

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**STANDING ORDERS FOR THE PRACTICE AND PROCEDURES OF THE BOARD OF DIRECTORS**

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**POLICY SUMMARY**

The purpose of the Standing Orders for the Board of Directors is to set out the practice and procedures of the Board in order to maintain good standards of governance.

**The Trust monitors the implementation of and compliance with this policy in the following ways:**

Monitoring of implementation and compliance with the Standing Orders for the Board of Directors will be undertaken by the Trust Secretary.

<b>Services</b>	<b>Applicable</b>	<b>Comments</b>
Trustwide	✓	
Essex MH&LD		
CHS		

**The Director responsible for monitoring and reviewing this policy is the Executive Director Corporate Governance & Strategy**

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## INTRODUCTION

### Regulatory Framework

Essex Partnership University NHS Foundation Trust (the Trust) is a public benefit corporation. It was established on 1 April 2017, following the grant of an application pursuant to Section 56 of the National Health Service Act 2006 (the 2006 Act) by Monitor - Independent Regulator of NHS Foundation Trusts.

The functions of the Trust are conferred by this legislation and the Trust will exercise its functions in accordance with the terms of its provider licence (no 120163) and all relevant legislation and guidance.

These Standing Orders add clarity and detail where appropriate. Nothing in these Standing Orders shall override the Trust's constitution, the National Health Service Act 2006 and the Health & Social Care Act 2012.

The constitution at paragraph 35 requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business. The Trust's Standing Orders and wider governance arrangements are further supported by various policies and procedures and for financial matters, by the Standing Financial Instructions (SFIs), Detailed Scheme of Delegation (DSoD), and associated finance procedures. Certain powers are reserved to be exercised by the Board only, others are delegated to individual Executive Directors and/or committees of the Board. These are covered by the Scheme of Reservation & Delegation of Powers of the Board. (SoRD).

The principal place of business of the Trust is at The Lodge, Lodge Approach, Runwell Chase, Wickford SS11 7XX.

As a public benefit corporation the Trust has the power to act as a corporate Trustee of charitable funds. Under section 11 of the Trustee Act 2000 the Trust can appoint a Charitable Funds Committee and delegate its functions to it. This power includes appointing a committee whose members are not members of the Board of Directors. The Trust has appointed a Charitable Funds Committee which operates in accordance with these Standing Orders and its terms of reference (as approved by the Board of Directors) and the relevant guidance from the Charity Commission.

## 1. INTERPRETATION

- 1.1 Save as otherwise permitted by law, at any meeting of the Board of Directors the Chair of the Trust shall be the final authority on the interpretation of these Standing Orders (on which they should be advised by the Chief Executive and the Trust Secretary)
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 and regulations made under it shall have the same meaning in these Standing Orders and in addition:
- 1.2.1 **2006 Act** means the National Health Service Act 2006 (as amended by the Health & Social Care Act 2012)
- 1.2.2 **2012 Act** means the Health & Social Care Act 2012
- 1.2.3 **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act
- 1.2.4 **Board of Directors** or **Board** or **Board Member** or **Member of the Board** means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body in accordance with the constitution. This term is used interchangeably with the term **Director**
- 1.2.5 **Budget** means a resource, expressed in financial terms, proposed by the Trust for the purpose of carrying out, for a specific period, any or all of the functions of the Trust
- 1.2.6 **Chair of the Board** or **Chair of the Trust** or **Chair** means the person appointed under paragraph 28 of the constitution by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its responsibility for the Trust as a whole. The expression “the Chair of the Trust” shall be deemed to include the Vice-Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable
- 1.2.7 **Chief Executive** is the person appointed as the Chief Executive Officer (the Accounting Officer) of the Trust under paragraph 31 of the constitution
- 1.2.8 **Commissioning** means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources
- 1.2.9 **Committee** means a committee appointed by the Board of Directors
- 1.2.10 **Committee members** means persons formally appointed by the Board of Directors to sit on or to chair specific committees

- 1.2.11 **Constitution** means the Trust's constitution which has effect in accordance with Section 56(11) of the 2006 Act
- 1.2.12 **Contracting and procuring** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets
- 1.2.13 **Council of Governors** or **Council** means the Council of Governors of the Trust as described in paragraphs 14 and 18 of the constitution
- 1.2.14 **Deputy Chief Executive** means the officer of the Trust appointed under paragraph 30 of the constitution
- 1.2.15 **Directors** means the Executive and Non-Executive members of the Board of Directors
- 1.2.16 **Executive Chief Finance Officer** means the Chief Finance Officer of the Trust
- 1.2.17 **Executive Director** means a member of the Board of Directors appointed under paragraph 31 of the constitution
- 1.2.18 **Licence** means the Trust's provider licence (no 120163) issued by Monitor on 1 April 2017 (and reissued on 11 October 2017)
- 1.2.19 **Member** means a person registered as a member of one of the constituencies as set out in paragraph 5 of the constitution
- 1.2.20 **Monitor** means the body corporate known as Monitor, as part of NHS Improvement, as provided by Section 61 of the 2012 Act
- 1.2.21 **Motion** means a formal proposition to be discussed and voted on during the course of a meeting
- 1,2,22 **Nominated Officer** means an officer charged with the responsibility for discharging specific task under the Scheme of Reservation & Delegation
- 1.2.23 **Non-Executive Director** means a member of the Board of Directors, including the Chair, appointed by the Council of Governors under paragraph 28 of the constitution
- 1.2.24 **Officer** means employee of the Trust or any other person holding a paid appointment or office with the Trust
- 1.2.25 **SFIs** means the Standing Financial Instructions of the Trust
- 1.2.26 **Scheme of Reservation & Delegation** is the Trust's scheme of reservation and delegation of powers approved by the Board of

Directors

- 1.2.27 **SOs** means these Standing Orders (for the Board of Directors)
  - 1.2.28 **Trust** means Essex Partnership University NHS Foundation Trust
  - 1.2.29 **Trust headquarters** means The Lodge, Lodge Approach, Runwell Chase, Wickford SS11 7XX
  - 1.2.30 **Trust Secretary** is the person appointed by the Chair and Chief Executive as the Trust Secretary
  - 1.2.31 **Vice-Chair** means the Non-Executive Director appointed under paragraph 30 of the constitution
  - 1.2.32 **Working days** means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday
- 1.3 Any reference to an Act shall, where appropriate, include any Act amending or consolidating that Act and any regulation or order made under any such Act.



## **2. THE BOARD OF DIRECTORS**

2.1 The general duty of the Board and of each Director individually is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public. All business shall be conducted in the name of the Trust. The business of the Trust is to be managed by the Board. A third party dealing in good faith with the Trust shall not be affected by any defect in the process by which Directors are appointed or any vacancy on the Board

2.2 All funds received in trust shall be held in the name of the Trust as corporate Trustee

2.3 The powers of the Trust shall be exercisable by the Board

2.4 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the SoRD and have effect as if incorporated into these SOs

### **2.5 Patients Forum Representatives**

The Trust will continue to be subject to the general duty to consult and involve patients, and to seek assurance that the appropriate process has been adhered to in line with national guidance

### **2.6 Composition of the Board**

In accordance with paragraph 25 of the constitution, the composition of the Board of the Trust shall be:

- A Non-Executive Chair
- Not less than five and not more than eight other Non-Executive Directors
- Not less than four and not more than eight Executive Directors

so that the number of Non-Executive Directors including the Chair shall always exceed the number of Executive Directors including the Chief Executive.

### **2.7 Appointment and Removal of the Chair and other Non-Executive Directors**

In accordance with paragraph 28 of the constitution and guidance issued by Monitor, the Chair and the other Non-Executive Directors are appointed (and removed) by the Council at a general meeting of the Council

### **2.8 Terms of Office of the Chair and other Non-Executive Directors**

2.8.1 The Chair and Non-Executive Directors shall be appointed with terms and conditions of office as decided by the Council at a general meeting taking account of Monitor's governance guidance

- 2.8.2 The Chair and Non-Executive Directors shall be appointed for a term of office of up to three years
- 2.8.3 The Chair and Non-Executive Directors may be appointed to serve a further term of up to three years (depending on satisfactory performance) and subject to the provisions of the 2006 Act in respect of removal of a Director
- 2.8.4 The Chair and Non-Executive Directors may in exceptional circumstances serve longer than six years subject to annual re-appointment and subject to external competition if recommended by the Board and approved by the Council. In establishing that the Non-Executive Director continues to be independent, the Chair will take into account Monitor's guidance and conduct an evidence-based evaluation
- 2.8.5 Any reappointment after the second term of office for the Chair and Non-Executive Directors shall be subject to a performance evaluation carried out in accordance with procedures approved by the Council to ensure that those individuals continue to be effective, demonstrate commitment to the role and demonstrate independence
- 2.9 **Appointment and Powers of Vice-Chair**
- 2.9.1 The Council at a general meeting shall appoint one of the Non-Executive Directors as a Vice-Chair in accordance with paragraph 30.1 of the constitution and, in similar manner, shall remove any person so appointed from that position and appoint another Non-Executive Director in his place in accordance with paragraphs 28.3 and 28.4 of the constitution
- 2.9.2 In line with paragraph 30.2 of the constitution, before a resolution for any such appointment is passed, the Board may decide which of the Non-Executive Directors it recommends for that appointment; the Chair shall advise the Council of the recommendation from the Board which will not be binding upon the Council but will be presented to the Council at its meeting before it comes to a decision
- 2.9.3 In the absence of the Chair, the Vice-Chair shall be the acting Chair of the Trust
- 2.9.4 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair. The Council may then appoint another Vice-Chair in accordance with paragraph 30.1 of the constitution and SO 2.9
- 2.9.5 Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Vice-Chair shall act as Chair and be entitled to exercise all the rights and powers conferred upon the Chair by the constitution including but without limit those set out in

these SOs and in the SOs of the Council until a new Chair is appointed or the existing Chair resumes their duties, as the case may be. References to the Chair in these SOs shall, so long as there is no Chair able to perform his duties, be taken to include references to the Vice-Chair

**2.10 Appointment and Removal of the Chief Executive**

2.10.1 In accordance with the constitution paragraph 31.1, the Non-Executive Directors of the Trust will appoint (and remove) the Chief Executive

2.10.2 The appointment of the Chief Executive requires the approval of the majority of the Council at a meeting of the Council in accordance with paragraph 31.2 of the constitution

**2.11 Appointment and Removal of Executive Directors**

In accordance with the constitution paragraph 31.3, all Executive Directors (excluding the Chief Executive) are to be appointed (and removed) by a committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors.

**2.12 Appointment of the Deputy Chief Executive**

In accordance with paragraph 30.4 of the constitution, the Board of Directors Nominations Committee, which shall comprise all of the Non-Executive Directors, may nominate one of the Executive Directors to be the Deputy Chief Executive.

**2.13 Joint Executive Directors**

2.13.1 Where more than one person is appointed jointly to an Executive Director post, those persons shall count for the purpose of SO 2.6 (composition of the Board) as one person (save that the Executive positions of registered Medical Practitioner or registered Dentist and registered Nurse or registered Midwife cannot be shared between the two professions) in accordance with paragraph of 31.4 of the constitution

2.13.2 Where such an arrangement is in force, both individuals shall be able to attend a meeting of the Board provided that at any meeting of the Board they may only count as one individual for the purposes of the quorum and may only exercise one vote between them

2.13.3 Where the two individuals disagree as to how to vote at a Board meeting, then no vote shall be cast. If only one individual attends the meeting they can cast the vote on behalf of both

2.13.4 The presence of either or both persons shall count as the presence of one person for the purposes of SO 30.17 (Quorum)

**2.14 Appointment and Removal of the Senior Independent Director**

2.14.1 The Board shall (following consultation with the Council) appoint one of the Non-Executive Directors as the Senior Independent Director in accordance with paragraph 30.3 of the constitution, for such period not exceeding the remainder of the individual's term of office as a Non-Executive Director

2.14.2 Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board (following consultation with the Council) may thereupon appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of this Standing Order.

**2.15 Trust Secretary**

The Chair and Chief Executive shall appoint a Trust Secretary to act independently of the Board, to provide advice on corporate governance issues to the Chair and the Board, and to monitor the Trust's compliance with the regulatory framework, the constitution and the SOs.

**2.16 Role of the Chief Executive**

2.16.1 The Chief Executive is responsible for implementing the decisions of the Board in the running of the Trust's business

2.16.2 The Chief Executive reports to the Chair and the Board

2.16.3 The Chief Executive is the Accounting Officer and shall be responsible for ensuring the discharge of obligations under all relevant financial directions and guidance issued by NHS FT regulators or any other relevant body

**2.17 Role of the Executive Chief Finance Officer**

2.17.1 The Executive Chief Finance Officer shall be responsible for the provision of financial advice to the Trust and to its Directors and for the supervision of financial control and accounting systems

2.17.2 The individual shall be responsible, along with the Chief Executive, for ensuring the discharge of obligations under all relevant financial requirements, conditions or notices issued by NHS FT regulators or any other relevant body.

**2.18 Role of Executive Directors**

Executive Directors shall exercise their authority within the terms of these SOs, SFIs and the SoRD

**2.19 Role of the Chair**

2.19.1 The Chair shall be responsible for the leadership of the Board (and Council), and chair all Board (and Council) meetings when present

- 2.19.2 The Chair must ensure effectiveness in all aspects of the Board's role and lead on setting the agenda for meetings and ensure that adequate time is available for discussion of agenda items and strategic issues
- 2.19.3 The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board (and Council) in a timely manner with all the necessary information and advice being made available to the Board (and Council) to inform the debate and ultimate decisions.
- 2.19.4 The Chair is responsible for ensuring that the Board and the Council work effectively together

## 2.20 **Role of Non-Executive Directors**

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may, however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

## **3. MEETINGS OF THE BOARD**

### 3.1 **Admission of the Public and the Press**

3.1.1 The meetings of the Board shall be open to members of the public and the press in accordance with paragraph 34.1 of the constitution

3.1.2 Members of the public and the press may be excluded from a meeting for special reasons. Special reasons include for reasons of commercial confidentiality. The Board will resolve that:

*"In accordance with paragraph 34.1 of the constitution and paragraph 18E of Schedule 7 of the 2006 Act, the Board of Directors resolves that there are special reasons to exclude members of the public from Part 2 of this meeting having regard to commercial sensitivity and/or confidentiality and/or personal information and/or legal professional privilege in relation to the business to be discussed"*

3.1.3 The Chair 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 Trust's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as detailed in SO 3.1.2 above

3.1.4 Nothing in these SOs 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 and such agreement not to be unreasonably withheld

3.1.5 Matters discussed at a meeting following the exclusion of the public and representatives of the media shall be confidential to the Board and shall not be disclosed by any person attending the meeting without the consent of the Chair of the meeting

**3.2 Calling Meetings**

3.2.1 Ordinary meetings of the Board shall be held at such times and places as the Board may determine

3.2.2 Meetings of the Board are convened by the Trust Secretary, by order of the Chair. Not less than one-third of the Directors can requisition the Trust Secretary to call a meeting at any time by giving written notice to the Trust Secretary

3.2.3 The Trust shall hold meetings of the Board at least six times in each calendar year

**3.3 Notice of Meetings**

3.3.1 The Trust Secretary shall give to all Directors at least ten (10) working days written notice of the date and place of every meeting of the Board

3.3.2 The Trust Secretary will call a meeting at the order of the Chair or the requisition of not less than one-third of the Directors. The Trust Secretary will call the meeting as soon as reasonably possible after receipt of such an order or requisition

3.3.3 If the Trust Secretary does not send notice a meeting of the Board within ten (10) working days of receiving an order from the Chair or a requisition from not less than one-third of the Directors pursuant to SO 3.2.2, the Directors who made the requisition may convene the meeting themselves by giving written notice to all Directors; this notice must be signed by all of the Directors who signed the requisition. A meeting called under this SO may only consider the business set out in the requisition.

3.3.4 Agendas will be sent to Directors not later than three (3) working days before the meeting and supporting papers, whenever possible, shall accompany the agenda, save in the case of the need to conduct urgent business

3.3.5 A notice or other document(s) to be served upon a Director under these SOs shall be manually delivered or sent by post to the Director at his usual place of residence which he shall have last notified to the Trust, or where sent by email, to the address which he shall have last notified to the Trust as the address to which a notice or other document may be sent by electronic means

- 3.3.6 A notice or other document(s) where manually delivered or sent by post shall be presumed to have been served on the next working day following the day of delivery and where sent by email at the time at which the email is sent
  - 3.3.7 Failure to serve notice and supporting papers on any Director shall not affect the validity of a meeting
  - 3.3.8 Save in the case of urgent meetings, for each meeting of the Board a public notice of the date, time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's head office and on the Trust's internet site for general access at least three working days before the meeting
  - 3.3.9 Before holding a meeting, the Board must send a copy of the agenda of the meeting to the Council
- 3.4 **Notice of Extraordinary Meetings**
- 3.4.1 At the request of the Chair or by at least one-third of the whole number of members of the Board, the Trust Secretary shall send a written notice to all Directors within 10 (ten) working days of receipt of such a request specifying the date and place to discuss the specified business
  - 3.4.2 If the Trust Secretary fails to call such a meeting, then the Chair or at least one-third of the whole number of members of the Board, whichever is the case, shall call such a meeting
- 3.5 **Notice of Urgent Meetings**
- 3.5.1 At the request of the Chair or not less than one-third of Directors, the Trust Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Trust Secretary shall give Board members as much notice as is possible in light of the urgency of the request
  - 3.5.2 If the Trust Secretary fails to call such a meeting, then the Chair or at least one-third of the whole number of Board members shall call such a meeting
  - 3.5.3 In the case of a meeting called under SOs 3.4 and 3.5, the notice shall be signed by the Chair or at least one-third of the whole number of Board members
  - 3.5.4 No business shall be transacted at the meeting called under SOs 3.4 and 3.5 other than that specified in the notice. Agendas will be sent to Board members three working days before the meeting and supporting papers shall accompany the agenda, save in the case of urgent meetings

3.5.5 In the case of a meeting called under SOs 3.4 and 3.5 failure to serve such a notice on more than three Directors will invalidate the meeting

### 3.6 **Setting the Agenda**

3.6.1 The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted

3.6.2 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 (ten) working days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than seven (7) working days before a meeting may be included on the agenda at the discretion of the Chair

3.6.3 Before holding a meeting, the Trust Secretary must send a copy of the agenda of the Board meeting to the members of the Council and may be sent in any manner permitted under SO 3.3.5 and 3.3.6

### 3.7 **Petitions**

Where a petition has been received by the Trust not less than ten (10) working days before a meeting of the Board, the Chair of the Board shall include the petition as an item for the agenda of the next Board meeting

### 3.8 **Chair of Meeting**

3.8.1 At any meeting of the Board, the Chair of the Board, if present, shall preside. If the Chair is absent from the meeting the Vice-Chair, if present, shall preside. If the Chair and Vice-Chair are absent (and provided the Chair has waived the requirement for the Chair or Vice-Chair to be present under SO 3.17), the Non-Executive Directors present shall nominate a Chair for the meeting from their number and who has no conflict of interest

3.8.2 If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Vice-Chair, if present, shall preside. If the Chair and Vice-Chair are absent, or are disqualified from participating, such Non-Executive Director as the Non-Executive Directors present shall nominate, shall preside

### 3.9 **Motions**

3.9.1 **Notices of Motion:** A Director desiring to move or amend a motion shall send a written notice thereof at least ten (10) working 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 SO shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda



- 3.9.2 **Withdrawal of motion or amendment:** 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
- 3.9.3 **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 (6) calendar months shall bear the signature of the Board member who gives it and also the signature of four other Board members, to include at least one non-executive director and one executive director. Such notice shall be sent at least ten (10) working days before the meeting to the Chair, who shall insert in the agenda for the meeting. When any such motion has been disposed of by the Board, it shall not be possible for any Board member other than the Chair to propose a motion to the same effect within six months. However, the Chair may do so if they consider it appropriate
- 3.9.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto
- 3.9.5 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\*
- provided that in the case of sub-paragraphs denoted by \* above and to ensure objectivity, motions may only be put by a Director who has not previously taken part in the debate
- 3.9.6 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

### 3.10 **Chair's Ruling**

Statements of Directors made at meetings of the Board 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, relevancy, regularity and any other matters shall be final

### 3.11 **Voting**

- 3.11.1 Subject to the following provisions of this clause, questions arising at a meeting of the Board shall be decided by a majority of votes. Each Director shall have one vote:

- (a) in the event of joint Executive Directors, SO 2.13 shall apply. In case of an equality of votes the Chair shall have a second casting vote
    - (b) no resolution of the Board shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present
  - 3.11.2 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
  - 3.11.3 A paper ballot may also be used if a majority of the Directors present so request in which case any person attending by telephone, teleconference, video or computer link shall cast their vote verbally (such verbal vote to be recorded in the minutes)
  - 3.11.4 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
  - 3.11.5 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot)
  - 3.11.6 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote
  - 3.11.7 Directors may participate (and vote) in Board meetings by telephone, teleconference, video or computer link with the prior agreement of the Chair; participation in a meeting in this manner shall be deemed to constitute a presence in person at the meeting
  - 3.11.8 An officer who has been appointed formally by the Board 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 and has a responsibility to consult with the Executive Director if available. An officer attending the Board 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, but has a responsibility to consult with the Executive Director if possible and to ensure their views are included within the debate, prior to the vote taking place. An officer's status when attending a meeting shall be recorded in the minutes
- 3.12 Minutes**
- 3.12.1 The minutes of the proceedings of a meeting shall be drawn up by the Trust Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it
  - 3.12.2 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

- 3.12.3 Minutes shall be retained in the Trust Secretary's office
  - 3.12.4 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 as required by Code of Practice on Openness in the NHS
  - 3.12.5 As soon as practicable after holding a Board meeting, the Trust Secretary must send a copy of the approved minutes of the meeting to the members of the Council of Governors
  - 3.12.6 Where Directors have concerns that cannot be resolved about the running of the Trust or a proposed action, they should ensure that their concerns are recorded in the Board minutes. On resignation, a Director should provide a written statement to the Chair for circulation to the Board, if they have any such concerns
- 3.13 **Informal Meetings and Meetings as a Committee**
- 3.13.1 The Chair should hold meetings with the Non-Executive Directors without the Executives Directors present
  - 3.13.2 Led by the Senior Independent Director, the Non-Executive Directors should meet without the Chair present, at least annually, to appraise the Chair's performance, and on other such occasions as are deemed appropriate
  - 3.13.3 Notwithstanding anything in these SOs, the Directors may meet informally or as a committee of the Board at any time and from time to time, and shall not be required to admit any member of the public or any representative of the media to any such meeting or to send a copy of the agenda for that meeting or any draft minutes of that meeting to any other person or organisation
- 3.14 **Amendment of Standing Orders**
- 3.14.1 These SOs may be amended without the need to amend the constitution. These SOs may be amended only if:
    - (a) a notice of motion under SO 3.9.1 (Notices of Motion) has been given
    - (b) not fewer than half of the total number of Non-Executive Directors vote in favour of the amendment
    - (c) at least two-thirds of Directors are present
    - (d) the amendment proposed does not contravene a statutory provision or direction made by Monitor

- 3.14.2 For the avoidance of doubt, SO 3.17 (Quorum) shall not apply to the variation of the SOs and the higher quorum required in SO 3.15 (Variation and Amendment of Standing Orders) shall be reached

**3.15 Waiver/Suspension of Standing Orders**

- 3.15.1 Except where this would contravene any statutory provision or any guidance issued by Monitor or the rules relating to the Quorum (SO 3.17), any one or more of the SOs may be waived at any meeting (for any specified period of time), provided that at least two-thirds of the whole number of the members 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 waiver. For the avoidance of doubt, SO 3.17 shall not apply to the waiver of the Standing Orders and the higher quorum required in this SO 3.15 shall be reached
- 3.15.2 No formal business may be transacted while SOs are suspended
- 3.15.3 A decision to waive the SOs shall be recorded in the minutes of the meeting and a separate record of matters discussed relating to the waiver of the SOs shall be made and shall be available to the Chair and members of the Board
- 3.15.4 The Audit Committee shall review every decision to waive the SOs

**3.16 Record of Attendance**

- 3.16.1 The names of the Chair, Directors and all others present at the meeting (other than members of the public and media) who are present at a meeting of the Board shall be recorded in the minutes
- 3.16.2 A meeting of the Board refers to officers being physically present and officers being present via the use of technology, as defined in SO 3.17.5 and 3.18

**3.17 Quorum**

- 3.17.1 Seven (7) Directors including not less than two (2) Executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive) and not less than two (2) Non-Executive Directors (one of whom must be the Chair or the Vice-Chair) shall form a quorum provided that a meeting shall be quorate if:
- (a) the Chief Executive has waived the requirement for the Chief Executive or the Deputy Chief Executive to be present; and
  - (b) the Chair has waived the requirement for the Chair or the Vice-Chair to be present
- 3.17.2 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum

- 3.17.3 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 SO 7) they 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
- 3.17.4 The above requirement for at least two (2) Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example, when the Board considers the recommendations of the Remuneration Committee)
- 3.17.5 Board Directors may participate (and vote) in its meetings by telephone, teleconference, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 3.18 Meetings: Electronic Communication**
- 3.18.1 In this SO, 'communication' and 'electronic communication' shall have the meanings as set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof
- 3.18.2 A Director in electronic communication with the Chair and all other parties to a meeting of the Board or of a standing committee or sub-committee of the Board shall be regarded for all purposes as being present and personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication
- 3.18.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair is physically present
- 3.18.4 Meetings held in accordance with this SO are subject to SO 17 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting
- 3.18.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

#### **4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

- 4.1 The NHS Act 2006 provides for all the powers of the Trust to be exercised by the Board on its behalf. It also states that the Board may delegate any of its powers to a committee of Directors or to an Executive Director
- 4.2 Subject to such requirements, conditions, notices or guidance as may be given by Monitor, the Board may make arrangements in these SOs for the exercise, on behalf of the Board, of any of its functions by either a committee or an Executive Director
- 4.3 In each case subject to such restrictions and conditions as the Trust thinks fit
- 4.4 Where a function is delegated (as detailed in the Trust's SoRD, i.e. delegation to committees or officers) the Trust retains full responsibility
- 4.5 **Emergency Powers**  
The powers which the Board has retained to itself within these SOs may in emergency situations be exercised by the Chief Executive or in his absence, the Deputy Chief Executive, provided that prior to taking such action, the Chief Executive has consulted with and gained the agreement of the Chair or in his absence, the Vice-Chair. Where time permits the Chair should contact all Board members in writing to allow the opportunity for objection. The exercise of such powers by the Chief Executive shall be reported to the next formal meeting of the Board held in public for ratification
- 4.6 **Delegation to Committees and Officers**
- 4.6.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by committees, which it has formally constituted in accordance with statute and such requirements, conditions, notices or guidance as may be given by Monitor. The constitution and terms of reference of these committees and their specific executive powers shall be approved by the Board
- 4.6.2 The Board may delegate certain functions of the Trust to an Executive Director
- 4.6.3 The Chief Executive shall prepare a detailed SoRD identifying the functions to be delegated to either an Executive Director or a committee of the Board. The proposals shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the detailed SoRD that shall be considered and approved by the Board as indicated above
- 4.6.4 Nothing in the SoRD shall restrict or limit the responsibility of the Executive Chief Finance Officer to provide information and advice to the Board in accordance with any statutory requirements, but subject to his discharge of these statutory requirements, the Executive Chief

Finance Officer shall be accountable to the Chief Executive for the performance of his role

4.6.5 The arrangements made by the Board as set out in the SoRD shall have effect as if incorporated in these SOs

**4.7 Non-compliance with the Standing Orders**

Full details of any non-compliance with these SOs together with the circumstances around the non-compliance shall be reported by the relevant Executive Director immediately to the Chair and the Chief Executive and to the next formal meeting of the Board for action and ratification. All staff have a duty to disclose any potential or impending non-compliance to their Executive Director, who in turn has a duty to report to the Chief Executive and the Chair as soon as possible.

<b>5. COMMITTEES</b>
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5.1 The National Health Service Act 2006 states that:

5.1.1 The Board shall appoint an Audit Committee of Non-Executive Directors to perform such monitoring, reviewing and other functions as appropriate in accordance with this SO and the constitution paragraph 43

5.1.2 The Board shall appoint a Remuneration Committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Executive Directors in accordance with SO 2.10 and 2.11 and the constitution paragraph 37

5.2 Subject to the NHS Act 2006 and the regulatory framework and any such guidance as may be issued by Monitor, the Board may appoint standing committees of the Board (ref SO 4.6 Delegation to Committees and Officers)

5.3 The SOs of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Trust. In which case the term "Chair" is to be read as a reference to the Chair of the committee as the context permits, and the term "member" is to be read as a reference to a member of the committee also as the context permits

5.4 There is no requirement to hold meetings of committees in public

5.5 Each such standing committee (including their sub-committees and working groups) shall have terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any legislation and regulation or direction issued by Monitor. Such terms of reference shall have effect as if incorporated into the SOs.

- 5.4 Committees are authorised to establish sub-committees which shall operate as working groups and shall have no delegated executive powers from the Board or a committee of the Board
- 5.5 The Board shall approve the appointments to each of the committees which it has formally constituted
- 5.6 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor and/or the law, and where such appointments are to operate independently of the Board, such appointment shall be made in accordance with the regulations and directions made by Monitor and/or the law
- 5.7 The committees established by the Board are attached at Appendix A of the SOs
- 5.8 The Board may change the committees, without requirement to amend these SOs
- 5.9 A Board member or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board shall resolve that it is confidential
- 5.10 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. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

### **6.1 Declaration of Interests**

6.1.1 All Board members have a statutory duty to avoid a situation in which they have (or can have) a direct or indirect interest that conflicts (or may conflict) with interests of the Trust. Any Director who has an interest in a matter that he/she is required to declare in accordance with paragraph 36 of the Trust's constitution shall declare such interest to the Board and:

- (a) shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- (b) shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

6.1.2 Details of any such interest shall be recorded in the Register of Interests of Board members. At the time Board members' interests are declared, they should be recorded in the Board of Directors minutes. Any changes in interests should be declared in



accordance with the requirements of paragraph of the Trust's constitution

- 6.1.3 Any Board member who fails to disclose any interest required to be disclosed under the preceding clause must permanently vacate their office if required to do so by a majority of the remaining Board members and (in the case of a Non-Executive Director) by the requisite majority of the Council
- 6.1.4 Board members' directorships of companies which may conflict with their management responsibilities should be published in the Trust's annual report. As the Trust maintains a Register of Interests which is open to the public, the disclosure in the annual report may at the discretion of the Board, be limited to a comment on how access to the information in that Register may be obtained
- 6.1.5 During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision
- 6.1.6 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair or the Trust Secretary

## 6.2 **Register of Interests**

- 6.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board members. In particular the Register will include details of all Directorships and other interests which have been declared by both Executive and Non-Executive Board members in accordance with paragraphs 36 and 40 of the Trust's constitution
- 6.2.2 The Trust Secretary will keep these details up to date by means of an annual review of the Register in which any changes to the interests declared during the preceding 12 (twelve) months will be incorporated. It is the responsibility of each member of the Board to provide an update to the Trust Secretary of their register entry if their interest changes
- 6.2.3 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

## 6.3 **Register of Gifts and Hospitality**

- 6.3.1 A Register of Gifts and Hospitality will be maintained by the Trust Secretary for Board members and staff
- 6.3.2 The Register will be published on the Trust's website in line with regulatory requirements.

## **7. CONFLICT OF INTEREST AND PECUNIARY INTEREST**

### **7.1 Disclosure of Interest**

Subject to the following provisions of this SO, if a Board member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall disclose that interest to the Board and/or meeting as soon as he becomes aware of it

### **7.2 Conflict of Interest**

During the course of a Board meeting (or other meeting) if a conflict of interest is disclosed, the Director concerned shall withdraw from the meeting and play no part in the relevant discussion or decision

7.3 The Board may exclude the Director from a meeting of the Board while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration

7.4 Any remuneration, compensation or allowances payable to the Chair or a Non-Executive Director shall not be treated as a pecuniary interest by the Trust for the purpose of this SO

7.5 For the purpose of this SO, a Board member shall be treated, subject to SO 7.7, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

7.5.1 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

7.5.2 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 sibling, parent, child, co-habiting partner, married persons living together, the interest of one spouse shall, if known to the other, be deemed for the purposes of this SO to also be an interest of the other.

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

7.6.1 of his membership of a company or other body, if they have no beneficial interest in any securities of that company or other body

7.6.2 of an interest in any company, body or person with which he is connected as mentioned in SO 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter

7.7 In the event that the Board member having an indirect pecuniary interest in a contract (including a proposed contract or other matter) by virtue of holding securities of the company concerned, then for the Board member to be able to participate in the consideration or discussion of the contract (or other matter), and vote on any question with respect to it, the following requirements need to be met:

7.7.1 If one class of share capital is held, the Board member holds the lower of £10,000 or 1/100<sup>th</sup> of the total nominal value of issued share capital of the company concerned; or

7.7.2 If more than one class of share capital is held, the Board member holds the lower of £10,000 or 1/100<sup>th</sup> of the total issued share capital of that class

However, it remains the responsibility of the individual to disclose his interest

7.8 This SO applies to a committee or sub-committee or a joint committee of the Board as it applies to the Board and applies to any such committee or sub-committee as it applies to a Director.

## **8. STANDARDS OF BUSINESS CONDUCT POLICY**

8.1 All Board members must comply with the Trust's standards of business conduct policy as amended from time to time.

8.2 All Board members should comply with this SO 8, Appendix B national guidance contained in HSG 1993/5 *Standards of Business Conduct for NHS Staff*, the *Standards for members of NHS boards and Clinical Commissioning Group governing bodies in England (November 2012)* included in Appendix C, the Trust's Counter Fraud Policy and Procedure and any such guidance issued by Monitor or the Department of Health from time to time

### **8.3 Interest of Officers in Contracts**

8.3.1 If it comes to the knowledge of an officer of the Trust that a contract in which they have any pecuniary interest not being a contract to which they themselves are party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive of the fact that they are interested therein

8.3.2 An Officer should also declare to the Chief Executive in accordance with Trust procedure, any other employment, business or other relationship of theirs, or of a spouse/partner/other family member, that

conflicts, or might reasonably be predicted could conflict with the interests of the Trust

- 8.3.3 The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff, in accordance with Trust procedure

**8.4 Canvassing of, and Recommendations by, Board Members in Relation to Appointments**

8.4.1 Canvassing of Board members of the Trust or of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the contractor for such appointment. The contents of this provision of the SO shall be included in application forms or otherwise brought to the attention of contractors

8.4.2 A Board member shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this clause of this SO shall not preclude a Board member from giving written testimonial of a contractor's ability, experience or character for submission to the Trust

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

**8.5 Relatives of Board Members or Officers**

8.5.1 Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Board member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal

8.5.2 Every Board member and officer of the Trust shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that Board member or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made

8.5.3 On appointment, Board members (and prior to acceptance of an appointment in the case of officer Board members) should disclose to the Board whether they are related to any other Board member or holder of any office in the Trust

8.5.4 Where the relationship to a Board member of the Trust is disclosed, SO 7 applies.

## **9. TENDERING AND CONTRACT PROCEDURE**

### **9.1 Duty to comply with Standing Orders and Standing Financial Instructions**

The procedures to be followed by the Trust in relation to all contract opportunities with the Trust and for awarding all contracts with the Trust shall comply with the SOs, SFIs, the financial limits specified in the detailed SoRD, and the Trust's Tendering & Quotation Policy and Procedure.

### **9.2 Legislation Governing Public Procurement**

9.2.1 The Trust shall comply with the Public Contracts Regulations 2006 or the Public Contracts Regulations 2015 (the "Regulations") as applicable and any European Union (EU) Directives relating to EU procurement law having direct effect in England (the "Directives") and any other duties derived from EU Treaty ("Treaty Obligations") and any other duties derived from the UK common law ("Common Law Duties") and where applicable The National Health Service (Procurement, Patient Choice and Competition)(No.2) Regulations 2013 (the Regulations, Directives, Treaty Obligations and Common Law Duties together are referred to elsewhere in those SOs as "Procurement Legislation"). The Procurement Legislation as from time to time amended shall have effect as if incorporated in these SOs and the Trust's Standing Financial Instructions

9.2.2 The Trust should consider obtaining support from the NHS Supply Chain and/or the Cabinet Office where relevant and/or any suitably qualified professional advisor (including where appropriate legal advisors to ensure compliance with Procurement Legislation when engaging in tendering procedures)

9.2.3 The Trust shall consider the application of any applicable duty to consult or engage the public or any relevant Overview and Scrutiny Committee of a Local Authority prior to commencing any procurement process for a contract opportunity

9.2.4 When procuring services, the Trust should have regard to the requirements of the Public Services (Social Value) Act 2012 and its supporting regulations and guidance, as amended.

### **9.3 Guidance on Procurement and Commissioning**

9.3.1 The Trust should have regard to all relevant guidance issued in relation to the conduct of procurement practice, including but not limited to:

- (a) the Department of Health's "*Capital Investment Manual*" and "Estate Code" in respect of capital investment and estate and property transactions save where either has been superseded by later published guidance;
- (b) policies and procedures in place for the control of all tendering activity carried out through Reverse Auctions. For further

guidance on Reverse Auctions refer to [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk); and

- (c) in the case of management consultancy contracts the Department of Health guidance "*The Procurement and Management of Consultants within the NHS*" or any successor guidance issued by the Department of Health;

or any successor to such guidance issued from time to time.

#### 9.4 **Formal Competitive Tendering**

9.4.1 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 when so required by any Procurement Legislation or as otherwise set out in the Trust's Tendering and Quotation Policy and Procedure and/or the DSoD

9.4.2 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 (f) below) where:

- (a) the estimated expenditure or income does not, or is not reasonably expected to, exceed the minimum procurement threshold for the purposes of the Regulations or any figures set by the Board, (this figure to be reviewed annually); or
- (b) the supply is proposed under special arrangements negotiated by the DoH, to the extent that these arrangements comply with the Regulations and utilising them will not cause the Trust to breach any of its obligations arising pursuant to any Procurement Legislation, 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 and the relevant tests set out in the Regulations for such instances have been met; 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, in deciding if this provision can be relied on, the relevant/corresponding provision in the Regulations will need to be satisfied; or
- (f) there is a working 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, in deciding if this provision can

be relied on the relevant/corresponding provision in the Regulations will need to be satisfied; or

- (g) provided for in the Capital Investment Manual; or
- (h) the supply of goods or services is covered by an NHS Framework Agreement, and the price is certain (i.e. quoted)

The waiving of competitive tendering procedures 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

Where it is decided that competitive tendering is not applicable and should be waived by virtue of (c) to (f) above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Executive Operational Committee. All such waivers should also be reported at the next available meeting of the Audit Committee

- 9.4.3 Except where SO 9.4.2, or a requirement under SO 9.2, applies, the Trust 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/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required
- 9.4.4 The Trust shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. As an alternative to maintaining its own list the Trust may, where appropriate and with appropriate amendment to this section and the Tendering & Quotation Procedure approve a list prepared by or for another body. Where in the opinion of the Executive Chief Finance Officer it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive for approval
- 9.4.5 Tendering procedures are set out in the Trust's Tendering & Quotation Procedure.

## 9.5 **Quotations**

- 9.5.1 Quotations are required where formal tendering procedures are waived under SO 9.4.2 (a) or (c) and where the intended expenditure is reasonably expected to exceed the financial limit specified in the DSoD
- 9.5.2 Where quotations are required under SO 9.5.1 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
- 9.5.3 Quotations should normally be in writing, (subject to limits specified in SFIs and occasions when verbal quotes can be obtained)

- 9.5.4 All quotations should be treated as confidential and should be retained for inspection. A written record of verbal quotations should also be retained
- 9.5.5 The Chief Executive or the nominated officer (via the DSoD) should select the quotations which gives the best quality and value for money. If this is not the lowest cost then this fact and the reasons why the lowest quotation was not chosen should be stated in a permanent record
- 9.5.6 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 the nominated officer, possible or desirable to obtain competitive quotations
  - (b) the goods/services are required urgently.

**9.6 Where tendering or competitive quotation is not required**

- 9.6.1 The Trust shall use NHS Supply Chain for procurement of all goods and services unless the Chief Executive or nominated officers deem it inappropriate.

Competitive quotations should be sought for all expenditure in excess of the limit specified in the DSoD. However, there are a number of approved instances when three competitive quotes need not be sought as follows:

- (a) Sole Supplier - specialist expertise is required and is available from only one source
- (b) Agency/Consultancy Staff - where the goods/services purchased are staffing expertise or agency staff or expenditure in relation to training or training courses
- (c) Part order of tendered contract
- (d) Call off order
- (e) Specialist training course
- (f) Specialist research
- (g) NHS Framework Agreement – if the supply of goods or services is on a national framework agreement, and the price is certain (i.e. quoted).

A waiver form needs to be completed if one of these instances does not apply.

In the event that three competitive quotations cannot be obtained and none of the above reasons apply, then a formal waiving of competitive quotations needs to occur and section C of the waiver form needs to be completed and authorised by both the Executive Chief Finance Officer



and the Chief Executive. This decision then needs to be reported to the next available meeting of the Audit Committee

9.6.2 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering (SO 11).

## 9.7 **Private Finance/Procure 22**

The Trust may consider using PFI/Procure 22 when considering a capital procurement. When the Board proposes that PFI/Procure 22 be considered:

9.7.1 The Chief Executive shall demonstrate that the scheme represents value for money and genuinely transfers risk to the private sector

9.7.2 The proposal must be specifically agreed by the Board

9.7.3 Trust competitive tendering/quotations procedures should apply where necessary.

## 9.8 **Contracts**

9.8.1 The Board of Directors may only enter into contracts on behalf of the Trust within the statutory powers delegated to it and shall comply with:

- (a) these SOs;
- (b) the Trust's SFIs;
- (c) EU Directives and other statutory provisions;
- (d) any relevant and mandatory directions including Monitor's guidance on Risk Evaluation for Investment Decisions, the DoH's Capital Investment Manual, Estate Code and guidance on the Procurement and Management of Consultants;
- (e) such of the NHS Standard Contract Conditions as are applicable.

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.

9.8.2 In all contracts made by the Trust, the Board shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.

## 9.9 **Personnel and Agency or Temporary Staff Contracts**

The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

**9.10 Legally Binding Contracts (LBC) for the Provision of Healthcare**

Legally binding contracts for the supply of healthcare services shall be drawn up in accordance with legal advice, best practice and where possible use the NHS Standard model contract. These legally binding contracts will be administered by the Trust.

**9.11 Cancellation of Contracts**

Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the NHS, 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:

9.11.1 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

9.11.2 if the like acts shall have been done by any person employed by them or acting on their behalf (whether with or without the knowledge of the contractor); or

9.11.3 if in relation to any contract with the Trust the contractor or any person employed by them or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916, the Bribery Act 2010 and any other appropriate legislation.

**9.12 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:

9.12.1 such default; or

9.12.2 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.

- 9.13 **Contracts involving Funds Held on Trust** shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Act.

## **10. DISPOSALS**

- 10.1 Competitive tendering or quotation procedures shall not apply to the disposal of:
- 10.1.1 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 Chief Executive or their nominated officer
  - 10.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust
  - 10.1.3 items to be disposed of with an estimated sale value of less than £5,000
  - 10.1.4 items arising from works of construction, demolition or site working, which should be dealt with in accordance with the relevant contract
  - 10.1.5 land or buildings concerning which DoH or other statutory body guidance has been issued but subject to compliance with such guidance.

## **11. IN-HOUSE SERVICES**

- 11.1 In all cases where the Board determines that in-house services should be subject to competitive tendering the following groups shall be set up:
- 11.1.1 Specification group, comprising the Chief Executive or nominated officer/s and specialist
  - 11.1.2 In-house tender group, comprising a nominee of the Chief Executive and technical support
  - 11.1.3 Evaluation team, comprising normally a specialist officer, a supplies officer and the Executive Chief Finance Officer or their nominated representative. For services having a likely annual expenditure exceeding £100,000, a non-officer member should be a member of the evaluation team
- 11.2 All groups should work independently of each other. No officer is able to sit on both the in-house tender group and the evaluation group
- 11.3 The evaluation team shall make recommendations to the Executive Operational Sub-Committee and/or the Board, in accordance with the Trust's DSoD.

## **12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

### **12.1 Custody of Seal**

The common seal of the Trust shall be kept by the Trust Secretary in a secure place.

### **12.2 Sealing of Documents**

12.2.1 The seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by the Chief Executive or Executive Chief Finance Officer

12.2.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Executive Chief Finance Officer (or an officer nominated by him and authorised and countersigned by the Chief Executive (or an officer nominated by them who shall not be within the originating Directorate).

### **12.3 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 sealings shall be made to the Board at least quarterly. The report shall detail the description of the document, the date of sealing and the names of persons who attested the fixing of the seal or who executed the Deed on behalf of the Trust.

## **13. SIGNATURE OF DOCUMENTS**

13.1 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, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings

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

## **14. MISCELLANEOUS**

### **14.1 Standing Orders to be given to Board Members and Officers**

It is the duty of the Chief Executive to ensure that existing Board members, officers and all new appointees are notified of and understand their responsibilities within SOs and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.

**14.2 Documents having the standing of Standing Orders**

SFIs, DSoD and the SoRD shall have effect as if incorporated into SOs.

**14.3 Review of Standing Orders**

SOs shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in SOs.

**14.4 Dispute Resolution**

14.4.1 Where there is a dispute between the Board of Directors and the Council of Governors, the procedure set out in the *Council of Governors Policy for Engagement with the Board of Directors where there is disagreement and/or concerns regarding performance* should be referred to and followed

14.4.2 Where a dispute arises out of or in connection with the constitution, including the interpretation of these SOs and the procedure to be followed at meetings of the Board, the Trust and the parties to that dispute shall use all reasonable endeavours to resolve the dispute as quickly as possible

14.4.3 Where a dispute arises that involves the Chair, the dispute shall be referred to the Senior Independent Director who will use all reasonable efforts to mediate a settlement to the dispute

14.4.4 For the avoidance of doubt, the Trust Secretary shall deal with any membership queries and other similar questions in the first place including any voting or legislation issues and shall otherwise follow a process for resolving such matters in accordance with any procedures agreed by the Board.

<b>15. RELATIONSHIP BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS</b>
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15.1 The Council has a statutory duty to hold the Non-Executive Directors individually and collectively to account for the performance of the Board. This includes ensuring the Board acts so that the Trust does not breach the conditions of its Licence. It remains the responsibility of the Board to design and then implement agreed priorities, objectives and the overall strategy of the Trust. The Council is responsible for representing the interests of Trust members and the public and staff in the governance of the Trust. Governors must act in the best interests of the Trust and should adhere to its values and code of conduct. Governors are responsible for regularly feeding back information about the Trust, its vision and its performance to members and the public and the stakeholder organisations that either elected or appointed them. The Trust should ensure Governors have appropriate support to help them discharge this duty

15.2 Governors should discuss and agree with the Board how they will undertake these and any other additional roles, giving due consideration to the circumstances of the Trust and the needs of the local community and

emerging good practice. Governors should work closely with the Board and must be presented with, for consideration, the annual report and accounts and the annual plan at a general meeting. The Governors must be consulted on the development of forward plans for the Trust and any significant changes to the delivery of the Trust's business plan

- 15.3 Board members are to present to the Council at a general meeting the annual accounts, any report of the auditor on them, and the annual report
- 15.4 The Directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, are fair, balanced and understandable and provide the information necessary for patients, regulators and other stakeholders to assess the NHS Foundation Trust's performance, business model and strategy. There should be a statement by the external auditor about their reporting responsibilities. Directors should also explain their approach to quality governance in the Annual Governance Statement (within the annual report). The Trust will comply with the NHS Foundation Trust Annual Reporting Manual. The Council may request that a matter which relates to the annual accounts or forward planning for the Trust is included on the agenda for a meeting of the Board
- 15.5 The annual report should identify the members of the Council, including a description of the constituency or organisation that they represent, whether they were elected or appointed, and the duration of their appointments. The annual report should also identify the nominated Lead Governor. A record should be kept of the number of meetings of the Council and the attendance of individual Governors and Directors and it should be made available to members on request.
- 15.6 The annual report should include a statement from the Board on how performance evaluation of the Board, its committees and its Directors is conducted and the reason why the Trust adopted a particular method of performance evaluation
- 15.7 If the Council so desires such a matter as described within SO 15.5 to be included on an agenda, they shall make their request in writing to the Chair at least 10 (ten) working days before the meeting of the Board and provide the information stipulated at SO 3.14. The Chair shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 10 (ten) days before a meeting may be included on the agenda at the discretion of the Chair
- 15.8 The Council should take the lead in agreeing with the Audit Committee the criteria for appointing, re-appointing and removing external auditors. The Council will need to work hard to ensure they have the skills and knowledge to choose the right external auditor and monitor their performance. However, they should be supported in this task by the Audit Committee, which provides information to the governors on the external auditor's performance as well as overseeing the Trust's internal financial reporting and internal auditing

- 15.9 If the Council does not accept the Audit Committee's recommendation, the Board should include in the annual report a statement from the Audit Committee explaining the recommendation and should set out reasons why the Council has taken a different position
- 15.10 The annual report should describe the process followed by the Council in relation to appointments of the Chair and Non-Executive Directors
- 15.11 In accordance with section A 1.1 of Monitor's *Code of Governance* (February 2014) the roles and responsibilities of the Council of Governors are set out in Appendix D.

<b>16 OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, THE STANDING FINANCIAL INSTRUCTIONS, THE PROVIDER LICENCE AND THE NATIONAL HEALTH SERVICE ACT 2006</b>
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**16.1 Specific Policy Statements**

These SOs must be read in conjunction with the following policy statements and documents which shall have effect as if incorporated in these SOs:

- 16.1.1 the Standards of Business Conduct and Conflicts of Interest Policy for Trust staff
- 16.1.2 the Code of Conduct for Board Members
- 16.1.3 the Staff Disciplinary and Appeals Procedures
- 16.1.4 the SFIs adopted by the Board in accordance with all financial regulations, directions and guidance issued by Monitor and any other relevant body
- 16.1.5 the SoRD approved by the Board
- 16.1.6 Tendering and Quotations Procedure
- 16.1.7 the Trust's Counter Fraud Policy and Procedure

**16.2 Specific Guidance and Legislation**

These SOs must be read in conjunction with any directions and guidance issued by Monitor, the Department of Health and any other relevant body and in accordance with the following:

- National Health Service Act 2006
- Health and Social Care Act 2012
- DH Caldicott Guardian Manual 2010 (and any subsequent versions)
- Human Rights Act 1998
- Freedom of Information Act 2000 and relevant guidance from the Information Commissioner Office

- Equality Act 2010
- Information Governance Toolkit July 2010 (and any subsequent versions)
- Bribery Act 2010
- Data Protection Act 1998 and relevant guidance from the Information Commissioner's Office
- Monitor's Code of Governance (December 2013) (and any subsequent versions)
- any other relevant legislation and guidance as applicable from time to time.

**16.3 Potential Inconsistency**

In the event of any conflict or inconsistency between these SOs and any of the legislation and guidance listed in SO 16.2 above (the Legislation), the Legislation shall prevail.

In the event of any conflict or inconsistency between these SOs and the Licence and/or the constitution, the Licence and/or the constitution shall prevail.



**Appendix A**

<b>COMMITTEES OF THE BOARD OF DIRECTORS</b>
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1. **Audit Committee**
2. **Charitable Funds Committee**
3. **Finance & Performance Committee**
4. **Investment & Planning Committee**
5. **Mental Health & Safeguarding Committee**
6. **Nominations Committee**
7. **Quality Committee**
8. **Remuneration Committee**

## Appendix B

### STANDARDS OF BUSINESS CONDUCT FOR NHS STAFF

#### 1. Prevention of Corruption – Bribery Act 2010

1.1 The Trust has a responsibility to ensure that all Directors (and staff) are made aware of their duties and responsibilities arising from the Bribery Act 2010. Under this Act there are four offences:

- (a) bribing, or offering to bribe, another person (section 1);
- (b) requesting, agreeing to receive, or accepting a bribe (section 2);
- (c) bribing, or offering to bribe, a foreign public official (section 6);
- (d) failing to prevent bribery (section 7)

1.2 All Directors (and staff) are required to be aware of the Bribery Act 2010 and should also refer to the remaining provisions in this Appendix B for further guidance in relation to this duty as well as any other national guidance.

#### 2. NHS staff are expected to abide by the seven principles of public life (Nolan) at all times:

- 2.1 **SELFLESSNESS:** Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends
- 2.2 **INTEGRITY:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties
- 2.3 **OBJECTIVITY:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit
- 2.4 **ACCOUNTABILITY:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office
- 2.5 **OPENNESS:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest workingly demands.
- 2.6 **HONESTY:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

- 2.7 **LEADERSHIP:** Holders of public office should promote and support these principles by leadership and example.

### **3. IMPLEMENTING THE GUIDING PRINCIPLES ABOVE:**

#### **Gifts**

- 3.1 With the exception of items of little value (less than £25) such as diaries, calendars, flowers and small tokens of appreciation (including seasonal gifts), which may be accepted, all offers of gifts should be declined. In cases of doubt, advice should be sought from your line manager. A 'gift' is defined as any item of cash or goods, or any service, which is provided for personal benefit at less than its commercial value. Any personal gift of cash or cash equivalents (e.g. tokens) must be declined whatever its value. All Directors (and staff) should report immediately all offers of unreasonably generous gifts to the Trust Secretary and return promptly any unacceptable gifts, with a letter politely explaining the terms of this policy and stating that you are not allowed to accept them.

#### **Hospitality**

- 3.2 Hospitality will be in accordance with Trust's policy on hospitality and sponsorship.

#### **Raising concerns**

- 3.3 It is the duty of every member of the Board (and staff) to speak up about genuine concerns in relation to criminal activity, breach of a legal obligation (including negligence, breach of contract or breach of administrative law), miscarriage of justice, danger to health and safety or the environment, and the cover up of any of these in the workplace. The Trust has a whistle-blowing policy that sets out the arrangements for raising and handling staff concerns. The procedure for reporting specific concerns relating to fraud are described below at 3.5.

#### **Freedom to Speak Up**

- 3.4 The Trust's Freedom to Speak Up Guardian is contactable by email and telephone and contact details are available on the Trust's intranet for all staff needing to raise a concern about patient or staff safety. For example, matters may be raised such as unsafe patient care; unsafe working conditions; inadequate induction or training for staff; lack of, or poor, response to a reported patient safety incident or a bullying culture across a team.

#### **Counter fraud**

- 3.5 All Directors (and staff) are required not to use their position to gain financial advantage. The Trust is keen to prevent fraud and encourages staff with concerns or reasonably held suspicions about potentially fraudulent activity or practice, to report these. The Trust's Directors (and staff) should inform the Executive Chief Finance Officer immediately, unless the Executive Chief Finance Officer is implicated. If that is the

case, they should report it to the Chair or Chief Executive, who will decide on the action to be taken

- 3.6 The Trust's Directors (and staff) can also call the NHS Fraud and Corruption Reporting Line on free phone 0800 028 40 60. This provides an easily accessible and confidential route for the reporting of genuine suspicions of fraud within or affecting the NHS. All calls are dealt with by experienced trained staff and any caller who wishes to remain anonymous may do so.
- 3.7 Anonymous letters, telephone calls, etc are occasionally received from individuals who wish to raise matters of concern, but not through official channels. While the suspicions may be erroneous or unsubstantiated, they may also reflect a genuine cause for concern and will always be taken seriously. The Executive Chief Finance Officer will make sufficient enquiries to establish whether or not there is any foundation to the suspicion that has been raised
- 3.8 The Trust's Directors (and staff) should not ignore their suspicions, investigate themselves or tell colleagues or others about their suspicions.

#### **Preferential treatment in private transactions**

- 3.9 Individual Directors must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of the Trust. (This does not apply to concessionary agreements negotiated with companies by the Directors, or by recognised staff interests on behalf of all staff - for example, NHS staff benefits schemes.)

#### **Contracts**

- 3.10 All Directors who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to the standards set out in Appendix B and are encouraged to also follow the professional standards set out in the Ethical Code of the Chartered Institute of Purchasing and Supply.

#### **Favouritism in awarding contracts**

- 3.11 Fair and open competition between prospective contractors or suppliers for all contracts is a requirement of NHS Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:
- 3.11.1 no private, public or voluntary organisation or company which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the

NHS employer, such as a long-running series of previous contracts.

- 3.11.2 each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfil them.
- 3.11.3 the Trust should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff that are known to have a relevant interest play no part in the selection.

#### **Warnings to potential contractors**

- 3.12 The Trust will wish to ensure that all invitations to potential contractors to tender for NHS and non-NHS business include a notice warning tenderers of the consequences of engaging in any corrupt practices involving employees of public bodies.

#### **Outside employment**

- 3.13 No Directors should engage in outside employment that may conflict with their NHS work, or be detrimental to it. They are advised to tell the Trust if they think they may be risking a conflict of interest in this area; the Trust will be responsible for judging whether the interests of patients could be harmed.

#### **Intellectual property**

- 3.14 The Board of Directors should ensure that they are in a position to identify potential intellectual property rights (IPR), as and when they arise, so that they can protect and exploit them properly, and thereby ensure that they receive any rewards or benefits (such as royalties) in respect of work commissioned from third parties, or work carried out by the Trust's employees in the course of their duties. Most IPR are protected by statute; e.g. patents are protected under the Patents Act 1977 and copyright (which includes software programmes) under the Copyright Designs and Patents Act 1988. To achieve this, the Directors should build appropriate specifications and provisions into the contractual arrangements that they enter into before the work is commissioned, or begins. They should always seek legal advice if in any doubt in specific cases
- 3.15 With regard to patents and inventions, in certain defined circumstances the Patents Act gives employees a right to obtain some reward for their efforts, and employers should see that this is effected. Other rewards may be given voluntarily to employees who within the course of their

employment have produced innovative work of outstanding benefit to the NHS. Similar rewards should be voluntarily applied to other activities such as giving lectures and publishing books and articles

- 3.16 In the case of collaborative research and evaluative exercises with manufacturers, the Trust should see that they obtain a fair reward for the input they provide. If such an exercise involves additional work for an employee outside that paid for by the Trust under their contract of employment, arrangements should be made for some share of any rewards or benefits to be passed on to the employee(s) concerned from the collaborating parties. Care should however be taken that involvement in this type of arrangement with a manufacturer does not influence the purchase of other supplies from that manufacturer.

### **Standards of business**

- 3.17 All Directors who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to these standards; and

- 3.17.1 maintain the highest standard of integrity in all business relationships
- 3.17.2 reject any business practice which might reasonably be deemed improper
- 3.17.3 never use their authority or position for their own personal gain
- 3.17.4 enhance the proficiency and stature of the profession by acquiring and applying knowledge in the most appropriate way
- 3.17.5 foster the highest standards of professional competence amongst those for whom they are responsible
- 3.17.6 optimise the use of resources which they have influence over for the benefit of the organisation
- 3.17.7 comply with both the letter and the intent of: - the law of countries where the contracts are executed or as otherwise stated in the contracts - Chartered Institute of Purchasing and Supply guidance on professional practice
- 3.17.8 declare any personal interest that might affect, or be seen by others to affect, their impartiality or decision making
- 3.17.9 ensure that the information they give in the course of the work is accurate

- 3.17.10 respect the confidentiality of information they receive and never use it for personal gain
- 3.17.11 strive for genuine, fair and transparent competition
- 3.17.12 not accept inducements or gifts, other than items of small value such as business diaries or calendars
- 3.17.13 always declare the offer or acceptance of hospitality and never allow hospitality to influence a business decision
- 3.17.14 remain impartial in all business dealing and not be influenced by those with vested interests.

## Appendix C

### STANDARDS FOR MEMBERS OF NHS BOARDS AND CLINICAL COMMISSIONING GROUP GOVERNING BODIES IN ENGLAND



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## Appendix D

### ROLES AND RESPONSIBILITIES OF THE COUNCIL OF GOVERNORS

The roles and responsibilities of the Council which are to be carried out in accordance with the constitution and the Trust's licence include:

#### General Duties

1. To hold the Non-Executive Directors individually and collectively to account for the performance of the Board, including ensuring that the Board acts so that the Trust does not breach the terms of its licence. "Holding the Non-Executive Directors to account" includes scrutinising how well the Board is working, challenging the Board in respect of its effectiveness, and asking the Board to demonstrate that it has sufficient quality assurance in respect of the overall performance of the Trust, questioning Non-Executive Directors about the performance of the Board and of the Trust and making sure to represent the interests of the Trust's members and of the public in doing so
2. To represent the interests of the members of the Trust and the interests of the public.

#### Non-Executive Directors, Chief Executive and Auditor

3. To approve the policies and procedures for the appointment and removal of the Chair and Non-Executive Directors on the recommendation of the Nomination Committee of the Council
4. To approve the appointment and removal of the Chair and the Non-Executive Directors. The Council should only exercise its power to remove the Chair or any Non-Executive Directors after exhausting all means of engagement with the Board
5. To approve the policies and procedures for the appraisal of the Chair, and Non-Executive Directors on the recommendation of the Remuneration Committee of the Council. All Non-Executive Directors and elected Governors should be submitted for re-appointment or re-election at regular intervals. The performance of Executive Directors should be subject to regular appraisal and review. The Council should ensure planned and progressive refreshing of the Non-Executive Directors
6. To set the remuneration of Non-Executive Directors and the Chair and to approve changes to the remuneration, allowances and other terms of office for the Chair and the Non-Executive Directors on the recommendations of the Remuneration Committee of the Council. The Council should consult external professional advisers to market-test the remuneration levels of the Chair and other Non-Executives Directors at least once every three years and when they intend to make a material change to the remuneration of a Non-Executive Director
7. To approve the appointment of a candidate as Chief Executive of the Trust recommended by the Non-Executive Directors

8. To approve the criteria for the appointment, removal and re-appointment of the auditor
9. To approve the appointment, removal and re-appointment of the auditor on the recommendation of the Audit Committee

### **Strategy Planning**

10. To provide feedback to the Board on the development of the strategic direction of the Trust, as appropriate
11. To collaborate with the Board in the development of the forward plan
12. Where the forward plan contains a proposal that the Trust will carry out activity other than the provision of goods and services for the purpose of the NHS in England, to determine whether the proposal will interfere in the fulfilment by the Trust of its principal purpose and notify its determination to the Board
13. To approve increases to the proposed amount of income derived from the provision of goods and services other than for the purpose of the NHS in England where such an increase is greater than 5% of the total income of the Trust
14. To approve entering into any significant transactions (as defined by the Board from time to time) in accordance with the 2006 Act and the constitution
15. To approve proposals from the Board for merger, acquisition, dissolution or separation in accordance with 2006 Act and the constitution
16. When appropriate, to make recommendations for the revision of the constitution and approve any amendments to the constitution in accordance with the 2006 Act and the constitution
17. To receive the Trust's annual accounts, any report of the auditor on them, and the annual report at a general meeting of the Council

### **Representing Members and the Public**

18. To prepare and from time to time review the Trust's membership engagement strategy and policy
19. To notify Monitor, via the Lead Governor, if the Council is concerned that the Trust is at risk of breaching the terms of its licence, if these concerns cannot be resolved at local level
20. To report to the members annually on the performance of the Council
21. To promote membership of the Trust and contribute to opportunities to recruit members in accordance with the membership strategy
22. To seek the views of stakeholders and feed back to the Board.