

# **Torbay and South Devon NHS Foundation Trust**

## **Board of Directors Standing Orders**

**Document Information**

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Scheme of Delegation			

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## SECTION A

### 1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

- 1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Secretary to the Board of Directors) and in the case of Standing Financial Instructions by the Director of Finance and Director of Internal Audit.
- 1.2 Any expression to which a meaning is given in the National Health Service Act 1977, National Health Service and Community Care Act 1990, National Health Service Act 2006, Health and Social Care Act 2012, Care Act 2014 or subsequent acts and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in this interpretation and in addition:
- 1.2.1 "**Accounting Officer**" means the NHS Officer responsible and accountable for funds entrusted to the Foundation Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
- 1.2.2 "**Board of Directors**" means the Board of Directors comprising the Chairman, the Chief Executive, six other Executive Directors and seven other Non-Executive Directors as defined in the Trust's Constitution.
- 1.2.3 "**Budget**" means a resource, expressed in financial terms, proposed by the Board of Directors for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
- 1.2.4 "**Budget holder**" means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.
- 1.2.5 "**Chairman of the Board of Directors**" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Vice-Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.
- 1.2.6 "**Chief Executive**" means the chief officer of the Trust.

- 1.2.7 "**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.
- 1.2.8 "**Committee**" means a committee or sub-committee created and appointed by the Trust.
- 1.2.9 "**Committee members**" means persons formally appointed by the Board of Directors to sit on or to chair specific committees.
- 1.2.10 "**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.
- 1.2.11 "**Director of Finance**" means the chief financial officer of the Trust.
- 1.2.12 "**Executive Director**" means a member of the Trust who is an officer of the Trust.
- 1.2.13 "**Funds held on trust**" shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under Schedule 2 Part II Para 16.1.c NHS & Community Care act 1990. Such funds may or may not be charitable.
- 1.2.14 "**Council of Governors**" means that body of elected and appointed Governors, authorised to be members of the Council of Governors and act in accordance with the Constitution.
- 1.2.15 "**Legal Adviser**" means the properly qualified person appointed by the Trust to provide legal advice.
- 1.2.16 "**Member**" means executive or Non-Executive director of the Board of Directors. (Member in relation to the Board of Directors does not include its Chairman.)
- 1.2.17 "**Associate Member**" means a person appointed to perform specific statutory and non-statutory duties which have been delegated by the Trust Board of Directors for them to perform and these duties have been recorded in an appropriate Board of Directors minute or other suitable record.
- 1.2.18 "**Nominated officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

- 1.2.19 **"Non-Executive Director"** means a Member of the Board of Directors who does not hold an executive office of the Trust.
- 1.2.20 **"Officer"** means an employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 1.2.21 **"Secretary"** means a person appointed by the Trust (the Company Secretary) to act independently of the Board of Directors and monitor the Trust's compliance with the law, SO's and observance of Constitution and Licence.
- 1.2.22 **"SFIs"** means Standing Financial Instructions.
- 1.2.23 **"SOs"** means Standing Orders.
- 1.2.24 **"Trust"** means Torbay and South Devon NHS Foundation Trust.
- 1.2.25 **"Vice-Chairman"** means the non-executive director ratified by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason.
- 1.2.26 Wherever the title Chief Executive, Director of Finance, or other nominated officer is used in these instructions, it shall be deemed to include such other Director or employee who has been duly authorised to represent them.
- 1.2.27 Wherever the item "employee" is used it shall be deemed to include employees of third parties contracted to the Trust when acting on behalf of the Trust. In addition "employee" includes all nursing and medical staff and consultants practising upon Torbay and South Devon NHS Foundation Trust premises or contracted to perform services on other premises on behalf of Torbay and South Devon NHS Foundation Trust.
- 1.2.28 All references in these Standing Orders to the masculine gender shall be read as equally applicable to the feminine gender and vice versa.

## **SECTION B**

### **1. INTRODUCTION**

#### **1.1 Statutory Framework**

- 1.1.1 The Torbay and South Devon NHS Foundation Trust is a public benefit corporation which was established originally as South Devon healthcare NHS Foundation Trust under the Health and Social Care (Community Health and Standards) Act 2003 on 1 March 2007 and Changed its name to Torbay and South Devon NHS Foundation Trust on 1<sup>st</sup> October 2015. NHS Foundation Trusts are governed by statute, mainly the National Health Service Act 2006, Health and Social Care Act 2012 and the National Health Service Act 1977 (NHS Act 1977). The Integrated Care Organisation (ICO) from 1 October 2015 will also need to take into consideration the Care Act 2014 and any subsequent amendments.
- 1.1.2 NHS Foundation Trusts are governed by statute, mainly the National Health Service Act 2006, and the National Health Service Act 1977 (NHS Act 1977). The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 and in the Trust's Licence and Constitution.
- 1.1.3 As a public benefit corporation the Trust has specific powers to do anything which is necessary or desirable for the purposes of, or in connection with, its functions. It is also 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.
- 1.1.4 The Constitution requires the Trust to adopt Standing Orders (SOs) for the regulation of its proceedings and business. When compiling their accounts, the Independent Regulator of Foundation Trusts (NHS Improvement/Monitor) requires that foundation trusts comply with International Financial Reporting Standards. NHS Improvement/Monitor has produced a Financial Reporting Manual (FReM) which also provides guidance for foundation trusts, consistent with the requirements of the Financial Reporting Advisory Board.
- 1.1.5 NHS Improvement/Monitor's Code of Governance requires that, inter alia, boards draw up a schedule of matters 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 constitution also requires the establishment of audit and remuneration committees with formally

agreed terms of reference. The Trust also operates a Code of Conduct for directors.

## **1.2 NHS Framework**

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

## **1.3 Delegation of Powers**

1.3.1 The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO 5) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 4 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit or as the Independent Regulator may direct". Delegated Powers are covered in a separate document (Reservation of Powers to the Board of Directors and Delegation of Powers). This document has effect as if incorporated into the Standing Orders.

## **1.4 Integrated Governance**

1.4.1 Trust Boards are now encouraged to move away from silo governance and develop integrated governance that will lead to good governance and to ensure that decision-making is informed by intelligent information covering the full range of corporate, financial, clinical, information and research governance. Guidance from the Department of Health on the move toward and implementation of integrated governance has been issued and is incorporated in the Trust's Information Governance Strategy (see Integrated Governance Handbook 2006). Integrated governance enables the Board of Directors to take a holistic view of the organisation and its capacity to meet its legal and statutory requirements and clinical, quality and financial objectives.

## **2. THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF MEMBERS**

### **2.1 Composition of the Membership of the Board of Directors**

2.1.1 In accordance with the Constitution the composition of the Board of Directors shall be:

- a) a Non-Executive Chairman;
- b) not less than five and no greater than eight other Non-Executive Directors.
- c) a Chief Executive and not less than four and no more than seven Executive Directors; and
- d) at least half of the Board of Directors, excluding the Chairman, should be Non-Executive Directors.
- e) one of the Executive Directors will be the Chief Executive.
- f) the Chief Executive shall be the Accounting Officer.
- g) one of the Executive Directors shall be the Finance Director.
- h) one of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- i) one of the Executive Directors is to be a registered nurse or a registered midwife.
- j) the Board of Directors may determine that other Trust officers may attend meetings of the Board of Directors as and when required to provide operational advice and support to the Board to assist the Board in the discharge of their responsibilities. For the avoidance of doubt, such an officer attending will not be a Director for the purpose of the 2006 Act, nor will they be able to vote and will bear no responsibility or liability for any action of decision of the Board of Directors.

## **2.2 Appointment of the Chairman and Members**

- 2.2.1 The regulations for such appointments are laid down in the Constitution and are summarised as follows. The Chairman and Non-Executive Directors are appointed by the Council of Governors. The Council of Governors shall appoint a committee (the Nominations Committee), whose members shall be laid down in terms of reference, to select suitable candidates for their approval. It is for the Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and accounting officer). Executive Directors, except for the Chief Executive, will be appointed or removed by a committee whose members shall be the Chairman, the Vice Chairman and the Chief Executive and such other members that are deemed necessary by the Chairman.

## **2.3 Terms of Office of the Chairman and Members**

- 2.3.1 The regulations governing the period of tenure of office of the Chairman and members and the termination or suspension of office of the Chairman and members are contained in the Constitution.

## **2.4 Termination of Tenure**

- 2.4.1 If the Chairman or a Non-Executive Director fails to attend three consecutive meetings of the Board of Directors, the Board of Directors shall, by giving notice in writing to the person, remove that person from office unless the Board of Directors (in consultation with the Council of Governors) is satisfied that:
- a) the absence was due to a reasonable cause; and
  - b) he/she will be able to start attending meetings of the Trust again within such a period as they consider reasonable.

## **2.5 Appointment and Powers of Vice-Chairman**

- 2.5.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Board of Directors will recommend one of the Non-Executive Directors to be the Vice Chairman of the Trust. The Council of Governors will be asked to ratify this recommendation. This appointment as Vice-Chairman will be for a period not exceeding the remainder of his term as Non-Executive Director of the Trust.
- 2.5.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman. The Chairman and Directors of the Trust may thereupon appoint another Non-Executive Director as Vice-Chairman in accordance with the provisions of Standing Order 2.5 .1.
- 2.5.3 Where the Chairman of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Vice-Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice-Chairman.

## **2.6 Joint Directors**

- 2.6.1 Where one or more persons is appointed jointly to a post in the Trust which qualifies the holder for executive directorship, those persons shall become appointed as an executive director jointly, and shall count for the purpose of Standing Order 2.7 as one person.
- 2.6.2 Where a post of Executive Director of the Board of Directors is shared jointly by more than one person:

- a) either or both of those persons may attend or take part in meetings of the Board of Directors;
- b) if both are present at a meeting they should cast one vote if they agree;
- c) in the case of disagreements no vote should be cast; and
- d) the presence of either or both of those persons shall count as the presence of one person for the purposes of Standing Order 3.11 Quorum.

## **2.7 Role of Members**

2.7.1 The Board of Directors will function as a corporate decision-making body Officer and Non-Officer (Non – Executive) Members will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

### **2.7.2 Executive Directors**

Executive Members shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

### **2.7.3 Chief Executive**

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He/she is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum for Trust Chief Executives.

### **2.7.4 Director of Finance**

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He/she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

### **2.7.5 Non-Executive Directors**

The Non-Executive Members 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.

2.7.6 Chairman

The Chairman shall be responsible for the operation of the Board of Directors and chair all Board of Directors meetings when present. The Chairman has certain delegated executive powers. The Chairman shall comply with his terms of appointment and with these Standing Orders.

The Chairman shall work with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors in a timely manner with all the necessary information and advice being made available to the Board of Directors to inform the debate and ultimate resolutions.

**2.8 Corporate Role of the Trust**

2.8.1 All business shall be conducted in the name of the Trust.

2.8.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.

2.8.3 The Trust has the functions conferred on it by the National Health Service Act 2006, and by its Licence, which include the Constitution.

2.8.4 Directors acting on behalf of their Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission. Accountability for non-charitable funds held on trust is to NHS Improvement/Monitor.

**2.9 Schedule of Matters Reserved to the Board of Directors and Scheme of Delegation**

2.9.1 The Trust has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the 'Schedule of Matters Reserved to the Board of Directors' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

**2.10 Lead Roles for Board of Directors Members**

2.10.1 The Chairman will ensure that the designation of Lead roles or appointments of Board of Directors members as required by the Independent Regulator, NHS Improvement/Monitor or as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead

Board Member with responsibilities for Infection Control or Child Protection Services etc.).

## **2.11 Relationship between the Board of Directors and the Council of Governors**

2.11.1 The Constitution describes the duties of these two bodies in more detail. In summary the Board of Directors manage the business of the Trust (in accordance with the Constitution), and the Council of Governors conduct a number of tasks, among them; to approve the appointment of the Non-Executive members of the Board of Directors (after selection by the Nominations Committee); to decide their remuneration and terms and conditions of office; to appoint auditors; and to review various periodic reports listed in the constitution, presented to them by the Board of Directors. The Council of Governors will also represent the views of their constituency, or group, so that the needs of the local health economy are taken into account when deciding the Trust's strategic direction.

2.11.2 In situations where any conflict arises between the Board of Directors and the Council of Governors, which contact through the normal channels of the Chairman, Chief Executive or Finance Director has failed to resolve, or for which such contact is inappropriate, the 'Policy for resolving differences between the Council of Governors and the Board of Directors' will be invoked.

## **3 MEETINGS OF THE BOARD OF DIRECTORS**

### **3.1 Calling Meetings**

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

3.1.2 The Chairman of the Trust may call a meeting of the Board of Directors at any time.

3.1.3 One third or more members of the Board of Directors may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

### **3.2 Notice of Meetings and the Business to be Transacted**

3.2.1 Before each meeting of the Board of Directors, a written notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf shall be delivered to every member, or sent by post to the usual place of residence of such member, so

as to be available to him at least three clear days before the meeting. Want of service of the notice on any member shall not affect the validity of a meeting.

3.2.2 In the case of a meeting called by members pursuant of clause 3.1.4 the notice shall be signed by those members and no business shall be transacted at the meeting other than that specified in the notice.

3.2.3 A member desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 12 clear days before the meeting. The request shall state whether the item of business is proposed to be transacted in the presence of the public, subject to approval of the Board of Directors as per 3.17.1, and shall include appropriate supporting information. Requests made less than 12 days before a meeting may be included on the agenda at the discretion of the Chairman.

3.2.4 If the Board of Directors is required to meet in public, details of the meetings will be displayed throughout the Trust at least three clear days before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened.

### **3.3 Agenda and Supporting Papers**

3.3.1 Agendas and supporting papers will be sent to members 6 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.

### **3.4 Setting the Agenda**

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

### **3.5 Petitions**

3.5.1 Where a petition has been received by the Trust the Chairman of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting.

### **3.6 Notice of Motion**

3.6.1 Subject to the provision of Standing Orders 3.8 'Motions: Procedure at and during a meeting' and 3.8.7 'Motions to rescind a resolution', a member of the Board of Directors wishing to move a motion shall

send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chairman.

- 3.6.2 The notice shall be delivered at least 12 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

### **3.7 Emergency Motions**

- 3.7.1 Subject to the agreement of the Chairman, and subject also to the provision of Standing Order 3.8 'Motions: Procedure at and during a meeting', a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

### **3.8 Motions: Procedure at and during a Meeting**

#### **3.8.1 Who may Propose**

A motion may be proposed by the Chairman of the meeting or any member present. It must also be seconded by another member.

#### **3.8.2 Contents of Motions**

The Chairman may exclude from the debate at his discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- a) the reception of a report;
- b) consideration of any item of business before the Board of Directors;
- c) the accuracy of minutes;
- d) that the Board of Directors proceed to next business;
- e) that the Board of Directors adjourn; and
- f) that the question be now put.

#### **3.8.3 Amendments to Motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board of Directors.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

#### 3.8.4 **Rights of Reply to Motions**

a) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

b) Substantive/original motion

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

#### 3.8.5 **Withdrawing a Motion**

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

#### 3.8.6 **Motions Once Under Debate**

When a motion is under debate, no motion may be moved other than:

- 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) that the question should be now put;
- e) the appointment of an 'ad hoc' committee to deal with a specific item of business; and
- f) that a member/director be not further heard.

If a motion to proceed to the next business or that the question be now put, is carried, the Chairman should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

### 3.8.7 **Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the member who gives it and also the signature of 4 other Board of Directors members. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any member other than the Chairman to propose a motion to the same effect within 6 months, however, the Chairman may do so if he/she considers it appropriate and in the interests of the Trust.

This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

### 3.9 **Chairman of Meeting**

3.9.1 At any meeting of the Board of Directors, the Chairman of the Board of Directors, if present, shall preside. If the Chairman is absent from the meeting the Vice-Chairman, if there is one and he/she is present, shall preside.

3.9.2 If the Chairman and Vice-Chairman are absent such member (who is not also an officer of the Trust) as the members present shall choose shall preside.

### 3.10 **Chairman's Ruling**

3.10.1 The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

### 3.11 **Quorum**

3.11.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and members appointed, (including at least one Non-Executive and one executive member) are present.

3.11.2 An officer in attendance for an executive member but without formal acting up status will not count towards the quorum.

3.11.3 If the Chairman or member 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 he 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.

- 3.11.4 The above requirement for at least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Executive Nomination and Remuneration Committee).

### **3.12 Voting**

- 3.12.1 Save as provided in Standing Orders 3.13 - Suspension of Standing Orders and 3.14 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (i.e. the Chairman of the meeting shall have a second, and casting vote.
- 3.12.2 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members present so request.
- 3.12.3 If at least one-third of the members present so request, the voting (other than by paper ballot) on any question may be recorded to show how each member present voted or abstained.
- 3.12.4 If a member so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.12.5 In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.12.6 A manager who has been formally appointed 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.
- 3.12.7 A manager attending the Board of Directors meeting 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.
- 3.12.8 For the voting rules relating to joint members see Standing Order 2.6.

### **3.13 Suspension of Standing Orders**

- 3.13.1 Except where this would contravene any statutory provision or any direction made by NHS Improvement/Monitor or the rules relating to the Quorum (SO 3.11), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present (including at least one member who is an Executive Director of the Trust and one member who is not) and that at least two-thirds of those members present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board of Directors' minutes.
- 3.13.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Board of Directors.
- 3.13.4 No formal business may be transacted while Standing Orders are suspended.
- 3.13.5 The Audit and Assurance Committee shall review every decision to suspend Standing Orders.

### **3.14 Variation and Amendment of Standing Orders**

- 3.14.1 These Standing Orders shall be amended only if:
- a) a notice of motion under Standing Order 3.6 has been given;
  - b) upon a recommendation of the Chairman or Chief Executive included on the agenda for the meeting;
  - c) no fewer than half the total of the Trust's non executive directors vote in favour of amendment;
  - d) that two thirds of the Board of Directors members are present at the meeting where the variation or amendment is being discussed, and that at least half of the Trust's Non-Executive members vote in favour of the amendment; and
  - e) the variation proposed does not contravene a statutory provision or direction made by the Secretary of State.

### **3.15 Record of Attendance**

- 3.15.1 The names of the Chairman and Directors/members present at the meeting shall be recorded in the minutes.

**3.16 Minutes**

- 3.16.1 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.
- 3.16.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.16.3 Minutes shall be circulated in accordance with members' 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.

**3.17 Admission of Public and Press**

- 3.17.1 Meetings of the Board of Directors shall not be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of a meeting. The Chair may exclude any member of the public from an open meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 3.17.2 Arrangements for the public to attend the Board of Directors meeting shall not be construed as allowing them any right to speak at the meeting. However, at the discretion of the Chair and with the agreement of Directors, individuals, including representatives of the professional bodies and those with an expert point of view, may be invited to contribute views on specific matters.
- 3.17.3 Observers invited to attend meetings of the Board of Directors shall receive agenda papers and may be permitted to speak by invitation from the Chair, but not to propose motions nor to vote.
- 3.17.4 Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Trust or Committee thereof. Such permission shall be granted only upon resolution of the Trust.

**4. APPOINTMENT OF COMMITTEES, SUB-COMMITTEES AND WORKING PARTIES**

**4.1 Appointment of Committees**

4.1.1 Subject to such directions as may be given by NHS Improvement/Monitor, the Trust Board of Directors may appoint committees of the Trust.

4.1.2 The Trust shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees.

4.1.3 A Committee may, subject to such directions as may be given by NHS Improvement/Monitor or the Trust, appoint Sub-Committees or Working Parties 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 Committee (whether or not they include Directors of the Trust).

**4.2 Joint Committees**

4.2.1 Joint committees may be appointed by the Trust by joining together with one or more Commissioners, or other providers consisting of, wholly or partly of the Chairman and members of the Trust or other bodies, or wholly of persons who are not members of the Trust or other health bodies in question.

**4.3 Applicability of Standing Orders and Standing Financial Instructions to Committees**

4.3.1 The Standing Orders of the Trust, 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 "Chairman" is to be read as a reference to the Chairman 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. (There is no requirement to hold meetings of committees established by the Trust in public).

**4.4 Terms of Reference**

4.4.1 Every committee, sub-committee and working party shall have such terms of reference, powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide and shall be in accordance with any legislation and regulation or direction issued by NHS Improvement/Monitor. Such terms of reference shall have effect as if incorporated into the Standing Orders.

#### **4.5 Delegation of Powers by Committees to Sub-Committees**

4.5.1 Where committees are authorised to establish sub-committees they may not delegate power to the sub-committee unless expressly authorised by the Board of Directors.

#### **4.6 Approval of Appointments to Committees**

4.6.1 The Board of Directors shall approve the appointments to each of the committees, sub-committees and working parties which it has formally constituted. Where the Board of Directors determines, and regulations permit, that persons, who are neither members nor officers, shall be appointed to a committee, sub-committee or working party the terms of such appointment shall be within the powers of the Board of Directors as defined by NHS Improvement/Monitor. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

#### **4.7 Appointments for Statutory Functions**

4.7.1 Where the Board of Directors is required to appoint persons to a committee and/or to undertake statutory functions and where such appointments are to operate independently of the Board of Directors such appointment shall be made in accordance with the relevant authority.

#### **4.8 Standing Committees established by the Board of Directors**

The standing committees, sub-committees, joint-committees, groups and boards established by the Board of Directors are:

##### **4.8.1 Audit and Assurance Committee**

In line with the requirements of the NHS Audit Committee Handbook, NHS Codes of Conduct and Accountability, and NHS Improvement/Monitor's Code of Governance, an Audit and Assurance Committee will be established and constituted to make recommendations and provide the Board of Directors with an independent and objective review on its financial systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The Terms of Reference have been approved by the Board of Directors and are reviewed on a periodic basis.

The Code of Governance recommends all members of the Audit and Assurance Committee to be independent.

#### 4.8.2 **Executive Nominations and Remuneration Committee**

In line with the requirements of the NHS Codes of Conduct and Accountability, and NHS Improvement/Monitor's Code of Governance, an Executive Nominations and Remuneration Committee will be established and constituted.

In line with the Code of Governance recommendations the committee is comprised exclusively of the Chairman and Non-Executive Directors.

The purpose of the Committee will be to advise and make recommendations to the Board of Directors about appropriate remuneration and terms of service for the Chief Executive and other Executive Directors including:

- (a) all aspects of salary (including any performance-related elements/bonuses);
- (b) provisions for other benefits, including pensions and cars;
- (c) arrangements for termination of employment and other contractual terms.

#### 4.8.3 **Charitable Funds Committee**

In line with its role as a corporate trustee for any funds held in trust, either as charitable or non-charitable funds, the Board of Directors has established a Charitable Funds Committee to administer those funds in accordance with any statutory or other legal requirements or best practice required by the Charities Commission.

The provisions of this Standing Order must be read in conjunction with Standing Order 2.7 and Standing Financial Instructions 17.

#### 4.8.4 **Quality Assurance Committee**

The Committee will monitor, review and report on the quality (safest care, effectiveness of care, best experience) of clinical and social care services provided by the Trust. This will include review of i) the systems in place to ensure the delivery of safe, high quality, person-centred care ii) quality indicators flagged as of concern through escalation reporting or as requested by the Trust Board iii) progress in implementing action plans to address shortcomings in the quality of services, should they be identified.

#### 4.8.5 **Finance, Performance and Investment Committee**

The Committee shall undertake on behalf of the Trust Board objective scrutiny of the Trust's financial plans, investment policy,

major investment decisions, information management and technology functions.

#### 4.8.6 **Torbay Pharmaceuticals (TP) Board**

The TP Board recommends the strategy of the TP to the Board of Directors. The TP Board approves the objectives and plans of the TP and oversees and monitors the performance of TP business.

The TP Board reports to the Board of Directors on all matters associated with the above.

#### 4.8.7 **Other Committees**

The Board of Directors may also establish such other committees as required to discharge the Trust's responsibilities.

#### 4.8.8 **Committee for Appointing/Removing the Chief Executive as Director**

As laid down in the Trust's Constitution, it is for the Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and accounting officer).

#### 4.8.9 **Committee for Appointing/Removing Executive Directors other than the Chief Executive**

As laid down in the Trust's Constitution, a Committee, whose members shall be the Chairman, the Non-Executive Directors and the Chief Executive of the Trust, will appoint or remove the Executive Directors of the Trust other than the Chief Executive.

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

#### 5.1 **Delegation of Functions to Committees, Officers or Other Bodies**

5.1.1 Subject to such directions as may be given by NHS Improvement/Monitor, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions:

- a) by a committee, sub-committee or working party;
- b) appointed by virtue of Standing Order 4.1 or 4.2 or by an officer of the Trust;

in each case subject to such restrictions and conditions as the Trust thinks fit or as NHS Improvement/Monitor may direct.

## **5.2 Emergency Powers and Urgent Decisions**

- 5.2.1 The powers which the Board of Directors has retained to itself within these Standing Orders (Standing Order 2.8) may in emergency be exercised by the Chief Executive and the Chairman. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board of Directors for ratification.

## **5.3 Delegation to Committees**

- 5.3.1 The Board of Directors may agree to the delegation of powers to be exercised by committees, or sub-committees, or joint-committees, which it has formally constituted in accordance with directions issued by NHS Improvement/Monitor. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their delegated powers shall be approved by the Board of Directors.

## **5.4 Delegation to Officers**

- 5.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or sub-committee or joint-committee with power to act shall be exercised on behalf of the Trust 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 Trust.
- 5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendments to the Scheme of Delegation which shall be the subject of consideration and approval by the Board of Directors as indicated above.
- 5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance to provide information and advise the Board of Directors in accordance with statutory or NHS Improvement/Monitor requirements. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

**5.5 Schedule of Matters Reserved to the Board of Directors and Scheme of Delegation of Powers**

5.5.1 The arrangements made by the Board of Directors as set out in the Reservation of Powers to the Board of Directors and Delegation of Powers document shall have effect as if incorporated in these Standing Orders.

**5.6 Duty to Report Non-Compliance with Standing Orders and Standing Financial Instructions**

5.6.1 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

**6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS**

**6.1 Policy Statements: General Principles**

6.1.1 The Board of Directors will from time to time agree and approve Policy statements/ procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board of Directors minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

**6.2 Specific Policy Statements**

6.2.1 Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- a) the Standards of Business Conduct and Conflicts of Interest Policy for Trust staff;
- b) the staff Disciplinary and Appeals Procedures adopted by the Trust;

both of which shall have effect as if incorporated in these Standing Orders.

### **6.3 Standing Financial Instructions**

- 6.3.1 Standing Financial Instructions adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

### **6.4 Specific Guidance**

- 6.4.1 Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Secretary of State for Health:

- a) Caldicott Guardian 1997;
- b) Human Rights Act 1998;
- c) Freedom of Information Act 2000.

## **7. DUTIES AND OBLIGATIONS OF BOARD OF DIRECTORS MEMBERS /DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS**

### **7.1 Declaration of Interests**

#### **7.1.1 Requirements for Declaring Interests and Applicability to Board of Directors Members**

The Constitution requires Board of Directors members to declare interests which are relevant and material to the NHS Board of which they are a member. All existing Board of Directors members shall declare such interests. Any Board of Directors members appointed subsequently shall do so on appointment.

#### **7.1.2 Interests which are Relevant and Material**

Interests which shall be regarded as "relevant and material" are:

- a) employment directorships and remuneration, including Non-Executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
- b) ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- c) majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- d) a position of trust in a charity or voluntary organisation in the field of health and social care;
- e) any connection with a voluntary or other organisation contracting for NHS services;

- f) research funding/grants that may be received by an individual or their department;
- g) interests in pooled funds that are under separate management;
- h) gifts and hospitality; and
- i) related party disclosure(s).

Any member of the Board of Directors who is aware, or becomes aware, that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in Standing Order 7.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Board of Directors member shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

#### 7.1.3 **Advice on Interests**

If Board of Directors members have any doubt about the relevance of an interest, this shall be discussed with the Chairman of the Trust or with the Trust's Company Secretary. The Company Secretary retains guidance in respect of interests and disclosures.

Latest IFRS guidance should also be considered in accessing the relevance of an interest.

#### 7.1.4 **Recording of Interests in Board of Directors Minutes**

At the time Board of Directors members' interests are declared; they shall be recorded in the Board of Directors minutes.

Any changes in interests shall be declared at the next Board of Directors meeting following the change occurring and recorded in the minutes of that meeting.

#### 7.1.5 **Publicity of Declared Interests in Annual Report**

Board of Directors members' directorships of companies likely or possibly seeking to do business with the NHS shall be published in the Board of Directors' Annual Report. The information shall be kept up to date for inclusion in succeeding annual reports.

#### 7.1.6 **Conflicts of Interest which Arise During the Course of a Meeting**

During the course of a Board of Directors meeting, if a conflict of interest is established, the member concerned shall withdraw from

the meeting and play no part in the relevant discussion or decision.  
(See overlap with Standing Order 7.3).

There is no requirement in the Code of Accountability for the interests of Board of Directors members' spouses or partners to be declared. However, Standing Order 7, which is based on the regulations, requires that the interest of members' spouses, if living together, in contracts shall be declared. Therefore the interests of Board of Directors members' spouses and cohabiting partners shall also be regarded as relevant and therefore if a conflict of interest is established it should be declared. In addition if it becomes evident during the course of a Board of Directors meeting that a Director has a conflict of interest due to their spouse or cohabiting partner interests, the member concerned shall withdraw from the meeting and play no part in the relevant discussion or decision.

## **7.2 Register of Interests**

7.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board of Directors members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both executive and Non-Executive Board of Directors members, as defined in Standing Order 7.1.2.

7.2.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

7.2.3 The Register will be available to the public 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.

## **7.3 Disability of Chairman and Members in Proceedings on Account of Pecuniary Interest**

### **7.3.1 Definition of Terms used in Interpreting 'Pecuniary' Interest**

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

- (i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- (ii) "contract" shall include any proposed contract or other course of dealing;

(iii) “Pecuniary interest”

Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:-

- a) he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same; or
- b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

(iv) Exception to Pecuniary interests

A person shall not be regarded as having a pecuniary interest in any contract if:-

- a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member; or
- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract; or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.2.

### 7.3.2 **Exclusion in Proceedings of the Board of Directors**

Subject to the following provisions of this Standing Order if the Chairman or a 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 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.

The Board of Directors may exclude the Chairman or a member of the Board of Directors from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

Any remuneration, compensation or allowance payable to the Chairman or a Member by virtue of paragraph 11 of Schedule 5A to the National Health Service Act 1977 (pay and allowances) or any subsequent related Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.

The Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Trust and applies to a member of any such committee or sub-committee (whether or not he is also a member of the Trust) as it applies to a member of the Trust.

#### **7.4 Standards Of Business Conduct Policy**

##### **7.4.1 Trust Policy and National Guidance**

All Trust staff and members of must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy and the national guidance contained in HSG(93)5 on 'Standards of Business Conduct for NHS staff' or TP version.

##### **7.4.2 Interest of Officers in Contracts**

Any officer or employee of the Trust who is aware, or becomes aware, that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in Standing Order 7.3) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Trust's Company Secretary as soon as practicable.

An officer shall also declare to the Chief Executive any other employment or business or other relationship of his, 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 declared, to be entered in a register of interests of staff.

##### **7.4.3 Canvassing of, and Recommendations by, Members in relation to Appointments**

Canvassing of members of the Trust or 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.

A member of the Board of Directors 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 member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

#### **7.4.4 Relatives of Members or Officers**

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

The Chairman and every member and officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made. In the case of a declaration by the Chief Executive that should be made to the Chairman and disclosed to the Board by the Chairman.

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

Where the relationship to a member of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and members in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.

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

#### **8.1 Custody of Seal**

8.1.1 The Common Seal of the Trust shall be kept by the Chief Executive in a secure place.

#### **8.2 Sealing of Documents**

8.2.1 The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of

Directors or of a committee, thereof or where the Board of Directors has delegated its powers.

8.2.2 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 directorate/division).

8.2.3 Where a document needs to be sealed, the seal shall be affixed in the presence of the above officers and shall be attested by them (see Appendix B).

### **8.3 Register of Sealing**

8.3.1 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 of Directors at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

### **8.4 Signature of Documents**

8.4.1 Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or Finance Director.

8.4.2 In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

## **9 MISCELLANEOUS (see overlap with SFI No. 10.3)**

### **9.1 Joint Finance Arrangements**

9.1.1 The Board of Directors may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under Section 28A of the NHS Act 1977 or subsequent acts. The Board of Directors may confirm contracts to transfer money from the NHS to the voluntary sector or the health related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services, using its powers under Section 28A

of the NHS Act 1977, as amended by section 29 of the Health Act 1999 or subsequent acts and shall comply with procedures laid down by the Director of Finance which shall be in accordance with these Acts.

See overlap with Standing Financial Instruction No. 10.3.

## **9.2 Integrated Care Organisation**

Under the Risk Share Agreement with South Devon and Torbay Clinical Commissioning Group and Torbay Council the parties agree to pool budgets in Torbay and South Devon NHS Foundation Trust for the delivery of Health and Adult Social Care to the population those bodies represent. The management of that pooling is set out in the Risk Share Agreement signed by all the parties.

## APPENDIX A

### Standards of Business Conduct

**The following documents must be read in conjunction with the Trust's Standard of Business Conduct Policy contained on the Trust's intranet.**

In January 1993 HSG (93)5 was issued by the Department of Health detailing how staff were expected to conduct NHS business. Despite pre-dating the Wicks (formerly Nolan) Committee's enquiry into conduct in public life, its guidance covered all aspects of the Nolan report relevant to the NHS. However, such is the importance of the Nolan report; staff must be aware of the 7 principles and adhere to them at all times. They are:

1. **Selflessness:** Holders of public office should take decisions 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. **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
3. **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for awards or benefits, holders of public office should make choices on merit.
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.
5. **Openness:** Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
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.
7. **Leadership:** Holders of public office should promote and support these principles by leadership and example.

## Part A

### Bribery Act 210 - summary of main provisions

#### Further guidance can be found at

<http://www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm>  
or please search for 'Fraud and Bribery Prevention Policy' on the Trust intranet.

The Trust has a zero tolerance policy to Bribery and all policies and procedures will be reviewed to ensure they reflect the requirements of this policy and the detail of the Bribery Act 2010.

The Director of Finance has overall responsibility for ensuring the Trust has adequate procedures for compliance with the Bribery Act 2010.

Specifically the Director of Finance in relation to procurement, sponsorship and hospitality and the Director of Workforce and Organisational Development in relation to expenses.

#### ***Acceptance of gifts by way of Inducements or rewards***

1. Under the Bribery Act 2010, it is an offence for employees corruptly to accept or offer any gifts or consideration as an inducement reward for:
  - a) doing, or refraining from doing, anything in their official capacity; or
  - b) showing favour or disfavour to any person in their official capacity.
2. Under the Bribery Act 2010, any money, gift or consideration received by an employee in public service from a person or organisation holding or seeking to obtain a contract will be deemed by the courts to have been received corruptly unless the employee proves the contrary.

TP managers are in a more exposed position than most other NHS staff as not only do they have the power to award contracts, they are also engaged in winning new customers and increasing sales. The TP Board should ensure training is provided for staff that could be put in a position where judgement around this Act is necessary and as part of that should cover the following:

1. Any casual gifts which the TP may wish to offer its customers should first be approved by the TP Board.
2. Such hospitality could be provided at the discretion of the Managing Director and only with the prior approval of the Chairman of the Torbay Pharmaceuticals Board. On occasion, this type of expenditure may, for acceptable business reasons, exceed that initially authorised. In such circumstances, the Managing Director must seek the retrospective approval of the Chairman of the Torbay Pharmaceuticals Board. Such hospitality should be reasonable and proportionate.

TP staff should be mindful of the continued need for the prudent use of public funds. The Association of the British Pharmaceutical Industry (ABPI) Code of Practice, clause 22, which relates to meetings, hospitality and sponsorship states that:

*'The cost of a meal (including drinks) provided by way of subsistence must not exceed £75 per person, excluding VAT and gratuities.'*

Section 10.4 of the Standing Financial Instructions refers.

## Part B

### NHS Management Executive (NHSME) - general guidelines

#### Introduction

1. These guidelines, which are intended by the NHSME to be helpful to all NHS employers (I) and their employees, re-state and reinforce the guiding principles previously set out in Circular HM (62) 21 (now cancelled), relating to the conduct of business in the NHS.

#### Responsibility of NHS employers

2. NHS employers are responsible for ensuring that these guidelines and those under the Bribery Act 2010 are brought to the attention of all employees; also that machinery is put in place for ensuring that they are effectively implemented.

#### Responsibility of NHS staff

3. It is the responsibility of staff to ensure that they are not placed in a position which risks, or appears to risk, conflict between their private interests and their NHS duties. This primary responsibility applies to all NHS Staff, i.e. those who commit NHS resources directly (e.g. by the ordering of goods) or those who do so indirectly (e.g. by the prescribing of medicines). A further example would be staff who may have an interest in a private nursing home and who are involved with the discharge of patients to residential facilities.

#### Guiding principle in conduct of public business

4. It is a long established principle that public sector bodies, which include the NHS, must be impartial and honest in the conduct of their business, and that their employees should remain beyond suspicion. It is also an offence under the Bribery Act 2010 for an employee to corruptly accept or offer any inducement or reward for doing, or refraining from doing anything, in his or her official capacity, or corruptly showing favour, or disfavour, in the handling of contracts (see PART A).

Staff will need to be aware that a breach of the provisions of these Acts renders them liable to prosecution and may also lead to loss of their employment and superannuation rights in the NHS

#### Principles of conduct in the NHS

5. NHS staff are expected to:
  - a. ensure that the interest of patients remains paramount at all times;
  - b. be impartial and honest in the conduct of their official business;

- c. use the public funds entrusted to them to the best advantage of the service, always ensuring value for money.
6. It is also the responsibility of staff to ensure that they do **not**:
- a. abuse their official position for personal gain or to benefit their family or friends;
  - b. seek to advantage or further private business or other interests, in the course of their official duties.

### **Implementing the guiding principles**

#### **Casual gifts**

7. Casual gifts offered by contractors or others, e.g. at Christmas time, may not be in any way connected with the performance of duties so as to constitute an offence under the Bribery Act 2010. Such gifts should nevertheless be politely but firmly declined. Articles of low intrinsic value such as diaries or calendars, or small tokens of gratitude from patients or their relatives, need not necessarily be refused. In cases of doubt staff should either consult their line manager or politely decline acceptance.

#### **Hospitality**

8. Modest hospitality provided it is normal and reasonable in the circumstances, e.g. lunches in the course of working visits, may be acceptable, though it should be similar to the scale of hospitality which the NHS as an employer would be likely to offer.
9. Staff should decline all other offers of gifts, hospitality or entertainment. If in doubt they should seek advice from their line manager.

TP staff should refer to Part A above and section 10.4 of the Standing Financial Instructions.

#### **Declaration of interests**

10. NHS employers need to be aware of all cases where an employee, or his or her close relative or associate, has a controlling and/or significant financial interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any other activity or pursuit, which may compete for an NHS contract to supply either goods or services to the employing authority.
11. All NHS staff should therefore declare such interests to their employer, either on starting employment or on acquisition of the interest, in order that it may be known to and in no way promoted to the detriment of either the employing authority or the patients whom it serves.

12. One particular area of potential conflict of interest that may directly affect patients is when NHS staff hold a self-beneficial interest in private care homes or hostels. While it is for staff to declare such interests to their employing authority, the employing authority has a responsibility to introduce whatever measures it considers necessary to ensure that its interests and those of patients are adequately safeguarded. This may for example take the form of a contractual obligation on staff to declare any such interests. Advice on professional conduct issued by the General Medical Council recommends that when a doctor refers a patient to a private care home or hostel in which he or she has an interest, the patient must be informed of that interest before referral is made.
13. In determining what needs to be declared, employers and employees will wish to be guided by the principles set out in paragraph 5 above; also the more detailed guidance to staff contained in Part D.
14. NHS employers should:
  - a) ensure that staff are aware of their responsibility to declare relevant interests (perhaps by including a clause to this effect in staff contracts;
  - b) consider keeping registers of all such interests and making them available for inspection by the public;
  - c) develop a local policy, in consultation with staff and local staff interests, for implementing this guidance. This may include the disciplinary action to be taken if an employee fails to declare a relevant interest, or is found to have abused his or her official position, or knowledge, for the purpose of self-benefit, or that of family or friends.

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

15. Individual staff 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 their NHS employer. (This does not apply to concessionary agreements negotiated with companies by NHS management, or by recognised staff interests on behalf of all staff - for example, NHS staff benefits schemes.)

### **Contracts**

16. All staff 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 professional standards of the kind set out in the Ethical Code of the Chartered Institute of Purchasing and Supply (CIPS), reproduced at PART E.

### **Favouritism in awarding contracts**

17. Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of NHS Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:
  - a) 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.
  - b) 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.
  
18. NHS employers 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**

19. NHS employers will wish to ensure that all invitations to potential contractors to tender for NHS business include a notice warning tenderers of the consequences of engaging in any corrupt practices involving employees of public bodies.

### **Outside employment**

20. NHS employees are advised not to engage in outside employment that may conflict with their NHS work, or be detrimental to it. They are advised to tell their NHS employing authority if they think they may be risking a conflict of interest in this area: the NHS employer will be responsible for judging whether the interests of patients could be harmed, in line with the principles in paragraph 5 above. NHS employers may wish to consider the preparation of local guidelines on this subject.

### **Private practice**

21. Consultants (and associate specialists) employed under the Terms and Conditions of Service of Hospital Medical and Dental Staff are permitted to carry out private practice in NHS hospitals subject to the conditions

outlined in the handbook "A Guide to the Management of Private Practice in the NHS". (See also PM (79)11). Consultants who have signed new contracts with Trusts will be subject to the terms applying to private practice in those contracts.

22. Other grades may undertake private practice or work for outside agencies, providing they do not do so within the time they are contracted to the NHS, and they observe the conditions in paragraph 20 above. All hospital doctors are entitled to fees for other work outside their NHS contractual duties under "Category 2" (paragraph 37 of the TCS of Hospital Medical and Dental staff), e.g. examinations and reports for life insurance purposes. Hospital doctors and dentists in training should not undertake locum work outside their contracts where such work would be in breach of their contracted hours. Career grade medical and dental staff employed by NHS Foundation Trusts may agree terms and conditions different from the National Terms and Conditions of Service.

## **Rewards for Initiative**

23. NHS employers 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 their employees in the course of their NHS 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 or subsequent acts. To achieve this, NHS employers 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.
24. 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 affected. 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.
25. In the case of collaborative research and evaluative exercises with manufacturers, NHS employers should see that they obtain a fair reward for the input they provide. If such an exercise involves additional work for an NHS employee outside that paid for by the NHS employer under his or her 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.

### **Commercial sponsorship for attendance at courses and conferences**

26. Acceptance by staff of commercial sponsorship for attendance at relevant conferences and courses is acceptable, but only where the employee seeks permission in advance and the employer is satisfied that acceptance will not compromise purchasing decisions in any way.
27. On occasions when NHS employers consider it necessary for staff advising on the purchase of equipment to inspect such equipment in operation in other parts of the country (or exceptionally, overseas), employing authorities will themselves want to consider meeting the cost, so as to avoid putting in jeopardy the integrity of subsequent purchasing decisions.

### **Commercial Sponsorship of posts ("linked deals")**

28. Pharmaceutical companies, for example, may offer to sponsor, wholly or partially, a post for an employing authority. NHS employers should not enter into such arrangements, unless it has been made abundantly clear to the company concerned that the sponsorship will have no effect on purchasing decisions within the authority. Where such sponsorship is accepted, monitoring arrangements should be established to ensure that purchasing decisions are not, in fact, being influenced by the sponsorship agreement.

**Under no circumstances should employees agree to "linked deals" whereby sponsorship is linked to the purchase of particular products, or to supply from particular sources.**

### **"Commercial in-confidence"**

29. Staff should be particularly careful of using, or making public, internal information of a "commercial in-confidence" nature, particularly if its disclosure would prejudice the principle of a purchasing system based on fair competition. This principle applies whether private competitors or other NHS are concerned, and whether or not is prompted by the expectation of personal gain (see paragraphs 16 18 above and Part E).
30. However, NHS employers should be careful about adopting a too restrictive view on this matter. It should certainly not be a cause of excessive secrecy on matters which are not strictly commercial per se. For example, the term "commercial in confidence" should not be taken to include information about service delivery and activity levels, which should be publicly available. Nor should it inhibit the free exchange of data for medical audit purposes, for example, subject to the normal rules governing patient confidentiality and data protection. In all

circumstances the overriding consideration must be the best interests of patients.

## Part C

### Action checklist for NHS managers

References are to paragraphs in Part B of "Standards of business conduct for NHS" (Annex to HSG(93)5).

#### YOU must:

- a) ensure that all staff are aware of this guidance (2) and (4);
- b) develop a local policy and implement it (2 and 14);
- c) show no favoritism in awarding contracts to businesses run by employees, ex-employees or their friends or relatives) (17 - 18);
- d) include a warning against corruption in all invitations to tender (19);
- e) consider requests from staff for permission to undertake additional outside employment (20);
- f) apply the terms of M(79)11 concerning doctors' engagements in private practice (21);
- g) receive rewards or royalties in respect of work carried out by employees in the course of their NHS work, and ensure that such employees receive due rewards (24);
- h) similarly ensure receipt of rewards for collaborative work with manufacturers, and pass on to participating employees (25);
- i) ensure that acceptance of commercial sponsorship will not influence or jeopardize purchasing decisions (26-27);
- j) refuse "linked deals" whereby sponsorship of staff posts is linked to the purchase of particular products or supply from particular sources (28);
- k) avoid excessive secrecy and abuse of the term "commercial in confidence" (30).

## Part D

### Short guide for staff on "Standards of business conduct for NHS staff"

References are to paragraphs in Part B of "Standards of business conduct for NHS staff" (Annex to HSG(93)5).

#### Do:

- a) make sure you understand the guidelines on standards of business conduct, and consult your line managers if you are not sure;
- b) make sure you are not in a position where your private interests and NHS duties may conflict (3);
- c) declare to your employer any relevant interests (10 - 14). If in doubt, ask yourself:
  - i. am I, or might I be, in a position where I (or my friends/family) could gain from the connection between my private interests and my employment?
  - ii. do I have access to information which could influence purchasing decisions?
  - iii. could my outside interest be in any way detrimental to the NHS or to patients' interests?
  - iv. do I have any other reason to think I may be risking a conflict of interest?

If still unsure - **Declare it!**;

- d) adhere to the ethical code of the Institute of Purchasing and Supply if you are involved in any way with the acquisition of goods and services (16);
- e) seek your employer's permission before taking on outside work, if there is any question of it adversely affecting your NHS duties (20) (Special guidance applies to doctors);
- f) obtain your employer's permission before accepting any commercial sponsorship (26).

#### Do not:

- a) accept any gifts, inducements or inappropriate hospitality (see 7 – 9);
- b) abuse your-past or present official position to obtain preferential rates for private deals (15);
- c) unfairly advantage one competitor over another or show favoritisms in awarding contracts (18);
- d) misuse or make available official "commercial in confidence" information (29).

## Part E

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### **Professional Code of Ethics**

#### **An introduction to our code of ethics**

1. Members of our Institute undertake to work to exceed the expectations of the following Code and will regard the Code as the basis of best conduct in the Purchasing and Supply profession.
2. Members should seek the commitment of their employer to the Code and seek to achieve widespread acceptance of it amongst their fellow employees.
3. Members should raise any matter of concern of an ethical nature with their immediate supervisor or another senior colleague if appropriate, irrespective of whether it is explicitly addressed in the Code.

#### **Key principles**

4. Members shall always seek to uphold and enhance the standing of the Purchasing and Supply profession and will always act professionally and selflessly by:
  - Maintaining the highest possible standard of integrity in all business relationships, both inside and outside the organisations where they work.
  - Rejecting any business practice which might reasonably be deemed improper and never using their authority for personal gain.
  - Enhancing the proficiency and stature of the profession by acquiring and maintaining current technical knowledge and the highest standards of ethical behaviour.
  - Fostering the highest possible standards of professional competence amongst those for whom they are responsible.
  - Optimising the use of resources which they are responsible or influence to provide the maximum benefit to their employing organisation.
  - Complying both with the letter and the spirit of:
    - The law of the country in which they practise.
    - Institute guidance on professional practice.
    - Contractual obligations.
5. Members should never allow themselves to be deflected from these principles.

## Guidance

6. In applying these principles, members should follow the guidance set out below:
- Declaration of interest - any personal interest which may affect or be seen by others to affect a member's impartiality in any matter relevant to his or her duties should be declared.
  - Confidentiality and accuracy of information - the confidentiality of information received in the course of duty should be respected and should never be used for personal gain. Information given in the course of duty should be honest and clear.
  - Competition - the nature and length of contracts and business relationships with suppliers can vary according to circumstances. These should always be constructed to ensure deliverables and benefits. Arrangements which might in the long term prevent the effective operation of fair competition should be avoided.
  - Business gifts - business gifts, other than items of very small intrinsic value such as business diaries or calendars, should not be accepted.
  - Hospitality - the recipient should not allow him or herself to be influenced or be perceived by others to have been influenced in making a business decision as a consequence of accepting hospitality. The frequency and scale of hospitality accepted should be managed openly and with care and should not be greater than the member's employer is able to reciprocate.

## Decisions and advice

7. When it is not easy to decide between what is and is not acceptable, advice should be sought from the member's supervisor, another senior colleague or the Institute as appropriate. Advice on any aspect of the Code is available from the Institute.

*This Code was approved by the Council of CIPS on 16 October 1999*

## APPENDIX B

### Sealing of Documents

#### 1. Form of Attestation

An appropriate form of attestation for documents is "The Common Seal Torbay and South Devon NHS Foundation Trust was unto here affixed in the presence of ....."

#### 2. **Use of the Seal**

Refer to National Service and Community Care Act 1990 schedule 2, paragraph 28 or subsequent Acts.

2.1 The seal is a corporate signature. It may be interchangeable with the words "for and on behalf of the Trust" for documents of minor importance and/or value. The use of the seal indicates that the document is important and/or valuable. No common law exists regarding any financial limits which require a seal; however, a seal must be used in the conveyancing of land.

2.2 If the Trust gives an undertaking, the sealing of a document imposes an obligation. A signature does not reduce the obligation, but a seal reaffirms the obligation expressed within the document. In cases where the Trust is uncertain, a signature could be offered 'for and on behalf of the Trust' and if this is refused, the seal can be used.

2.3 The Trust or its officers may decide that a document shall be sealed, within the provisions of the NHS Acts.

2.4 The following documents should be sealed:

- a) Land Conveyances;
- b) Shares or bond transfers and sales.

2.5 The following documents may be sealed:

- a) Legal agreements and licences;
- b) When a seal is requested by the other party.