

ANNEX 8

Standing Orders for the Practice and Procedure of the Council of Governors

1. Interpretation and definitions

- 1.1 The definition and interpretation of words and expressions contained in these Standing Orders are as set out at paragraph 1 of the constitution.
- 1.2 Save as otherwise permitted by law, the Chair of the Trust shall be the final authority on the interpretation of these paragraphs and the Standing Orders (on which they should be advised by the Chief Executive or Company Secretary).

2. General information

- 2.1 The purpose of these Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings, proceedings and associated deliberations. The Council of Governors shall at all times seek to comply with the NHS Foundation Trust Code of Governance (as the same is in issue from time to time).
- 2.2 The roles and responsibilities of the Council of Governors which are to be carried out in accordance with the constitution and the Trust's authorisation include:
 - 2.2.1 to hold the Trust Board to account for the performance of the Trust, including ensuring that the Trust Board acts so that the Trust does not breach its authorisation;
 - 2.2.2 to respond as appropriate when consulted by the Trust Board in accordance with the constitution;
 - 2.2.3 to undertake such functions as the Trust Board shall from time to time request;
 - 2.2.4 to prepare and from time to time review the Trust's membership strategy and the policy for the composition of the Council of Governors and of the non-executive directors; and
 - 2.2.5 when appropriate, to make recommendations for the revision of the constitution.
- 2.3 All business shall be conducted in the name of the Trust.

3. Meetings of the Council of Governors

- 3.1 Council of Governors meetings
 - 3.1.1 Subject to paragraph 3.1.2 below, all meetings of the Council of Governors are to be open to members of the public.
 - 3.1.2 The Council of Governors may resolve by a majority of two thirds of governors present and voting, to exclude members of the public from any meeting or part of a meeting on the grounds that:
 - 3.1.2.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be

transacted following an appropriate resolution by the Council of Governors; or

3.1.2.2 there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

3.1.3 The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with, or preventing the proper conduct of, the meeting.

3.1.4 The Council of Governors may invite the Chief Executive, and other appropriate directors, to attend any of its meetings to assist it in fulfilling its responsibilities.

3.2 Calling and Notice of Meetings

3.2.1 The Council of Governors is to meet a minimum of four times in each financial year.

3.2.2 Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least fourteen clear days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will be given by post or by email and also be published on the Trust's website and in the Trust's membership newsletter if practicable. Lack of service of the notice on any governor shall not affect the validity of a meeting.

3.2.3 Meetings of the Council of Governors may be called by the Company Secretary, the Chair, or by ten governors (including at least two elected governors and two appointed governors) who give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary shall send a written notice to all governors as soon as possible after receipt of such a request and will call a meeting on at least fourteen clear days' (but not more than twenty eight days') notice. Notice by post, delivery in person, fax or email shall constitute written notice.

3.2.4 The Council of Governors may agree that its governors can participate in its meetings by means of electronic communication. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting. The Council of Governors shall agree a protocol to be applied in the case of such meetings.

3.3 Setting the agenda

3.3.1 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under paragraph 3.4.1 below.

3.3.2 A governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least seven clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information.

- 3.3.3 Where a request for an item of business to be included on an agenda is made less than seven clear days but more than three clear days before a meeting such item of business may, at the discretion of the Chair, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.
- 3.4 Chair of the Meeting
- 3.4.1 At a Council of Governors meeting, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, shall preside.
- 3.4.2 If the Chair is absent from part of a meeting of the Council of Governors due to a conflict of interest, the Deputy Chair shall preside. If the Deputy Chair is absent, or unable to participate in that part of the meeting due to a conflict of interest, then the Lead Governor or, if the Lead Governor is absent or unable to participate in that part of the meeting due to a conflict of interest, the Deputy Lead Governor, shall preside for that part of the meeting.
- 3.5 Notices of motions
- 3.5.1 A governor desiring to move or amend a motion shall send a written notice thereof at least seven clear days before the meeting to the Chair, who shall insert it into the agenda for the meeting. This Standing Order 3.5.1 shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 3.5.5 of these Standing Orders.
- 3.5.2 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.5.3 Notice of a motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding six calendar months, shall bear the signature of the governors who give it and also the signature of four other governors. When any such motion has been disposed of by the Council of Governors it shall not be for any governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 3.5.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.5.5 When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
- 3.5.5.1 an amendment to the motion;
 - 3.5.5.2 the adjournment of the discussion or the meeting;
 - 3.5.5.3 the appointment of an ad hoc committee to deal with a specific item of business;
 - 3.5.5.4 that the meeting proceed to the next business;

- 3.5.5.5 that the motion be now put; or
 - 3.5.5.6 a motion resolving to exclude the public, including the press.
- 3.5.6 Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the original motion. In the case of motions under 3.5.5.4 or 3.5.5.5 to ensure objectivity motions may only be put by a governor who has not previously taken part in the debate on the original motion.
- 3.6 Chair's ruling
 - 3.6.1 The decision of the Chair of the meeting (with advice of the Company Secretary) on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Trust's Standing Orders and Standing Financial Instructions, at the meeting, shall be final.
- 3.7 Quorum
 - 3.7.1 No business shall be transacted at a meeting of the Council of Governors unless:
 - 3.7.1.1 at least one third of the Council of Governors are present, a majority of whom must be public or patient and carer governors; and
 - 3.7.1.2 one of the Chair or Deputy Chair are present, unless either are absent for part of a meeting due to a conflict of interest, in which case, during that part of the meeting the Lead Governor or Deputy Lead Governor must be present.
 - 3.7.2 In the event that there is no quorum, in respect of any matters upon which decisions are to be made, the meeting may only make recommendations for consideration at the next quorate meeting of the Council of Governors (or by other means as defined in the constitution).
 - 3.7.3 If a governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of an interest (Standing Order 6.1.3) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
 - 3.7.4 The Chief Executive or any other member(s) of the Trust Board or a representative of the Trust's external auditors or other advisors may attend a meeting of the Council of Governors by invitation.

3.8 Voting

- 3.8.1 Unless otherwise specified in the constitution or these Standing Orders, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes of those governors present and voting.
- 3.8.2 All questions put to the vote shall, at the discretion of the Chair of the Council of Governors (or in their absence the person presiding in their place), be determined by a show of hands.
- 3.8.3 The Council of Governors may agree that its governors can vote electronically or by post. In no circumstances may an absent governor vote by proxy. "Absent" is defined as being absent at the time of the vote.
- 3.8.4 In case of an equality of votes the Chair of the Council of Governors (or in their absence the Deputy Chair) shall have a casting vote except when the Chair (or the Deputy Chair) has a conflict of interest. If the Chair (or the Deputy Chair) has a conflict of interest in the vote which prohibits them from voting under the constitution, the Lead Governor (or in their absence the Deputy Lead Governor) shall have a casting vote. For the avoidance of doubt the Chair shall not participate in votes at Council of Governors meetings, other than in the circumstances to which this paragraph 3.8.4 relates and in accordance with its terms.
- 3.8.5 A governor elected to the Council of Governors may not vote at a meeting of the Council of Governors unless, within the last three years made a declaration stating which constituency or section they are a member of and is not prevented from being a member of the Council of Governors.
- 3.8.6 Any matter which could be decided by the Council of Governors in a meeting may be determined by written resolution. A written resolution shall, with any accompanying papers which are relevant, describe the matter to be decided and provide for governors to sign the resolution to confirm their agreement. A written resolution may comprise identical documents sent to all governors, each to be signed by a governor, or one document to be signed by all governors voting. A written resolution shall be passed only when at least three quarters of the governors approve the resolution in writing within the timescale imposed in such a notice. The Company Secretary shall keep records of all written resolutions.

3.9 Suspension of council Standing Orders

- 3.9.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 3.9.2 A decision to suspend any Standing Order shall be recorded in the minutes of the relevant meeting.

- 3.9.3 A separate record of matters discussed during the suspension of any Standing Order(s) shall be made and shall be available to the directors and governors.
- 3.9.4 No formal business may be transacted by the Council of Governors while any Standing Order is suspended.
- 3.9.5 The Trust's audit committee shall review every decision to suspend any Standing Order.
- 3.10 Record of attendance
 - 3.10.1 The minutes of each meeting of the Council of Governors shall record the name of each governor in attendance as well as the name of their constituency or, in the case of appointed governors, the name of the appointing organisation. The names (and any other relevant details) of any other persons in attendance shall also be recorded in the minutes.
- 3.11 Minutes
 - 3.11.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting of the Council of Governors where they will be signed by the person presiding at it.
 - 3.11.2 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 such next meeting.
 - 3.11.3 Minutes shall be circulated in accordance with a decision of the governors. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Council of Governors Standing Order 3.1.2.

4. Committees

- 4.1 The nominations and remuneration committee will comprise the Chair, the Deputy Chair, two public governors and/or patient and carer governors, one staff governor and one appointed governor. When the Chair is being appointed or reappointed, the Deputy Chair shall take his or her place, unless they are standing for appointment, in which case another non-executive director shall take his or her place, and, when the Chair's remuneration is being considered, the Deputy Chair shall take their place.
- 4.2 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. Such committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the committee so decide.
- 4.3 The Council of Governors may appoint committees of the council consisting wholly of persons who are governors. Persons who are not governors may

attend such committees if appropriate under the committee's terms of reference but they shall have no vote.

- 4.4 A committee so appointed may appoint sub-committees consisting wholly of persons who are governors. Persons who are not governors may attend such committees if appropriate under the committee's terms of reference but they shall have no vote.
- 4.5 These Council of Governors Standing Orders, as far as they are applicable, shall apply also, with appropriate alteration, to meetings of any committees or sub-committees so established by the Council of Governors.
- 4.6 Each such committee or sub-committee shall have such terms of reference and be subject to such conditions as the council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 4.7 The Council of Governors shall approve the membership of all committees and sub-committees that it has formally constituted and shall approve the recommendation from the relevant committee to appoint the Chair and, if applicable, the Deputy Chair of each committee and sub-committee.
- 4.8 Any member of a committee may participate in a duly convened meeting of a committee or sub-committee by means of a video conference, telephone or any other communications equipment which allows all persons to hear and speak to one another subject to reasonable notice and availability of the necessary equipment. Any such meetings shall adopt the procedure agreed by the Council of Governors.
- 4.9 The Council of Governors may, through the Company Secretary, request that external advisors assist them or any committee they appoint in carrying out duties. Advisers will:
 - 4.9.1 not be designated governors;
 - 4.9.2 not have voting rights; and
 - 4.9.3 provide such assistance as the Council of Governors may agree.

5. Confidentiality

- 5.1 In the event of the Council of Governors, or any Committee established by the Council of Governors, meeting in private for all or part of a meeting, governors shall not disclose the contents of the papers considered, discussions held or minutes of the items taken in private.

6. Declaration of interests

- 6.1 Declaration of interests
 - 6.1.1 Each governor shall declare:
 - 6.1.1.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.2 and 6.2.6 (subject to Standing Order 6.2.3);
 - 6.1.1.2 any actual or potential, direct or indirect, non-financial

professional interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.4 and 6.2.6; and

6.1.1.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.5 and 6.2.6.

6.1.2 The responsibility for declaring an interest is solely that of the governor concerned and shall be declared to the Company Secretary:

6.1.2.1 within 28 days of commencement of that governor's term of office; or

6.1.2.2 if arising later, within 5 days of the governor becoming aware of the interest.

6.1.3 If during the course of a Council of Governors meeting a governor has an interest of any sort in a matter which is the subject of consideration the governor concerned shall disclose the fact, and the Chair shall decide what action to take. This may include excluding the governor from the discussion of the matter in which the governor has an interest and/or prohibiting the governor from voting any such matter.

6.1.4 Subject to Standing Order 6.2.3, if a governor has declared a financial interest in a matter (as described in Standing Order 6.2.2) they shall not take part in the discussion of that matter nor vote on any question with respect to that matter.

6.1.5 Any interest declared at a meeting of the Council of Governors and subsequent action taken should be recorded in the Council of Governors' meeting minutes. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.

6.2 Nature of interests

6.2.1 Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by Monitor.

6.2.2 A financial interest is where a governor may receive direct financial benefits (by either making a gain or avoiding a loss) as a consequence of a decision that the Council of Governors makes. This could include:

6.2.2.1 directorships, including non-executive directorships held in any other organisation which is doing, or is likely to be doing business with the Trust;

- 6.2.2.2 employment in an organisation other than the Trust; or
- 6.2.2.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing, or is likely to do business with the Trust.
- 6.2.3 A governor shall not be treated as having a financial interest in any a matter by reason only:
 - 6.2.3.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
 - 6.2.3.2 of shares or securities held in collective investment or pensions funds or units of authorised unit trusts;
 - 6.2.3.3 of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
 - 6.2.3.4 of any travelling or other expenses or allowances payable to a governor in accordance with the constitution.
- 6.2.4 A non-financial professional interest is where a governor may receive a non-financial professional benefit as a consequence of a decision that the Council of Governors makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a governor is:
 - 6.2.4.1 an advocate for a particular group of patients;
 - 6.2.4.2 a clinician with a special interest;
 - 6.2.4.3 an active member of a particular specialist body; or
 - 6.2.4.4 an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.
- 6.2.5 A non-financial personal interest is where a governor may benefit personally as a consequence of a decision that the Council of Governors makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where a governor is:
 - 6.2.5.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or
 - 6.2.5.2 a member of a lobbying or pressure group with an interest in health and/or social care.
- 6.2.6 A governor will be treated as having an indirect financial interest, indirect non-financial professional interest or indirect non-financial

personal interest where they have a close association with another individual who has a financial interest, non-financial professional interest or a non-financial personal interest in a decision that the governor is involved in making. This includes material interests of:

6.2.6.1 close family members and relatives, including a spouse or partner or any parent, child, brother or sister of a governor;

6.2.6.2 close friends and associates; and

6.2.6.3 business partners.

6.2.7 If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.

6.3 Register of interests

6.3.1 The Company Secretary will ensure that a register of interests is established to record formally declarations of interests of governors.

6.3.2 Details of the register will be kept up to date and reviewed annually by the Council of Governors.

6.3.3 The register will be available to the public.

7. Compliance

7.1 All members of the Council of Governors are required to comply with Standing Financial Instructions approved by the Trust Board from time to time for the guidance of all staff employed by the Trust.

7.2 All members of the Council of Governors should act at all times in accordance with the Trust's schedule of reservation and delegation of powers as the same may be adopted by the Trust from time to time.

7.3 All members of the Council of Governors are required to comply with any Code of Conduct adopted by the Council of Governors.

8. Resolution of disputes with the Trust Board

8.1 Should a dispute arise between the Council of Governors and the Trust Board this disputes resolution procedure shall apply.

8.2 The Chair, or Deputy Chair if the dispute involves the Chair, shall first endeavour through discussion with appropriate representatives of the governors and the directors to achieve the earliest possible resolution of the matter in dispute to the reasonable satisfaction of both parties.

8.3 Failing resolution under Standing Order 8.2 above, the Trust Board or the council, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.

8.4 The Chair or Deputy Chair (if the dispute involves the Chair) shall ensure that the disputes statement, without amendment or abbreviation in any way, shall

be submitted to the next formal meeting of the Trust Board or the Council of Governors as appropriate. That meeting shall agree the precise wording of a response to disputes statement.

- 8.5 The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written response to the disputes statement. If the matter remains unresolved or only partially resolved then the procedure outlined in Standing Order 8.2 above shall be repeated.
- 8.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair), and following the further discussions prescribed in council Standing Order 8.5, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair (as the case may be), there is no prospect of a resolution (partial or otherwise) then they shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and to make recommendations to the council and the Trust Board with a view to resolving the dispute.
- 8.7 On the satisfactory completion of this disputes procedure the Trust Board shall implement agreed changes.
- 8.8 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the decision of the Trust Board shall prevail.
- 8.9 In the event that the Council of Governors is of the opinion that the Trust has breached, or is about to breach, the terms of its authorisation, nothing in this procedure shall prevent the Council of Governors from informing Monitor to that effect.

9. Variation and amendment of these Standing Orders

- 9.1 These Standing Orders shall be amended only if:
 - 9.1.1 a notice of motion has been given pursuant to Standing Order 4.5 of this Annex 8;
 - 9.1.2 more than half the total of the governors voting approve the amendment;
 - 9.1.3 more than half of the members of the Trust Board voting approve the amendment; and
 - 9.1.4 members' approval is obtained for any amendment to the role or duties of the Council of Governors.