

# GLOUCESTERSHIRE HOSPITALS NHS FOUNDATION TRUST

## STANDING ORDERS

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Approved by the Audit Committee on 4 October 2011  
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Amended by the Audit Committee on 21 September 2012

# Gloucestershire Hospitals NHS Foundation Trust

## Standing Orders – November 2011

### Foreword

NHS Foundation Trusts need to agree Standing Orders (SOs) for the regulation of their proceedings and business. Regulation 19 of the NHS Trusts (Membership and Procedure) Regulations 1990 (SI(1990)2024) requires the meetings and proceedings of an NHS trust to be conducted in accordance with the rules set out in the Schedule to those Regulations and with Standing Orders made under regulation 19 (2). The Codes of Conduct and Accountability (EL(94)40) require Boards to adopt schedules of reservation of powers and delegation of powers.

The documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less than properly.

The Standing Orders, Delegated Powers and Standing Financial Instructions provide a comprehensive business framework. All Executive and Non-Executive Directors, and all Members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

The Standing Orders incorporate provisions of the National Health Service Trusts (Membership and Procedure) Regulations 1990 SI(1990)2024 as amended by SI(1990)2160 and SI(1996)1755; [such provisions are indicated in italics and are not subject to suspension under SO 3.32].

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### Introduction

#### Statutory Framework

The Gloucestershire Hospitals NHS Trust (the Trust) was a body corporate which was established under the Gloucestershire Hospitals and the Gloucestershire Partnership National Health Service Trusts (Establishment) and the East Gloucestershire National Health Service Trust, The Gloucestershire Royal National Health Service Trust and the Severn National Health Service Trust (Dissolution) Order 2001 (the Establishment Order).

The Gloucestershire NHS Foundation Trust was authorised by the Independent Regulator from 1 July 2004.

No Statutory Instrument is required to establish an NHS Foundation Trust. Under section 7(1) of the Health and Social Care (Community Health and Standings) Act 2003, when the Regulator gives an Authorisation to an NHS Trust, then that body ceases to be an NHS Trust and becomes an NHS Foundation Trust. The Establishment Order of Gloucestershire Hospitals NHS Trust was also revoked when the Authorisation was issued, by virtue of section 7(2) of the 2003 Act.

The principal place of business of the Trust is Trust Headquarters, 1 College Lawn, Cheltenham, Glos, GL53 7AG.

NHS Foundation Trusts are governed by statute, mainly Chapter 5 of the National Health Service Act 2006.

The statutory functions conferred on the Trust are set out in the NHS & CC Act 1990 (Schedule 2), Chapter 5 of the National Health Service Act 2006, Health Act 2009, in the Trust's Constitution and in its authorisation from the Independent Regulator.

As a public benefit corporation the Trust has specific powers to take any action which appears to be necessary or desirable for the purposes of, or in connection with, its functions. It has the power to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

The Membership and Procedure Regulations 1990 (SI(1990) 2024) requires the Trust to adopt Standing Orders (SOs) for the regulation of its proceedings and business. The "Directions on Financial Management in England" issued under HSG(96)12 in 1996, require Health Authorities to adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals. These directions are not mandatory on NHS trusts but trusts are asked to observe them and as a matter of good practice ensure they meet the Standings they lay down.

## **NHS Framework**

In addition to the statutory requirements the Secretary of State through the Department of Health issues further requirements and guidance. These are normally issued under cover of a circular or letter.

The Code of Accountability for NHS Boards requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The code also requires the establishment of audit and remuneration committees with formally agreed terms of reference. The Code of Conduct makes various requirements concerning possible conflicts of interest of Board Directors.

The Code of Practice on Openness in the NHS (to be revised following the passage of the Freedom of Information Act) sets out the requirements for public access to information on the NHS.

## **NHS Constitution**

**The NHS Constitution sets out the rights and responsibilities of patients and staff. The Health Act 2009 places a duty on all providers of NHS services to have regard to the NHS Constitution in performing its NHS functions.**

## **Delegation of Powers**

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 5) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 6 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as the Secretary of State may direct. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

## 1. Interpretation

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

Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

**"ACCOUNTABLE OFFICER"** shall be the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

**"AUTHORISATION"** shall mean the approval given to the Trust by the Independent Regulator to operate as a Foundation Trust.

**"BOARD OF DIRECTORS"** shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the relevant committee of the Trust, as constituted in accordance with the Constitution.

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

**"CHAIR"** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The Chair also presides at the meetings of the Council of Governors. 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.

**"CHIEF EXECUTIVE"** shall mean the chief officer of the Trust who is to be appointed (and removed) by the Non-Executive Directors, and whose appointment is subject to the approval of a majority of the Members of the Council of Governors present and voting at a General Meeting.

**"COMMITTEE"** shall mean a committee appointed by the Trust.

**"COMMITTEE MEMBERS"** shall be persons formally appointed by the Trust to sit on or to Chair specific committees.

**"CONSTITUTION"** shall mean the established form of operations for the Council of Governors and Board of Directors as authorised by the Independent Regulator.

**"COUNCIL OF GOVERNORS"** shall mean the persons, elected and appointed, to fulfil the functions as laid out in the Constitution.

**"DIRECTOR"** shall mean a person appointed as a Director in accordance with the Membership and Procedure Regulations and includes the Chair.

**"DIRECTOR OF FINANCE"** shall mean the chief finance officer of the Trust.

**"DEPUTY CHAIR"** shall mean the person appointed from the Public and Patient Governors who will have a second or casting vote, when the number of votes for and against a motion are equal.

**"FUNDS HELD ON TRUST"** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Sch 2 Part II para 16.1c NHS & Community Care Act 1990. Such funds may or may not be charitable.

**"INDEPENDENT REGULATOR"** means Monitor, the body corporate known as Monitor as provided by Section 61 of 2012 Act..

**"MEMBERS"** means any member of staff, public or patient who has signed to become a member of the Foundation Trust.

**"MEMBERSHIP AND PROCEDURE REGULATIONS"** shall mean the National Health Service Trust (Membership and Procedure) Regulations 1990 (SI(1990) 2024).

**"MOTION"** means a formal proposition to be discussed and voted on during the course of a meeting.

**"NOMINATED OFFICER"** means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs.

**"OFFICER"** means an employee of the Trust.

**"SECRETARY"** means the Secretary of the Trust or other person appointed to perform the duties of the Secretary.

**"SFIs"** means Standing Financial Instructions.

**"SOs"** means Standing Orders.

**"TRUST"** means the Gloucestershire Hospitals NHS Foundation Trust.

**"VICE-CHAIR"** means the Non-Executive Director appointed by the Trust to take on the Chair's duties if the Chair is absent for any reason.

## 2. The Trust

1. All business shall be conducted in the name of the Trust.
2. All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
3. The Trust has the functions conferred on it by Schedule 2 of NHS & CC Act 1990, Chapter 5 of the National Health Service Act 2006 and by its Constitution.
4. Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission.
5. The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" and have effect as if incorporated into the Standing Orders.
6. The Council of Governors has certain powers conferred on it in accordance with the Constitution.
7. **Composition of the Trust** - In accordance with the Constitution the composition of the Board of the Trust shall be:
  - The Chair of the Trust
  - 6 Non-Executive Directors
  - 7 voting Executive Directors :
    - The Chief Executive (the Chief Officer)
    - the Director of Finance (the Chief Finance Officer)
    - the Medical Director
    - the Nursing Director
    - three other voting Executive Directors
  - 1 non-voting Executive Director (An option available to the Board not currently taken up)
8. **Appointment of the Chair and Directors** -The Chair and Non-Executive Directors are appointed (and removed) by the Council of Governors in a General Meeting.

The Chief Executive is appointed (and removed) by the Non-Executive Directors, subject to the approval of a majority of members of the Council of Governors present and voting at a General Meeting for his or her appointment.

The Executive Directors are appointed (and removed) by a Committee consisting of the Chair, the Chief Executive and other Non-Executive Directors.

9. **Governance & Nominations Committee** - The Trust shall appoint a Governance and Nominations Committee whose Members shall comprise the Chair, the Senior Independent Director and selected Governors, to advise the Council of Governors on governance issues and on the appointment of Non-Executive Directors. The Governance & Nominations Committee may be advised by the Chief Executive, Non-Executive or Executive Directors and external advisors.
10. **Terms of Office of the Chair and Directors** – The Chair and Non-Executive Directors are to be appointed for a period of office in accordance with the terms of the Constitution.
11. **Appointment of Vice-Chair** - The Board of Directors shall elect one of the Non-Executive Directors to be a Vice-Chair of the Board. If the Chair is unable to discharge his/her office as Chair of the Trust, the Vice Chair of the Board of Directors shall be the acting Chair of the Trust.
12. **Resignation** - Any Non-Executive Director so elected may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair and the Directors of the Trust may thereupon appoint another Non-Executive Director as Vice-Chair in accordance with paragraph 2.11.
13. **Senior Independent Director.** The Chair shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director should be available to members and Governors if they have concerns which contact through the normal channels of Chair, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.
14. **Powers of Vice-Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chair owing to illness, absence from the country or any other cause, references to the Chair in the Schedule to these Regulations shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Vice-Chair.
15. **Joint Directors** - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of Standing Order 2.7 as one person.
16. **Relationship between the Board of Directors and the Council of Governors** – It is the responsibility of the Board of Directors to manage the business of the Trust (in accordance with the Constitution). The powers of the Council of Governors are detailed in the Constitution. The Governors will also represent the views of the Members of their constituency and ensure the needs of the local health community are taken into account when advising on the Trust's strategic direction.
17. **Conflict Resolution** - In situations where any conflict arises between the Board of Directors and the Council of Governors, then the decision of the Chair shall normally be final. However, there may be circumstances where the Chair feels unable to decide owing to a conflict of interest. In such situations, the Chair will initiate an independent review to investigate and make recommendations. Normally this will be achieved by inviting the Senior Independent Director or the Chair of another Foundation Trust to conduct the review and the choice of the individual will be agreed by both the Board of Directors and the Council of Governors. A formal Dispute Resolution Procedure is appended at Annex C.

### 3. Meetings of the Board of Directors

1. **Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board but shall be required to withdraw upon the Board resolving as follows:  
"That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest" (Section 1(2) Public Bodies (Admission to Meetings) Act 1960).
2. The Chair shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:  
"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public" (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).
3. Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board.
4. **Calling Meetings** - Ordinary meetings of the Trust shall be held at such times and places as the Board may determine.
5. The Chair may call a meeting of the Trust at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
6. **Notice of Meetings** - Before each meeting of the Trust, a Notice of the Meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least three clear days before the meeting.
7. Lack of service of the notice on any Director shall not affect the validity of a meeting.
8. In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
9. Agendas will be sent to members six days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency. Failure to serve such a notice on more than three Members will invalidate the meeting. A notice shall be presumed to have been served one day after posting.

10. Before each meeting of the Trust a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting. (required by the Public Bodies (Admission to Meetings) Act 1960 S.I.(4)(a).)
11. **Setting the Agenda** - The Trust may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
12. A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting, subject to Standing Order 3.6. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
13. **Chair of Meeting** - At any meeting of the Trust, the Chair, if present, shall preside. If the Chair is absent from the meeting the Vice-Chair, if there is one and he/she is present, shall preside. If the Chair and Vice-Chair are absent such Non-Executive Director as the Directors present shall choose shall preside.
14. If the Chair is absent from a meeting 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 Directors present shall choose shall preside.
15. **Annual Members Meeting** - The Trust will publicise and hold an annual members meeting, convened by the Secretary to the Trust by order of the Council of Governors, in accordance with the terms of the Constitution.
16. **Notices of Motion** - A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.8.
17. **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
18. **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director(s) who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Trust, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he/she considers it appropriate.
19. **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

20. When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- An amendment to the motion.
  - The adjournment of the discussion or the meeting.
  - That the meeting proceed to the next business. (\*)
  - The appointment of an ad hoc committee to deal with a specific item of business.
  - That the motion be now put. (\*)
  - A motion under Section 1 (2) of the Public Bodies (Admission to Meetings) Act 1960 resolving to exclude the public (including the press).

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

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.

21. **Chair's Ruling** - Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

22. **Voting** - Every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and Members present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.

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

24. 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.

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

26. In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

27. 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. 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. An officer's status when attending a meeting shall be recorded in the minutes.

28. **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

29. 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.
30. 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 the Code of Practice on Openness in the NHS.
31. **Joint Directors** - Where the office of a member of the Board is shared jointly by more than one person:
- either or both of those persons may attend or take part in meetings of the Board;
  - if both are present at a meeting they should cast one vote if they agree;
  - in the case of disagreements no vote should be cast;
  - the presence of either or both of those persons should count as the presence of one person for the purposes of SO 3.39 (Quorum).
32. **Suspension of Standing Orders** - Except where this would contravene any statutory provision or any direction made by the Secretary of State (applicable to Foundation Trusts) or authorisation of the Independent Regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
33. A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
34. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
35. No formal business may be transacted while Standing Orders are suspended.
36. The Audit Committee shall review every decision to suspend Standing Orders.
37. **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 3.16 has been given; and
  - no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
  - at least two-thirds of the Directors are present; and
  - the variation proposed does not contravene a statutory provision or direction made by the Secretary of State.
38. **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
39. **Quorum** - No business shall be transacted at a meeting of the Trust unless at least one-third of the whole number of the Chair and Directors appointed (including at least one Executive Director and one Non-Executive Director) are present.
40. An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

41. If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 7 and 8) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

42. **Frequency** – The Trust shall hold meetings of the Board of Directors at least six times in each calendar year.

## 4. Meetings of the Council of Governors

1. **Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Governors resolving as follows:  
"That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest" (Section 1(2) Public Bodies (Admission to Meetings) Act 1960).
2. The Chair (or Vice-Chair) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council of Governors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:  
"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Governors to complete business without the presence of the public" (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).
3. Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board.
4. **Calling Meetings** – General Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine.
5. **Notice of Meetings** - Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his/her behalf shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least three clear days before the meeting.
6. Lack of service of the notice on any Governor shall not affect the validity of a meeting.
7. In the case of a meeting called by eight Governors including at least one appointed Governor in default of the Secretary or the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.
8. Agendas will be sent to Members six days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency. Failure to serve such a notice on more than three Members will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
9. **Chair of Meeting** - At any meeting of the Council of Governors, the Chair, 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 one of the other Non-Executives will be nominated by the Board to Directors to preside.

10. If the person presiding at a meeting of the Council of Governors has a conflict of interest in relation to the business being discussed, the Deputy-Chair of the Council of Governors will chair that part of the meeting.
11. **Notices of Motion** - A Governor desiring to move or amend a motion shall send a written notice thereof at least fourteen clear days before the meeting to the Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 4.8.
12. **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
13. **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
14. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
  - An amendment to the motion.
  - The adjournment of the discussion or the meeting. (\*)
  - That the meeting proceed to the next business.
  - The appointment of an ad hoc committee to deal with a specific item of business.
  - That the motion be now put. (\*)
  - A motion under Section 1 (2) of the Public Bodies (Admission to Meetings) Act 1960 resolving to exclude the public (including the press).

\* In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.  
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.
15. **Chair's Ruling** - Statements of Governors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.
16. **Voting** - Every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Deputy Chair of the Council of Governors shall have a second or casting vote.
17. All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
18. If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
19. If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

20. In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
21. **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
22. 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.
23. Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by the Code of Practice on Openness in the NHS.
24. **Record of Attendance** - The names of the Governors present at the meeting shall be recorded in the minutes.
25. **Quorum** – For Council of Governors' Meetings, eight Governors shall form a quorum. At the Annual Members' Meeting twenty Members entitled to vote shall form a quorum.
26. If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Orders 7 and 8) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
27. **Frequency** - The Council of Governors shall hold meetings at least three times in each calendar year.
28. The Council of Governors has adopted the Rules of Procedure for its meetings and for the Annual Members' Meeting which shall be regarded as part of these Standing Orders.

## 5. Arrangements for the Exercise of Functions by Delegation

1. Subject to SO 2.5 and such directions as may be given by the Independent Regulator, the Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.3 or 5.4 below or by a Director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
2. **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (SO 2.5) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for ratification.
3. **Delegation to Committees** - The Board shall agree from time to time to the delegation of Executive powers to be exercised by committees or sub-committees, which it has formally constituted. The Constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
4. **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Board.
5. The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendments agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.
6. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance or other Executive Directors to provide information and advise the Board in accordance with any statutory requirements. Outside these statutory requirements the Director of Finance shall be accountable to the Chief Executive for operational financial matters.
7. The arrangements made by the Board as set out in the "Reservation of Powers to the Board and Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

## 6. Committees

1. **Appointment of Committees** - Subject to SO 2.5 and such directions as may be given by the Independent Regulator, the Trust may appoint committees of the Trust, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.
2. A committee appointed under SO 6.1 may, subject to such directions as may be given by the Independent Regulator or the Trust, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the Trust committee (whether or not they include Directors of the Trust).
3. The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Trust.
4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
5. Committees may not delegate their Executive powers to a sub-committee unless expressly authorised by the Board.
6. The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither Directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board. Exceptionally, travelling and other allowances for Governors and for Non-Executive Directors, shall be determined by the Governance and Nominations Committee of the Council of Governors.
7. Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by the Independent Regulator, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations laid down by the Independent Regulator.
8. The committees and sub-committees established by the Trust are:
  - a. Audit
  - b. Remuneration and Terms and Conditions
  - c. Finance and Performance
  - d. Quality
  - e. Sustainability
9. The Committee established by the Council of Governors is the Governance and Nominations Committee.
10. **Confidentiality** - 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.
11. A Director of the Trust 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 or committee shall resolve that it is confidential.

## 7. Declarations of Interests and Register of Interests

**Declaration of Interests** – Pursuant to Section 20 of the Schedule 7 of the National Health Service Act 2006, a register of Governor's and Director's interests must be kept by each NHS Foundation Trust.

1. All existing Directors (including for the purposes of the standing order, Non-Executive Directors) and Governors should declare relevant and material interests. Any Directors or Governors appointed or elected subsequently should do so on appointment or election.
2. Interests which should be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the register are:-
  - (a) Any directorship of a company.
  - (b) Any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) held by a Director or Governor in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust.
  - (c) Any interest in an organisation providing health and social care services to the National Health Service.
  - (d) A position of Authority in a charity or voluntary organisation in the field of health or social care.
  - (e) Any affiliation to a special interest group campaigning on health or social care issues.
  - (f) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
3. If Directors or Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.
4. At the time the interests are declared they should be recorded in the Council of Governors' or Board of Directors' minutes. Any changes in interests should be officially declared at the next Governors' or Board meeting. It is the obligation of the Governor and Director to inform the Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within three working days.
5. Directors' and Governors' Directorships of companies in 7.2(a) or in companies likely or possibly seeking to do business with the NHS (7.2(b)) should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
6. During the course of a Board meeting or a Governors' meeting, if a conflict of interest is established, the Director or Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, a majority will resolve the issue with the Chair having the casting vote.
7. There is no requirement for the interests of Directors' or Governors' spouses or partners to be declared. [Note however that SO 8 which is based on the Membership and Procedure regulations requires that in cases where the Director and his/her spouse/partner are living together the interest of Directors' spouses/partners in contracts should be declared].

8. **Registers of Interests** - The Chief Executive and the Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors and Governors. In particular the Registers will include details of all Directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Board Directors and Governors as defined in SO 7.2.
9. The details of Directors' and Governors' interests recorded in the Register will be kept up to date by means of an annual review of the Registers by the Secretary.
10. Subject to contrary regulations being passed, the Registers will be available for inspection by the public free of charge. The Chair 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. Copies or extracts of the Registers must be provided to Members of the NHS Foundation Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-Members for copies or extracts of the Register.

## **8. Disability of Directors or Governors in Proceedings on Account of Pecuniary Interest**

The entire text of this section is based on the Membership and Procedure regulations.

1. Subject to the following provisions of this Standing Order, if a Director or Governor of the Trust 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/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
2. The Independent Regulator may, subject to such conditions as he may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to him in the interests of the National Health Service that the disability shall be removed.
3. The Trust may exclude a Director or Governor from a meeting of the Trust while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
4. Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 9 of Schedule 2 to the NHS & CC Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.
5. For the purpose of this Standing Order the Chair or a Director shall be treated, subject to SO 8.2 and SO 8.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
  - a. he/she, or a nominee of his/hers, 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
  - b. he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
6. A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
  - a. of his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
  - b. of an interest in any company, body or person with which he/she is connected as mentioned in SO 8.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director or a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7. Where a Director:

- a. has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- b. the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- c. if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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

8. Standing Order 8 applies to a committee or sub-committee of the Trust as it applies to the Trust and applies to any member of any such committee or sub-committee (whether or not he/she is also a Director or a Governor of the Trust) as it applies to a Director of the Trust.
9. Whilst this Standing Order is aimed at the Board of Directors, because it exercises the powers of the Trust, it applies equally to Governors in circumstances in which Governors are in any way considering a contract with the Trust.

## 9. Standards of Business Conduct

1. **Policy** - Staff must comply with the national guidance contained in HSG(93)5 `Standards of Business Conduct for NHS staff'. The following provisions should be read in conjunction with this document.
2. **Interest of Officers in Contracts** - If it comes to the knowledge of a Director, Governor or an officer of the Trust that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
3. An officer must also declare to the Chief Executive any other employment or business or other relationship of his/hers, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.  
The Trust requires interests, employment or relationships so declared by staff to be entered in a register of interests of staff.
4. **Canvassing of, and Recommendations by, Directors and Governors in Relation to Appointments** - Canvassing of Directors of the Trust, Members of the Council of Governors or Members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
5. A Director or Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
6. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
7. **Relatives of Directors, Governors or Officers** - Candidates for any staff appointment shall, when making application, disclose in writing whether they are related to any Director, Governor or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
8. The Directors, Governors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
9. On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
10. Where the relationship of an officer or another Director to a Director or Governor is disclosed, the Standing Order headed `Disability of Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

## 10. Tendering and Contract Procedure

1. **Duty to comply with Standing Orders** - The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 3.32 (Suspension of SOs) is applied).
2. **EU Directives Governing Public Procurement** - Directives by the Council of the European Union, as implemented in English Law, for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.
3. The Trust shall comply as far as is practicable with the requirements of the NHS Executive "Capital Investment Manual". In the case of management consultancy contracts the Trust shall comply as far as is practicable with NHS Executive guidance "The Procurement and Management of Consultants within the NHS".
4. **Formal Competitive Tendering** - 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 (other than specialised services sought from or provided by the DoH); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
5. 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 £25,000,
  - b. where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with; or
  - c. the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
  - d. specialist expertise is required and is available from only one source; or
  - e. the task is essential to complete the project, AND arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
  - f. there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
  - g. where provided for in the Capital Investment Manual.

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

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 to the Audit Committee.
6. Except where SO 10.5, or a requirement under SO 10.2, applies, the Board 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.

7. The Board shall ensure that the organisations invited to tender / quote shall be those on an approved list, in relation to Annex A- section 5. Where, in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive (see Annex Section 5).
8. Tendering procedures are set out in the Annex.
9. **Quotations** - are required where formal tendering procedures are waived under SO 10.5 (a) or (c) and where the intended expenditure or income exceeds, or is reasonably expected to exceed £5,000.
10. Where quotations are required under SO 10.9 they should be sought from at least three firms/individuals as per the Annex based on specifications or terms of reference prepared by, or on behalf of, the Board.
11. Quotations should be in writing unless the Chief Executive or his nominated officer determine that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
12. All quotations should be treated as confidential and should be retained for inspection.
13. The Chief Executive or his nominated officer should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
14. Non-competitive quotations in writing may be obtained for the following purposes:
  - a. the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or his nominated officer, possible or desirable to obtain competitive quotations;
  - b. the goods/services are required urgently.
15. **Where tendering or competitive quotation is not required** - Where tenders or quotations are not required, because expenditure is below £5,000, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board.
16. 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 Board may also determine from time to time that in-house services should be market tested by competitive tendering (SO 10).
17. **Private Finance** - When the Board proposes, or is required, to use finance provided by the private sector the following should apply:
  - a. The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.

- b. The proposal must be specifically agreed by the Trust in the light of such professional advice as should reasonably be sought in particular with regard to vires.
  - c. The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.
18. **Contracts** - The Trust may only enter into contracts within its statutory powers and shall comply with:
- a. these Standing Orders;
  - b. the Trust's SFIs;
  - c. EU Directives and other statutory provisions;
  - d. any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants;
  - e. such of the NHS Standing Conditions of Contract as are applicable.
  - f. any framework agreement terms and conditions that apply to contracts made under frameworks, such as the Government Procurement Service.
- 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.
19. 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.
20. **Personnel and Agency or Temporary Staff Contracts** - The Chief Executive shall nominate officers with delegated authority to enter into contracts for the employment of other officers, to authorise regrading of staff, and enter into contracts for the employment of agency staff or temporary staff.
21. **Healthcare Services Contracts** - Service contracts with NHS commissioners for the supply of healthcare services shall be drawn up in accordance with the National Health Service Act 2006.
22. The Chief Executive shall nominate officers with power to negotiate for the provision of healthcare services with commissioners of healthcare.
23. **Cancellation of Contracts** - Except where specific provision is made in model Forms of Contracts or Standing Schedules of Conditions approved for use within the National Health Service and in accordance with Standing Orders 10.2 and 10.3, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.

24. **Determination of Contracts for Failure to Deliver Goods or Material** - There shall be inserted in every applicable written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.
25. **Contracts Involving Funds Held on Trust** – As management processes overlap, the preceding requirements in respect of contracts equally apply to contracts involving funds held on trust..

## 11. Disposals

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

- a. 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 his nominated officer;
- b. obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- c. items to be disposed of with an estimated sale value of less than £500, this figure to be reviewed annually;
- d. items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- e. land or buildings concerning which DoH guidance has been issued but subject to compliance with such guidance.

## 12. In-House Services

1. In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
  - a. Specification group, comprising the Chief Executive or nominated officer(s) and specialist(s).
  - b. In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
  - c. Evaluation group, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £1million, a Non-Executive Director should be a member of the evaluation team.
2. All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
3. The evaluation group shall make recommendations to the Board.
4. The Chief Executive shall nominate an officer to oversee and manage the contract.

### 13. Custody of Seal and Sealing of Documents

1. **Custody of Seal** - The Common Seal of the Trust shall be kept by the Chief Executive in a secure place.
2. **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee, thereof or where the Board has delegated its powers. Where the value of the contract (net of vat) is in excess of £250,000 those contracts are to be signed under seal. This will provide the Trust with a greater assurance should there be any future defect which the Trust may wish to pursue in law.
3. Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer nominated by him/her who shall not be within the originating Division).
4. **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

## **14. Signature of Documents**

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.
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 required to be executed as a deed) the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority.

## 15. Miscellaneous

1. **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders 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.
2. **Documents having the standing of Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into SOs.
3. **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

## **Annex A: Tendering Procedure**

### **1. Invitation to Tender**

- 1.1 All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted in either:
  - a. a plain, sealed package bearing a pre-printed label supplied by the Trust (or bearing the word 'Tender' followed by the subject to which it relates and the latest date and time for the receipt of such tender); or
  - b. **submitted electronically, as instructed, via the Trust E-tendering system.** Where an e-tendering software package is used the suppliers response will be completed on-line and uploaded into a secure electronic mailbox until the opening time.
- 1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.
- 1.3 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) Standing forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The Standing documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DoH.
- 1.4 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Conditions of Contract, or other appropriate public sector Conditions that may apply. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

### **2. Receipt, Safe Custody and Record of Formal Tenders**

- 2.1 Formal competitive tenders shall be addressed to the Head of Procurement, Victoria Warehouse.
- 2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package. Where an electronic tendering package is used the details of the persons opening the documents will be recorded in the audit trail together with the date and time of the document opening.
- 2.3 The Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on his/her behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3.
- 2.4 Where an electronic tendering system is used the details of the persons opening the documents will be recorded in the audit trail together with the date and time of the tender opening.

### **3. Opening Formal Tenders**

- 3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the Chief Executive and not from the originating department.
- 3.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening.
- 3.3 A permanent record shall be maintained to show for each set of competitive tender invitations despatched where an electronic tendering package is used all actions by both procurement staff and suppliers are recorded within the system audit reports:
  - a. the names of firms/individuals invited;

- b. the names of and the number of firms/individuals from which tenders have been received;
  - c. the total price(s) tendered;
  - d. closing date and time;
  - e. date and time of opening;
  - ;
  - f. and the record shall be signed by the persons present at the opening, or recorded electronically in an E-tendering system.
- 3.4 Except as in Section 3.5 below, a record shall be maintained of all price alterations on tenders, ie where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialled by two of those present at the opening.
- 3.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure Section 3.4 unreasonable.

#### **4. Admissibility and Acceptance of Formal Tenders**

- 4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.
- 4.2 Tenders received after the due date and time (whether hard copy or via electronic means) may be considered only if the Chief Executive or nominated officer decides that there are exceptional circumstances, eg where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or nominated officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.
- 4.3 Technically late tenders (ie those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.
- 4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (ie those amended by the tenderer upon his/her own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.
- 4.5 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his/her offer.
- 4.6 Necessary discussions with a tenderer of the contents of his/her tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.
- 4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.
- 4.8 Where only one tender/quotation is received the Trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.9 Should a request be made to the Board for acceptance of a tender that has not offered the most economically advantageous tender then the Board shall investigate and consider whether the request can be accepted or whether the tendering exercise should be completed again. Where the Board accepts that the reasons for accepting a tender that is not the most advantageous it shall document these reasons, together with any reference to risks to the Trust in accepting or rejecting the initial request.

4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.

4.11 All Tenders should be treated as confidential and should be retained for inspection.

## **5. Lists of Approved Firms**

5.1 The Trust shall use the registers maintained by the Department of Trade & Industry and CAPITA as its list of approved firms for Building and Engineering works, from whom tenders and quotations may be invited. For other services where tenders or quotations are required the Trust will use the processes established by the countywide Procurement Shared Service.

5.2 The Chief Executive's prior approval shall be obtained where a firm not on an approved list is asked to tender and a report shall be submitted to the Audit Committee on the reasons why the firm has been chosen.

5.3 Any Director may request a report on the financial standing of the favoured tenderer which will be carried out by an independent firm of financial advisers.

## **Annex B: Reservation of Powers to the Board**

1. Approval of Standing Orders, including Reservation of Powers to the Board.
2. Approval of Standing Financial Instructions, including Financial Delegation Limits.
3. Establishment, membership, terms of reference and reporting arrangements for all Committees acting on behalf of the Board.
4. Approval of strategic plans and policies.
5. Approval annually of a Business Plan, a Financial Plan, a "Budget Book" (for internal purposes), the Annual Accounts and accounting policies and the Annual Report. The Financial Plan will include authorised Reserves and Provisions against which expenditure can be committed.
6. Approval of business cases for capital schemes in excess of £2m.
7. Approval of the disposal of assets in excess of £500,000 (taken as the higher of book value and estimated sale proceeds).
8. Approval of additional revenue or capital expenditure on approved schemes and of new expenditure proposals, where these exceed the Chief Executive's delegated authority.
9. Personnel policies determining the terms and conditions of staff. The application of these policies to Executive Directors will be determined by the Board upon receipt of recommendations from the Remuneration & Terms of Service Committee.
10. Determination of the Board's information needs, both routine and ad hoc, to enable the financial and operational performance of the Trust to be monitored.
11. Receipt of reports of Audit Committee meetings, highlighting significant internal and external audit issues.
12. Investment policy.
13. Determination of insurance policy.
14. Approval of long term and short term borrowing facilities.

## **Annex C: Dispute Resolution Procedure**

### **1. Dispute resolution procedure if the Council of Governors and the Board of Directors disagree**

1.1 The Council's paper on "Working creatively with a diversity of views" recognises that there are likely to be strongly held and opposing views expressed by members of Council and that this is a sign that Council is fulfilling its role in bringing forward the views of the public in different parts of the region. A dispute, therefore, is not general disagreement or a lack of consensus: it arises from a material error such as withholding information or wilfully obstructing the proper work of a nominated body.

1.2 As in all grievance procedures, a dispute should be declared only as a last resort. Informal processes should be employed whenever possible to resolve disagreements between two key groups within the governance machinery of the Trust. Any dispute not resolved by informal means should:

- be subject to external review
- be dealt with in a timely manner and, as appropriate, confidentially.

The recommendations arising from the review will:

- be binding on all/both parties
- not be subject to appeal.

1.3 Grounds for declaring a dispute

A dispute may be declared only if there has been a material error in the decision making process and its implementation on the part of either the Council or the Board. A dispute can only be agreed if a majority of the Council members or of the Directors of the Board agree to this course of action.

1.4 Process

- **Level One – informal**  
The Chair will be informed, by Governors or Directors, that they consider there are grounds for an appeal.  
The Chair will seek to resolve matters informally, normally by commissioning the Senior Independent Director to investigate the issues and seek resolution.  
If there is no informal resolution a formal dispute will be declared.
- **Level Two – formal**  
The Governance & Nominations Committee, which includes the Deputy Chair and Independent Director, will arrange for three independent individuals with relevant experience (e.g. Chair, Non-Executive Directors or Governors of other Foundation Trusts) to undertake an investigation. The Review Team will be assisted by the Trust Secretary or his Assistant. The investigation report will be received by the Governance & Nominations Committee which will accept and act upon its recommendations.