directors, Governors or Officers

10.4.1 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.

10.4.2 The directors, governors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director, governor or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.

10.4.3 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.

10.4.4 Where the relationship of an officer or another director or governor to a director or governor of the Trust is disclosed, the Standing Order headed 'Disability of directors and governors in proceedings on account of pecuniary interest' (SO 10) shall apply.

### **11. Procurement**

#### 11.1 Duty to comply with Procurement Policy

When making all contracts by or on behalf of the Trust, all directors, officers, staff and agents of the Trust shall comply with the Trust's Procurement Policy which shall be read and followed as Standing Orders.

## 11.2 Competitive Tenders Procedure

In accordance with the Procurement Policy, the Chief Financial Officer shall prescribe procedures for competitive tendering and quotations, which will cover the following:

11.2.1 Competitive Tenders

11.2.2 Competitive Quotations

11.2.3 Negotiations

11.2.4 Post Tender/Quotations Negotiations

11.2.5 Regulations Relating to Works Contracts

11.2.6 Regulations Relating to Service and Supplies Contracts

11.2.7 Conditions of Contracts

11.2.8 Technical Specifications

11.2.9 Form of Contract

11.2.10 Dispute Resolution

11.2.11 Power to Act

All tendering and quotation procedures shall be administered by the Trust procurement department.

## 11.3 EU Directives Governing Public Procurement

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

11.3.2 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'.

## 11.4 Single Tender Action

A single tender action is only applicable if there are no alternative suppliers. All such actions must be authorised in accordance with the Trust's Procurement Policy, the Schedule of Reserved Matters and the

Scheme of Delegation, and must be reported to the Audit Committee on a quarterly basis

## 11.5 Formal Competitive Tendering

11.5.1 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.

11.5.2 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 h) 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) where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with; or
- c) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
- d) specialist expertise is required and is available from only one source; or
- e) 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
- f) 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
- g) where provided for in the Capital Investment Manual; or
- h) where the proposal is novel and better suited to a partnership arrangement - such proposals must be agreed by the Director of Finance and reported to the Board of Directors.

- 11.5.3 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.
- 11.5.4 Where it is decided that competitive tendering is not applicable and should be waived by virtue of 12.4 c) to h) above the fact of the waiver and the reasons should be documented and must be authorised as in SO 12.3. Where less than three suppliers are available to prepare tenders/quotes then the process is as indicated in SO 12.3.
- 11.5.5 Except where SO 12.3, or a requirement under SO 12.4, 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.
- 11.5.6 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.
- 11.5.7 Quotations are required where formal tendering procedures are waived under SO 12.4.1 or 12.4.8 and where the intended expenditure or income is reasonably expected to be between £10,000 and £50,000 per annum.
- 11.5.8 Where quotations are required under they should be obtained from at least three firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Board of Directors.
- 11.5.9 Quotations should be in writing 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.
- 11.5.10 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 by two

officers nominated by the Board of Directors and shall be recorded in a register held by the Foundation Secretary for that purpose.

11.5.11 The Chief Executive or his/her nominated officer should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen shall be recorded by the Procurement Team in a permanent record.

11.5.12 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.

#### 11.6 Where tendering or competitive quotation is not required

11.6.1 The Trust shall use the Procurement Department for procurement of all goods and services unless the Director of Finance Chief Financial Officer 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.

11.6.2 The Director of Finance 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 1614).

#### 11.7 Private Finance

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

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

11.7.2 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

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

## 11.8 Contracts

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

- a) The Standing Orders;
- b) The Trust's SFIs;
- c) The Trust Procurement Policy; and
- d) EU Directives and other statutory provisions.

11.8.2 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.

11.8.3 In all contracts made by the Trust, the Board shall endeavour to obtain best value.

## 11.9 Personnel and Agency or Temporary Staff Contracts

11.9.1 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.

11.9.2 The Chief Executive shall delegate to the Chief Financial Officer the power to negotiate for the provision of healthcare services with purchasers of healthcare.

## 11.10 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

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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.

**11.11 Determination Termination of Contracts for Failure to Deliver Goods or Materials**

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.

**12. Disposals**

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

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

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

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

12.1.4 Items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;

12.1.5 Land or buildings concerning which DoH guidance has been issued but subject to compliance as far as is practicable with such guidance.

### **13. Joint Ventures**

Foundation Trusts are permitted to enter into Joint Venture arrangements with other parties. The Board of Directors should approve all the processes before any commitment is entered into by the Trust. Tendering rules must be complied with to ensure that the Trust has achieved best value and legal advice should be obtained on the contractual issues of the Joint Venture. The Board of Directors shall approve any Joint Venture arrangements.

### **14. In - House Services**

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

14.1.1 Specification group, comprising nominated officer(s) and specialist(s) agreed by the relevant Executive Director;

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

14.1.3 Evaluation group, comprising normally a specialist officer, a Procurement officer and a 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.

14.2 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.

14.3 The evaluation group shall make recommendations to the relevant authorising officer or the Board of Directors, in accordance with the Corporate Governance Policy or the Scheme of Delegation.

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

### **15. Custody of Seal and Sealing of Documents**

#### **15.1 Custody of Seal**

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

#### **15.2 Deeds**

15.2.1 Deeds (contracts under seal) are required for:

- a) All freehold land property transactions;
- b) For all leases that extend for three years or more;
- c) For any 'gratuitous promise' i.e. a transaction in which there is no consideration for the value being given; or

15.2.2 Other contracts may be executed by seal under consultation with the Director of Corporate Affairs.

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

### 15.3 Sealing of Documents

15.3.1 The Seal of the Trust shall not be fixed to any document unless the sealing has been authorised by a resolution of the Board of Directors or where the Chair and Chief Executive have authorised such sealing as an urgent action between meetings. All such items sealed between meetings will be submitted for ratification at the next Board Meeting. The Common Seal shall be affixed in the presence of the Chair or other authorised Director of the Trust, and the Trust Board Secretary, or by two authorised Directors.

15.3.2 Every 12 months, the Board will approve or renew a resolution authorising the Chair, named Directors and the Foundation Secretary to sign on behalf of the Trust documents that require the use of the Seal.

### 15.4 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 when the seal is used.

## 16. **Signature of Documents**

16.1 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, the Director of Corporate Affairs, or such other officers as either of the Chief Executive or Director of Corporate Affairs shall nominate, unless any enactment otherwise requires or authorises, or

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the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

- 16.2 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.

## **17. Miscellaneous**

### **17.1 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 and the Scheme of Delegation and Powers Reserved to the Board of Directors. Updated copies shall be made available to staff designated by the Chief Executive.

### **17.2 Documents having the standing of Standing Orders**

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

### **17.3 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 SOs.