

**Torbay and South Devon NHS  
Foundation Trust**

**Council of Governors Standing Orders**

**Document Information**

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Date of Issue:	01 May 2024	Next Review Date:	May 2026
Version:	1.0	Last Review Date:	01 May 2024
Author:	Director of Corporate Governance and Trust Secretary		
Governor(s) Responsible	CoG		
Approval / Consultation Route: Council of Governors			
Approved By: Council of Governors		Date Approved: 01 May 2024	
Links or overlaps with other policies:			
The Constitution			
Governor Code of Conduct			

**Amendment History**

Issue	Status	Date	Reason for Change	Authorised

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## 1. INTRODUCTION

### 1.1 Statutory Framework

- 1.1.1 Torbay and South Devon NHS Foundation Trust ("**the Trust**") was established as a public benefit corporation following authorisation by NHS England (formerly Monitor) on 1 March 2007 as "South Devon Healthcare NHS Foundation Trust". It changed its name to Torbay and South Devon NHS Foundation Trust on 1st October 2015 upon acquiring Torbay and Southern Devon Health and Care NHS Trust.
- 1.1.2 The principal place of business of the Trust is at the Trust Headquarters.
- 1.1.3 The Trust is governed by the Regulatory Framework and its functions are conferred by the Regulatory Framework.
- 1.1.4 The Constitution requires the Council of Governors to adopt standing orders (**SOs**) for the regulation of its proceedings and business.
- 1.1.5 The Trust shall engage with NHS England in an open and co-operative manner and shall promptly notify it of anything relating to the Trust of which NHS England would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any financial or performance thresholds which NHS England may specify from time to time.
- 1.1.6 When giving information to the public on behalf of the Trust, Governors shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee) and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service. They will also ensure that they follow the best practice advice set out in the Code of Governance for NHS Providers (October 2022) with effect from April 2023 published by NHS England.

## 2. INTERPRETATION AND DEFINITIONS

### 2.1 Interpretation

- 2.1.1 Save as otherwise permitted by law, at any meeting the Chair shall be the final authority on the interpretation of the SOs (on which they should be advised by the Chief Executive or Secretary).
- 2.1.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in the SOs shall bear the same meaning as in the National Health Service Act 2006 (as amended) ("**2006 Act**").
- 2.1.3 Wherever the title Chair, Vice Chair, Senior Independent Director or Secretary is used in these SOs, it shall be deemed to include such other Director or employee who has been duly authorised to represent them.
- 2.1.4 Words importing the masculine gender only shall include the feminine gender.
- 2.1.5 Words importing the singular shall import the plural and vice-versa.
- 2.1.6 A reference to "writing" or "written" includes email but excludes texts from mobile phones and messages via instant messaging platforms.

### 2.2 Definitions

The definition and interpretation of words and expressions contained in these standing orders are as set out in the Constitution and in addition:

**"Clear Days"** means a day of the week not including a Saturday, Sunday or Public Holiday;

**"Committee"** includes a committee or sub-committee created and appointed by the Council of Governors as the context requires.

**"Committee Member"** means a person formally appointed by the Council of Governors to sit on or to chair specific Committees.

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

**"Officer"** means an employee of the Trust or any other person holding a paid appointment or office with the Trust.

**"Regulatory Framework"** means the 2006 Act, the Constitution and the Trust's NHS Provider Licence;

**"Senior Independent Director"** means the Non-Executive Director appointed as senior independent director from time to time in accordance with the Constitution.

**"SOs"** means these standing orders.

### **2.3 Order of precedence**

2.3.1 If there is any conflict or ambiguity between the terms of the Constitution and the Provider Code of Governance and these SOs, the following order of precedence shall apply:

2.3.1.1 The Constitution;

2.3.1.2 the Provider Code of Governance;

2.3.1.3 the SOs.

## **3. THE COUNCIL OF GOVERNORS**

### **3.1 Corporate Role of the Trust**

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

3.1.2 The Trust has the functions conferred on it by the Regulatory Framework. The powers of the Trust established under the Regulatory Framework shall be exercised by the Board of Directors (save where reserved to the Council of Governors).

3.1.3 All powers and decisions shall be exercised by the Council of Governors in formal session or by way of written motion as provided for in SO 4.12 (written motions), save as provided for in SO 6.1 (urgent decisions).

3.1.4 The validity of any act of the Trust is not affected by any vacancy among the Governors or by any defect in the election or appointment of any Governor.

## **4. MEETINGS OF THE COUNCIL OF GOVERNORS**

### **4.1 Admission of Public**

4.1.1 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors determines that members of the public are excluded from the meeting (or part thereof) for special reasons including but not limited to those set out in SO 4.1.2 and 4.1.3.

- 4.1.2 The public shall be afforded facilities to attend such meeting of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

*“...that 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 of which would be prejudicial to the public interest”.*

- 4.1.3 In the event that the public are admitted to all or part of a Council of Governors meeting pursuant to SO 4.1.1 above, the Chair (or other person presiding), shall give such directions as they think fit with regard to the arrangements for meetings and accommodation of the public such as to ensure that the Trust’s business shall be conducted without interruption and disruption. The public will be required to withdraw upon the Council of Governors resolving:

*“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Council of Governors to complete business without the presence of the public”.*

- 4.1.4 Arrangements for the public to attend and observe the Council of Governors meeting shall not be construed as allowing them any right to speak at the meeting or to vote.

- 4.1.5 Nothing in these SOs shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Council of Governors. Such permission shall be granted only upon resolution of the Council of Governors.

## **4.2 Frequency**

- 4.2.1 Subject to SO 4.2.2, meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine in such format as the Council of Governors may, in its absolute discretion, determine. Meetings may be conducted by electronic means in accordance with paragraph 48 of the Constitution (electronic communications).

- 4.2.2 The Trust shall hold meetings of the Council of Governors at least 4 times in each calendar year including:

4.2.2.1 an annual Governors' meeting fulfilling the requirements of paragraph 44 of the Constitution (presentation of the annual accounts and reports to the Governors and Members); and

4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

## **4.3 Calling Meetings**

- 4.3.1 The Chair may instruct the Secretary to call a meeting of the Council of Governors at any time.

- 4.3.2 One third or more Governors may requisition a meeting by giving notice in writing to the Secretary. If the Chair refuses, or fails, to call a meeting within seven Clear Days of a requisition being made, the Governors signing the requisition may instruct the Secretary to call a meeting.

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

- 4.4.1 Before each formal meeting of the Council of Governors, a written notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on their behalf shall be delivered to, or sent by email, to every Governor, or sent by

post to the usual place of residence of every Governor, so as to be available to them at least 3 Clear Days before the meeting, save in the case of emergencies or urgent matters to be considered by the Council of Governors.

- 4.4.2 Failure to serve notice on more than 3 Governors will invalidate a meeting. A notice will be deemed to have been served 48 hours after it was posted or, in the case of a notice sent electronically, on the date of transmission.
- 4.4.3 In the case of a meeting called by Governors in default of the Chair pursuant to SO 4.3.2 (meeting called by Governors), the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.4.4 In the event of an emergency giving rise to the need for an immediate meeting of the Council of Governors, failure to comply with the notice period in SO 4.4.1 shall not prevent the calling of, or invalidate, such a meeting provided that every effort is made to make personal contact with every Governor who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.
- 4.4.5 Before a meeting of the Council of Governors, a public notice of the time and place and format of the meeting, and the public part of the agenda, shall be displayed at the Trust's Headquarters and advertised on the Trust's website at least 3 Clear Days before the meeting, save in the case of emergencies.
- 4.4.6 No business may be transacted at any meeting of the Council of Governors which is not specified in the notice of that meeting unless the Chair, in his/her absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Council of Governors as a matter of urgency. A decision by the Chair to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.

#### **4.5 Agenda and Supporting Papers**

- 4.5.1 Save in an emergency or where urgent matters must be briefed to the Council of Governors, an agenda shall be sent to each Governor so as to arrive with each Governor no later than 5 Clear Days in advance of each meeting and supporting papers, whenever possible, shall accompany the agenda.

#### **4.6 Setting the Agenda**

- 4.6.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.6.2 A Governor desiring a matter to be included on an agenda, other than a standing item or a motion under SO 4.11 (urgent motions) and SO 4.12 (written motions) below, including a formal proposition for discussion and voting on at a meeting of the Council of Governors, shall make their request in writing to the Chair 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 and shall include appropriate supporting information. Requests made less than 12 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.6.3 The Chair is responsible for leading on the setting the agenda. They shall be entitled to suggest matters for the agenda of any or all meetings and shall be the final authority on whether matters are included pursuant to SO 4.6.2 above. The Chair shall include petitions on the agenda in compliance with SO 4.7 (Petitions).

#### **4.7 Petitions**

- 4.7.1 Where a petition has been received by the Trust which relates to matters concerning the functioning of the Council of Governors, the Chair shall include the petition as an item on the agenda of the next Council of Governors meeting. All other petitions are to be included on the agenda of a Board of Directors meeting.

#### **4.8 Chair of Meeting**

- 4.8.1 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 there is one and they are present, shall preside. If the Chair and Vice Chair are absent, such Governor as the Governors present shall choose shall preside.
- 4.8.2 If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, the [Lead Governor] or such other Governor as the Council of Governors present shall choose, shall preside.
- 4.8.3 On matters concerning the performance, reappointment or succession of the Chair, the Senior Independent Director will preside.
- 4.8.4 If any matter for consideration at a meeting of the Council of Governors relates to the interests of the Chair or the Non-Executive Directors as a class, neither the Chair nor any of the Non-Executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Governors shall elect the Lead Governor, Deputy Lead Governor to preside during that period and that person shall exercise all the rights and obligations of the Chair, including (for the avoidance of doubt) the right to exercise a casting vote where the numbers of votes for and against a motion is equal.

#### **4.9 Chair's Ruling**

- 4.9.1 The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the SOs, at the meeting, shall be final.

#### **4.10 Notice of Motion**

- 4.10.1 Subject to the provision of SO 4.13.1 (Motions: Procedure at and during a Meeting/Who may propose) and 4.17 (Motions: Motion to Rescind a Resolution), a Governor wishing to move or amend a motion shall send a written notice to the Secretary who will ensure that it is brought to the immediate attention of the Chair.
- 4.10.2 The notice shall be delivered at least 14 Clear Days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these SOs. This SO shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

#### **4.11 Urgent Motions**

- 4.11.1 Subject to the agreement of the Chair, and subject also to the provision of SO 4.13.1 (Motions: Procedure at and during a meeting/who may propose), a Governor may give written notice of an urgent 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 Council of Governors at the commencement of the business



of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

#### **4.12 Written motions**

- 4.12.1 Save in relation to the matters set out at SO 4.12.6 (decisions where written motions may not be used), written motions may be used to deal with business otherwise required to be conducted at a meeting of the Council of Governors. The Chair, the Secretary, one third or more Governors, or in urgent situations, the Vice Chair or another Governor with the consent of the Chair, may propose a written resolution by giving written notice to the Secretary specifying the business to be carried out.
- 4.12.2 The notice must be submitted in the relevant format or template issued by the Secretary from time to time for that purpose and must specify:
  - 4.12.2.1 the proposed resolution;
  - 4.12.2.2 how to signify agreement to the resolution; and
  - 4.12.2.3 the date by which it is proposed that the Council of Governors should adopt it.
- 4.12.3 If all Governors have been notified of the proposal and a simple majority of Governors entitled to attend and vote at a meeting of the Council of Governors confirm acceptance of the written motion in writing to the Secretary within the timescale for acceptance then the motion will be deemed to have been resolved notwithstanding that the Governors have not gathered in one place.
- 4.12.4 The effective date of the motion shall be the date that the last confirmation is received by the Secretary and, until that date a Governor who has previously indicated acceptance can withdraw and the motion shall fail.
- 4.12.5 Once the motion is passed, a copy shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the chair presiding at it.
- 4.12.6 Written motions may not be used to resolve the following matters:
  - 4.12.6.1 appointment and removal of the Chair or any other Non-Executive Director (paragraph 27 of the Constitution);
  - 4.12.6.2 appointment of the Vice Chair (paragraph 28 of the Constitution);
  - 4.12.6.3 the remuneration and allowances of the Chair and other Non-Executive Directors (paragraph 35 of the Constitution);
  - 4.12.6.4 appointment or removal of the Trust's auditor (paragraph 40 of the Constitution);
  - 4.12.6.5 removal of a Governor (paragraph 5 of Annex 4 of the Constitution);
  - 4.12.6.6 amendment to the Constitution (paragraph 46 of the Constitution);
  - 4.12.6.7 any other matter which the Constitution requires must be resolved at a meeting of the Council of Governors;
  - 4.12.6.8 any other matter which the Council of Governors may from time to time determine must be resolved at a meeting of the Council of Governors.

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

### **4.13 Who may propose**

- 4.13.1 A motion properly notified under SO 4.10 above may be proposed by the Chair of the meeting or any Governor present. All motions so proposed must be seconded by another Governor.

### **4.14 Contents of Motions**

- 4.14.1 The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:
- 4.14.1.1 the reception of a report;
  - 4.14.1.2 consideration of any item of business before the Council of Governors;
  - 4.14.1.3 the accuracy of minutes;
  - 4.14.1.4 that the Council of Governors proceed to next business;
  - 4.14.1.5 that the Council of Governors adjourn; and
  - 4.14.1.6 that the question be now put.

### **4.15 Amendments to Motions**

- 4.15.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.
- 4.15.2 Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Council of Governors.
- 4.15.3 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.

### **4.16 Rights of Reply to Motions**

#### **4.16.1 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.

#### **4.16.2 Substantive/original motion**

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

#### **4.16.3 Withdrawing a Motion**

A motion or amendment once moved and seconded may be withdrawn by the proposer with the agreement of the seconder and the Chair.

#### **4.16.4 Motions Once Under Debate**

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

- (i) an amendment to the motion;
  - (ii) the adjournment of the discussion, or the meeting;
  - (iii) that the meeting proceed to the next business;
  - (iv) that the question should be now put;
  - (v) the appointment of an 'ad hoc' committee to deal with a specific item of business;
  - (vi) (where relevant), a motion under SO 4.1 above resolving to exclude the public; and
  - (vii) that a Governor be not further heard.
- (b) In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a Governor who has not taken part in the debate and who is eligible to vote.

4.16.5 If a motion to proceed to the next business or that the question be now put, is carried, the Chair 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.

#### **4.17 Motion to Rescind a Resolution**

4.17.1 Notice of motion to 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 Governor who gives it and also the signature of 4 other Governors, and before considering any such motion of which notice shall have been given, the Council of Governors may refer the matter to any appropriate committee of the Council of Governors or the Chair for recommendation.

4.17.2 When any such motion has been dealt with by the Council of Governors, it shall not be competent for any Governor to propose a motion to the same effect within 6 calendar months. However, the Chair may do so if they consider it appropriate. This SO shall not apply to motions moved in pursuance of a report or recommendations of a Committee of the Council of Governors or the Chair.

#### **4.18 Quorum**

4.18.1 No business shall be transacted at a meeting unless at least one third of the whole number of the Chair and Governors appointed are present.

4.18.2 If the Chair or other 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 they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.18.3 Governors may participate in meetings by telephone, video or computer link in accordance with the Constitution. Participation shall be deemed to constitute presence in person at the meeting.

#### **4.19 Voting**

- 4.19.1 Save as provided in the Constitution, SO 4.21 (Suspension of SOs) or as otherwise provided in the SOs, every question put to a vote at a meeting shall be determined by a majority of the votes of Governors present and voting on the question. In the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a casting vote.
- 4.19.2 Decisions expressly catered for in the Regulatory Framework shall only be passed if the required proportion of votes are in favour of it and the relevant provisions of the Regulatory Framework have been complied with.
- 4.19.3 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.
- 4.19.4 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.
- 4.19.5 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.19.6 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.19.7 A Governor may not vote at a meeting of the Council of Governors unless, within 7 Clear Days prior to the commencement of the meeting they have made the following declaration:

*"Declaration to the Secretary of Torbay and South Devon NHS Foundation Trust*

*I hereby declare that I am at the date of this declaration a member of the [Public/Staff] Constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution."*

- 4.19.8 A Governor shall be deemed to have confirmed the declaration on attending a subsequent meeting of the Council of Governors, unless they otherwise notify the Secretary in writing.

#### **4.20 Adjournment of meetings**

- 4.20.1 The Council of Governors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting.
- 4.20.2 No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 4.20.3 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Governor specifying the business to be transacted and the date, time and place of the adjournment.

#### **4.21 Suspension of SOs**

- 4.21.1 Except where this would contravene any provision of the Regulatory Framework or any guidance or best practice advice issued by NHS England or the rules in relation to SO 4.18.1 (quorum), any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the

whole number of Governors are present, [including one Public Governor, one Staff Governor and one Appointed Governor], and that a majority of those present vote in favour of suspension.

- 4.21.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.21.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Council of Governors.
- 4.21.4 No formal business may be transacted while SOs are suspended.
- 4.21.5 The Audit Committee shall review every decision to suspend SOs.

#### **4.22 Amendment of SOs**

- 4.22.1 These SOs shall be amended only if:
  - 4.22.1.1 a notice of motion under SO 4.10 (notice of motion) has been given upon a recommendation of the Chair and included on the agenda for the relevant meeting;
  - 4.22.1.2 two thirds of the Council of Governors are present at the meeting where the amendment is being discussed; and
  - 4.22.1.3 the amendment proposed does not contravene a statutory provision or the Constitution.

#### **4.23 Attendance and Record of Attendance**

- 4.23.1 Governors who are unable to attend a meeting shall notify the Secretary in advance of the meeting in question so that their apologies may be submitted.
- 4.23.2 The Council of Governors may invite the Chief Executive, other Directors or a representative of the Auditor or other advisors to attend a meeting of the Council of Governors.
- 4.23.3 The Trust may make such arrangements from time to time as it sees fit with regards to extending of invitations to observers to attend meetings of the Council of Governors. Observers invited to attend meetings of the Council of Governors shall receive agenda papers and may be permitted to speak by invitation from the Chair, but not to propose motions nor to vote.
- 4.23.4 At the discretion of the Chair, individuals including representatives of the professional bodies and those with an expert point of view may be invited to contribute views on specific matters, but not to propose motions nor to vote.
- 4.23.5 The names of the Governors present at a meeting of the Council of Governors shall be recorded in the minutes together with the names of any Officers, and others invited by the Chair to be in attendance, save for members of the public.

#### **4.24 Minutes**

- 4.24.1 The minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chair presiding at the meeting.
- 4.24.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

- 4.24.3 Minutes shall be circulated in accordance with Governors' wishes and retained in accordance with the Trust's document retention policy, as amended from time to time.
- 4.24.4 The minutes of the meetings of the Council of Governors shall be made available to the public, save for items discussed by the Governors following the exclusion of the public under SO 4.1.2 or 4.1.3.

## 5. COMMITTEES

### 5.1 Appointment of Committees

- 5.1.1 Subject to SO 3.1.3 (reservation of powers to Council of Governors), the Regulatory Framework and such guidance or best practice advice issued by NHS England, the Council of Governors may appoint Committees consisting wholly or partly of the Chair and Governors and others including Officers.
- 5.1.2 A Committee appointed under SO 5.1.1 may, subject to such guidance and/or best practice advice as may be issued by NHS England and authorisation by the Council of Governors, appoint sub-Committees consisting wholly or partly of Committee Members.
- 5.1.3 Any Committee or sub-Committee may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors and subject to the payment of fees, travelling expenses and other allowances as may be determined by the Board of Directors.
- 5.1.4 Subject always to SO 6.2 (No Delegation), every Committee shall have such terms of reference and be subject to such conditions (as to reporting back to the Council of Governors) as the Council of Governors shall decide and shall be in accordance with any relevant legislation and regulation or guidance issued by NHS England. Such terms of reference shall have effect as if incorporated into the SOs.

### 5.2 Standing Committees of the Council of Governors

- 5.2.1 The standing Committees established by the Council of Governors are:
  - 5.2.1.1 Governor Nomination and Remuneration Committee
  - 5.2.1.2 Membership Committee
- 5.2.2 Subject to the terms of reference agreed by the Council of Governors in accordance with SO 5.1.4, Committees or sub-Committees may make written recommendations to the Council of Governors for action or ratification.
- 5.2.3 Notwithstanding the provisions of SO 5.2.1 above, the Council of Governors may establish other Committees and sub-Committees from time to time at its discretion.

### 5.3 Applicability of SOs to Committees

- 5.3.1 These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any Committees established by the Council of Governors. In which case the term "Chair" is to be read as a reference to the Chair of the Committee as the context permits, and the term "Governor" is to be read as a reference to a Committee Member as the context permits.
- 5.3.2 Meetings of Committees shall not be open to members of the public.

#### **5.4 Approval of Appointments to Committees**

5.4.1 Following recommendation from the Chair, the Council of Governors shall approve the appointments to each of the Committees, which it has formally constituted.

#### **5.5 Confidentiality**

5.5.1 A Committee Member (or an attendee) shall not disclose a matter dealt with by, or brought before, a Committee without its permission until the Committee has reported to the Council of Governors or has otherwise concluded on the matter. A Committee Member shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the Committee, notwithstanding that the matter has been reported or action has concluded, if the Council of Governors or the Committee resolves that it is confidential.

### **6. Arrangements for the exercise of functions by delegation**

#### **6.1 Urgency Powers**

6.1.1 The powers which the Council of Governors has retained to itself within these SOs may in an emergency or otherwise by reason of urgency be exercised by the Chair (or Vice Chair in relation to matters concerning the Chair) in consultation with the Lead Governor. The exercise of such powers shall be reported to the next formal meeting of the Council of Governors for ratification.

#### **6.2 No Delegation**

6.2.1 Subject to SO 6.1.1 (urgency powers), the Council of Governors shall not delegate to any Governor, Committee or sub-Committee or Officer any of the powers or responsibilities which are to be exercised by the Council of Governors.

#### **6.3 Duty to Report Non-Compliance with SOs**

6.3.1 If for any reason these SOs 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 Council of Governors for action or ratification. All Governors and staff have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

### **7. DECLARATIONS OF INTERESTS**

#### **7.1 Declaration of Interests**

7.1.1 The following SOs supplement paragraph 21 of the Constitution (Council of Governors – Conflicts of Interest of Governors) and are to be read in accordance with those provisions.

7.1.2 Pursuant to paragraph 21.1 of the Constitution, if a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it.

7.1.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a Council of Governor's meeting and delivering it to the Secretary on appointment or as soon as is practicable

thereafter as the interest arises and in any event within 5 Clear Days of becoming aware of the existence of a relevant and material interest.

- 7.1.4 If, during the course of a Council of Governors' meeting, a conflict of interest is established, the Governor concerned shall at the meeting, and as soon as practicable after its commencement, disclose the fact and must then withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on any question with respect to the matter. At the time the Governor's interests are declared, they shall be recorded in the Council of Governors minutes. Any changes in interests shall be declared at the next Council of Governors' meeting following the change occurring and recorded in the minutes of that meeting.
- 7.1.5 If a Governor has declared a pecuniary interest (within the meaning of SO 7.3 below), they shall be excluded from any meeting of the Council of Governors meeting whilst that proposed contract or matter is under consideration and shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed.
- 7.1.6 The interests of immediate family members as defined in SO 7.3.1 (pecuniary interests) shall, if known to the Governor, be deemed for the purposes of the Constitution and the SOs to be also a pecuniary interest of the Governor. Such interests shall be regarded as relevant and therefore if a direct or indirect conflict of interest is established it should be declared.
- 7.1.7 This SO 7 applies to any Committee or sub-Committee of the Council of Governors.
- 7.1.8 The Audit Committee shall monitor and review compliance by the Governors with the above provisions on declaring interests.

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

- 7.2.1 Subject to any guidance or best practice advice issued by NHS England, interests which should be regarded as "relevant and material" for the purposes of these SOs 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 shareholdings 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, hospitality and/or sponsorship; related party disclosure(s); and
  - (i) any application to a special interest group campaigning on health or social care issues.



### 7.3 Pecuniary Interests

- 7.3.1 In this SO:
- 7.3.1.1 a pecuniary interest includes the pecuniary interests of an immediate family member which, if known to the Governor, shall be deemed to be an interest of the Governor. "Immediate family member" includes a spouse, civil partner as defined in the Civil Partnerships Act 2004, parent, child and any other person who lives with the Governor in the same household; and
  - 7.3.1.2 "contract" shall include any proposed contract or other course of dealing;
- 7.3.2 Subject to the exceptions set out in this SO, a Governor shall be treated as having an indirect pecuniary interest in a contract if:
- 7.3.2.1 they, or a nominee of them, is a director 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
  - 7.3.2.2 they are 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.
- 7.3.3 A Governor shall not be regarded as having a pecuniary interest in any contract if:
- 7.3.3.1 neither they or any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a director; or
  - 7.3.3.2 any interest that they or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract; or
  - 7.3.3.3 those securities of any company in which they (or any person connected with them) has a beneficial interest do not exceed £25,000 in nominal value or five per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.
- 7.3.4 Notwithstanding SO 7.3.3 above, the Governor shall nevertheless be obliged to disclose/declare their interest in accordance with SO 7.1 (declaration of interests).
- 7.3.5 Any allowances payable to a Governor by virtue of paragraph 11 of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.

### 7.4 Register of Interests

- 7.4.1 The Trust shall establish and maintain a register of interests ("**Register**") containing the names of Governors and their interests, if any, declared in accordance with the Constitution and these SOs.
- 7.4.2 The Register will be kept up to date by the Secretary. Upon receipt of new or amended information, the Secretary shall amend the Register as soon as is practical and in any event within 14 Clear Days of receipt. The Register will also be subject to an annual review in which any changes to interests

declared during the preceding twelve months will be incorporated (if not already).

- 7.4.3 The Register will be made available to the public in accordance with Regulatory Framework.

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

### **8.1 Policy**

- 8.1.1 All Governors must comply with these Standing Orders and the Governors Code of Conduct.

### **8.2 Interest in Contracts**

- 8.2.1 The provisions of SO 7.3 (pecuniary interests) shall apply where a Governor becomes aware that the Trust has or is proposing to enter into a contract in which they have an interest.
- 8.2.2 A Governor shall declare to the Secretary any other employment or business or other relationship of theirs that conflicts, or might reasonably be predicted could conflict, with the interests of the Trust.

### **8.3 Canvassing of, and Recommendations by, Governors in relation to Appointments**

- 8.3.1 Canvassing of Governors or Committee Members directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. This SO shall be included in application forms or otherwise brought to the attention of candidates.
- 8.3.2 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment. This SO shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 8.3.3 Informal discussions outside appointment panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

### **8.4 Relatives of Governors or Officers**

- 8.4.1 Governors must note that candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 8.4.2 Governors shall disclose to the Secretary any relationship between them and a candidate of whose candidature that Governor is aware. It shall be the duty of the Secretary to report to the [Chair and Lead Governor] any such disclosure made.
- 8.4.3 On election or appointment, Governors shall prior to acceptance of their role disclose to the Secretary whether they are related to any other Governor, Director or holder of any office in the Trust. It shall be the duty of the Secretary to report to the [Chair and Lead Governor] any such disclosure made.
- 8.4.4 Where the relationship to an Officer, Director, or another Governor is disclosed, SO 7 (declaration of interests) shall apply.

9. **MISCELLANEOUS**

**9.1 SOs to be given to Governors**

9.1.1 It is the duty of the Chair to ensure that existing Governors and newly elected or appointed Governors are notified of, and understand, their responsibilities within the SOs.

**9.2 Review of SOs**

9.2.1 The SOs, and all documents having effect as if incorporated into the SOs, shall be reviewed every two years by the Council of Governors.