

**BARNSLEY HOSPITAL NHS
FOUNDATION TRUST**

July 2012

Standing Orders

FOREWORD

Barnsley Hospital NHS Foundation Trust has been established under part 1 of the Health and Social Care (Community Health and Standards) Act 2003, subsumed by the National Health and Social Care Act 2006 (the 2006 Act) (as amended by the Health and Social Care Act 2012(the 2012 Act), (Together referred to as the “the Health Service Acts”). This requires that the constitution of the Trust makes provision for the practice and procedure of the Board. The Trust’s constitution requires that the Board of Directors, in consultation with the Governing Council adopts Standing Orders covering the regularity, proceedings and business of its meetings.

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

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

The Standing Orders, Delegated Powers and Standing Financial Instructions have all been updated to recognise most of the requirements of the 2012 Health and Social Care Act (the 2012 Act) whilst accepting that it will be 2013 before all of the requirements are fully implemented.

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INTRODUCTION

Statutory Framework

The Barnsley Hospital NHS Foundation Trust (BHNFT) is a public benefit corporation established under licence by Monitor, the independent regulator for NHS Foundation Trusts, "as laid down in the National Health Service Acts". The principal place of business of the Trust is Gawber Road, Barnsley, South Yorkshire.

As a public benefit corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable as well as to the Secretary of State for Health. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

The Trust constitution requires the Trust to adopt Standing Orders (SOs) for the regulation of its proceedings and business. The "Directions on Financial Management in England" issued under HSG (96)12 in 1996, require Health Authorities to adopt Standing Financial Instructions (SFIs) setting out the responsibilities of individuals. These directions are not mandatory on NHS Foundation Trusts but the Board of Directors (the Board) will continue to apply them as a key element of its financial governance arrangements. The SFIs shall have effect as if incorporated into these Standing Orders.

NHS Framework

The Department of Health (DoH) issues further requirements and guidance. Many of these are contained within the DH's Corporate Governance Framework Manual (Finance). The manual also contains a list of the main statutes and legislation relevant to NHS Trusts.

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

Also included in the Corporate Governance Framework Manual (Finance) is the Code of Practice on Openness in the NHS which sets out the requirements for public access to information on the NHS. This is also subject to the Freedom of Information Act 2005. The Government's Transparency Guidance Publication of New Central Government Contracts 2010.

Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or committee appointed by virtue of SO 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as Monitor may direct. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

1. INTERPRETATION

- 1.1 Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).
- 1.2 Words importing the masculine gender only, shall include the feminine gender, words importing the singular shall import the plural and vice versa.
- 1.3 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

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

“TRUST” means the Barnsley Hospital NHS Foundation Trust.

“BOARD” and/or “BOARD OF DIRECTORS” shall mean the Chairman and Non-executive Directors, appointed by the Governing Council, and the executive Directors appointed by the Remuneration and Terms of Service Committee of the Trust.

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

“CHAIR” or “CHAIRMAN” is the person appointed by the Governing Council to lead the Board 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 Deputy-Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.

“CHIEF EXECUTIVE” shall mean an Executive Director who is also chief accounting/accountable officer of the Trust.

“COMMITTEE” shall mean a committee appointed by the Trust.

“COMMITTEE MEMBERS” shall be persons formally appointed by the Trust to sit on and/or to Chairman specific committees.

“CONSTITUTION” shall mean the constitution of Barnsley Hospital NHS Foundation Trust, as approved by Monitor with effect from 1st January 2005 or updated thereafter.

COUNCIL OF GOVERNORS – shall mean the Trust’s Council of Governors formed in accordance with Trust Constitution and the National Health Service Acts – *This is subject to implementation of the 2012 Act or revision of the Trust’s Constitution, whichever is the soonest, the Governing Council shall become the Council of Governors*)

“DEPUTY-CHAIRMAN” the Non-Executive Director appointed by the Governing Council, to take on the Chairman’s duties if the Chairman is absent for any reason.

“DIRECTOR” shall mean a person appointed as a Director in accordance with the Constitution and includes the Chairman.

“DIRECTOR OF FINANCE AND INFORMATION” shall mean the Chief Finance Officer of the Trust.

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

“GOVERNING COUNCIL” shall mean the Trust’s Governing Council formed in accordance with Trust Constitution and the National Health Service Act (the 2006 Act). *This will be changed subject to implementation of the 2012 Act or revision of the Trust’s Constitution, whichever is the soonest; the Governing Council shall become the Council of Governor at which time all references herein to Governing Council shall be read as Council of Governors.*

“MONITOR” shall mean Monitor, Independent Regulator of NHS Foundation Trusts.

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

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

“OFFICER” means an employee of the Trust.

“SECRETARY” means a person appointed by the Trust to act independently of the Board and monitor the Trust's compliance with the law, SOs, and observance of NHS Executive guidance.

“SENIOR INDEPENDENT DIRECTOR” means one of the independent non-executive directors who have been appointed by the Board of Directors, in consultation with the Governing Council, to undertake this role in accordance with The Monitor Code of Governance recommendation:

“SFIs” means Standing Financial Instructions.

“SOs” mean Standing Orders.

“TERMS OF AUTHORISATION” means the terms/conditions which Barnsley Hospital NHS Foundation Trust needs to operate within as a Public Benefits Corporation. These terms were authorised by (“Monitor”), the Independent Regulator of NHS Foundation Trusts January 2005.
(To be subsumed by the licensing arrangements (the License) when established by Monitor, in accord with the 2012 Act).

2. THE BOARD OF DIRECTORS

- 2.1 All business conducted by the Board of Directors shall be conducted in the name of the Trust. All decisions must be taken objectively and in the interests of the Trust
- 2.2 The Board of Directors will function as a unitary Board. The Board of Directors is collectively responsible for the exercise of the powers and the performance of the Trust. Executive and Non Executive Directors will have joint responsibility for every decision of the Board of Directors regardless of their individual skills or status.
- 2.3 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.4 The Trust has the functions conferred on it by its licence issued by Monitor. Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to the Secretary of State for Health. Accountability for non-charitable funds held on trust is only to Monitor.
- 2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" and have effect as if incorporated into the Standing Orders.
- 2.6 **The Role of Directors**
- 2.6.1 The role of the Directors as members of the Board of Directors is to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.
- 2.6.2 Directors will have a general and individual duty to promote the success of the Trust so as to maximise the benefits for the members as a whole and the public.
- 2.6.3 The duties that a Director of a public benefits corporation has by virtue of being a Director include: -
- 18b (1) of the 2012 Act.
- 2.6.3.1 A duty to avoid a situation in which the Director has (or can have) a direct interest or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation.
- 2.6.3.2 A duty not to accept a benefit from a third part by reason of being a director or doing (or not doing) anything in that capacity
- & 18C (1) of the 2012 Act.
- 2.6.3.3 If a Director of a public benefits corporation has in any way a direct or indirect interest in a proposed transaction or arrangement with the corporation, the Director must declare the nature and the extent of that interest to other Directors.

- 2.6.4 **Executive Directors.** Executive Directors will exercise their authority within the terms of these Standing Orders, the Trust's Standing Financial Instructions, the Reservations of Powers to the Board and the Scheme of Delegation
- 2.6.5 The Chief Executive is responsible for the overall performance of the executive functions of the Trust. He is the Accounting Officer for the Trust and shall be responsible for ensuring discharge of obligations under Financial Directions and in line with the requirements of the NHS Accounting Officer Memorandum
- 2.6.6 The Director of Finance and Information shall be responsible for the provision of financial advice to the Trust for the supervision of financial control and accounting systems. He shall be responsible along with the Chief Executive for ensuring discharge of obligations under Financial Direction.
- 2.6.7 **Non Executive Directors.** The Non Executive Directors will not be granted nor 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.
- 2.6.8 The Chairman is responsible for the operation of the Board of Directors and will Chair the Board meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of appointment and with these Standing Orders.
- 2.6.9 The Chairman will take responsibility either directly or indirectly for the induction of Non Executive Directors, their portfolios of interest and assignments and their performance.
- 2.6.10 The Chairman will work in close harmony with the Chief Executive and will ensure the Board of Directors discusses key and appropriate issues 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.
- 2.6.11 The Chairman is also responsible for the leadership of the Governing Council ensuring the Board of Directors and the Governing Council work effectively together.
- 2.6.12 The Board of Directors shall approve a Statement of Division of Responsibility between the Chairman and Chief Executive setting out as clearly as possible the division of responsibility. This Statement shall be reviewed and modified as required.

2.7 Governors (to be effected with implementation of 2012 Act)

- 2.7.1 The Governing Council has statutory duties to hold the non executive directors individually and collectively to account for the performance of the

Board and to represent the interests of the Foundation Trust members and the public as a whole.

2.7.2 The Governing Council can require Directors to attend a meeting to obtain information about the organisation's performance and the performance of individual Directors.

2.7.3 The Governing Council will review and approve material or significant transactions in place of Monitor; this will be done in accordance with the Trust's constitution.

2.8 Composition of the Board of Directors

2.8.1 The composition of the Board of Directors will be In accordance with section 9 of the Constitution as follows:

A Non Executive Chairman of the Trust

5 other Non-Executive Directors

5 Executive Directors including:

- the Chief Executive (the Chief Accounting Officer); and
- The Director of Finance and Information (the Chief Finance Officer);
- 3 other Directors, one of whom is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentist Act 1984) and another of whom is to be a registered nurse or a registered midwife.

2.8.2 The Trust Secretary (or nominated deputy) will be in attendance at all Board Directors' meetings

2.8.3 Clinical Directors and other non voting Directors may also be in attendance at Board of Director meetings, by the Board's invitation, to provide advice and support to the Board.

2.9 Appointment of the Chairman and Directors

The Chairman and Non-Executive Directors are appointed by the Governing Council. The Trust shall appoint a committee whose members shall be the Chairman and Non-Executive Directors of the Trust whose function will be to appoint the Chief Officer as a Director of the Trust. This appointment is subject to approval by the Governing Council. The Trust shall appoint a committee whose members shall be the Chairman, the Non-Executive Directors and the Chief Officer whose function will be to appoint the Executive Directors of the Trust other than the Chief Officer.

2.10 Terms of Office of the Chairman and Non-Executive Directors

The regulations governing the period of tenure of office of the Chairman and Non-Executive Directors and the termination or suspension of office of the Chairman and Non-Executive Directors are contained in the Trust Constitution.

2.11 Appointment of Deputy-Chairman

For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Governing Council may appoint a Non-Executive

Director from amongst them to be Deputy-Chairman for such a period, not exceeding the remainder of his term as Non-Executive Director of the Trust. As the Chairman may specify on appointing him.

2.12 Any Non-Executive Director so appointed may at any time resign from the office of Deputy-Chairman by giving notice in writing to the Chairman and the Chairman of the Trust may thereupon appoint another Non-Executive Director as Deputy-Chairman in accordance with paragraph 2.8.

2.13 Powers of Deputy-Chairman

Where the Chairman of an NHS Trust has died or has otherwise ceased to hold office, or where he has been unable to perform his duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman in the Schedule to these Regulations shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy-Chairman.

2.14 Senior Independent Director

The Board of Directors shall appoint one of the independent Non Executive Directors as the Senior Independent Director. This shall be done in consultation with the Governing Council.

2.15 Joint Directors

Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive Directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of Standing Order 2.7 as one person.

3. MEETINGS OF THE BOARD OF DIRECTORS

- 3.1 The Board of Directors shall meet sufficiently regularly to discharge its duties effectively and shall determine which of its meetings or part of a meeting shall be held in public.
- 3.2 Where a meeting of the Board of Directors or part of a meeting is to be held in public, the Chairman shall give such directions as he thinks fit with regard to the arrangements for the meeting and the accommodation of the public such as to ensure that the Trusts business shall be conducted without interruption and disruption and without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted.
- 3.3 Where the public and representatives of the press are afforded facilities to attend formal meetings of the Board of Directors they shall be required to withdraw upon the resolution of the Board:
- “That representatives of the press and other members of the public be excluded [from the remainder of] this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”.
- 3.4 Where the public are afforded facilities to attend formal meetings of the Board of Directors the Chairman may exclude any member of the public from that meeting if they are interfering with or preventing the proper and reasonable conduct of that meeting.
- 3.5 Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board.
- 3.6 Attendance at meetings by members of the public does not give a right to the said members of the public to ask questions or otherwise participate in that meeting.
- 3.7 Members of the public may request that they address a question to the Board of Directors. Any member of the public wishing to do so must advise the Trust secretary prior to commencement of the meeting, stating their name and the nature of the question. These questions shall be brought to the attention of the Chairman prior to the commencement of the meeting and the decision as to whether any question will or will not be allowed to be put to the Board of Directors by any member of the public will lie with the Chairman whose decision will be final.
- 3.8 **Calling Meetings**
Ordinary meetings of the Board shall be held at such times and places as the Board may determine.
- 3.9 The Chairman may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within seven days

after such requisition has been presented to him, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.

3.10 The Chairman may in extreme circumstances, issue a written resolution by e mail in advance of the next full Board meeting. A written resolution may be passed to resolve anything which could have been passed by the Board in a Board Meeting. However, this power cannot be used to remove a Director before the end of their Term of office. A written resolution is passed when the required majority of eligible members have signified their agreement to it.

3.11 Notice of Meetings

Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least three clear days before the meeting.

3.12 Lack of service of the notice on any Director shall not affect the validity of a meeting.

3.13 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

3.14 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

3.15 Setting the Agenda

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

3.16 A Director desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least three clear working days before the meeting, subject to SO 3.6. Requests made less than three days before a meeting may be included on the agenda at the discretion of the Chairman.

3.17 Chairman of Meeting

At any meeting of the Trust, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy-Chairman, if there is one and he is present, shall preside. If the Chairman and Deputy-Chairman are absent such Non-Executive Director as the Directors present shall choose shall preside.

3.18 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy-Chairman, if present, shall preside. If the Chairman and Deputy-Chairman are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.

3.19 Annual Public Meeting

Section 15.7 of the Trust's Constitution and the 2006/2012 Act requires that the annual report and accounts and the report of the external auditors on these

statements is put before the governors at a general meeting and members of the Trust at an annual meeting of it's members open to the general public.

3.20 Notices of Motion

A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 3.12.

3.21 Withdrawal of Motion or Amendments

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

3.22 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 Directors who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Trust, it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within 6 months; however the Chairman may do so if he considers it appropriate.

3.23 Motions

The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

3.24 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

- An amendment to the motion;
- The adjournment of the discussion or the meeting;
- That the meeting proceed to the next business; (*)
- The appointment of an ad hoc committee to deal with a specific item of business; and/or
- That the motion be now put. (*)

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

No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

3.25 Chairman's Ruling

Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

3.26 **Voting**

Any question put to the vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

3.27 The Chairman can exercise at Board meetings a second or casting vote, in case of any equality of votes (Scheme of Delegations 3.4.8).

3.28 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 Directors present so request.

3.29 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

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

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

3.32 An officer, who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board to represent an executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

3.33 **Minutes**

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

3.34 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.

3.35 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public (required by Code of Practice on Openness in the NHS).

3.36 The agendas and minutes of all meetings of the Board of Directors shall be provided to the governors. These shall be made available to governors at the same time as meeting papers are issued to directors, by secure means (private web page or secure post) to protect any confidential matters and discussions.

3.37 **Joint Directors**

Where a post of Executive Director is shared by more than one person:

a) both persons shall be entitled to attend meetings of the Trust:

b) either of those persons shall be eligible to vote in the case of agreement between them:

- c) in the case of disagreement between them no vote should be cast; and
- d) the presence of either or both of those persons shall count as one person for the purposes of Standing Order 3.42 [Quorum].

3.38 Suspension of Standing Orders

Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

3.39 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.

3.40 No formal business may be transacted while Standing Orders are suspended.

3.41 The Audit Committee shall review every decision to suspend Standing Orders.

3.42 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

- a notice of motion under Standing Order 3.20 has been given; and
- no fewer than half the total of the Trust's non-executive Directors vote in favour of amendment; and
- at least two-thirds of the Directors are present; and
- the variation proposed does not contravene a statutory provision or direction made by the Secretary of State and Monitor.

3.43 Record of Attendance

The names of the Directors present at the meeting shall be recorded in the minutes.

3.44 Quorum

No business shall be transacted at a meeting of the Trust unless at least one-third of the whole number of the Directors are present including on or after the operational date at least one Executive Director and one Non-Executive Director.

3.45 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.46 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 6 and 7) 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. 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 considers the recommendations of the Remuneration and Terms of Service Committee).

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Subject to the Constitution, Terms of Authorisation, statutory provision and guidance given by Monitor, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee appointed by virtue of Standing Order 5.1 or 5.2 below or by a Director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 Emergency Powers

The powers which the Board has retained to itself within these Standing Orders (Standing Order 2.5) may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification

4.3 Delegation to Committees

The Board shall agree from time to time to the delegation of executive powers to be exercised by committees, which it has formally constituted. The constitution and terms of reference of these committees, and their specific executive powers shall be approved by the Board.

4.4 Delegation to Officers

Those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountable to the Board.

4.5 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.

4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of The Director of Finance and Information or other Executive Director to provide information and advise the Board in accordance with any statutory requirements.

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

4.8 If for any reason these Standing Orders are not complied with, full details of 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 and ratification. All members of the Board of Directors and officers have a duty to disclose any non compliance with these Standing Orders to the Chief Executive as soon as possible

5. COMMITTEES

5.1 Appointment of Committees

Subject to the Trust Constitution, Terms of Authorisation statutory provision and guidance given by Monitor the Board of Directors may appoint committees of the Trust, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.

5.2 A committee appointed under SO 5.1 may, subject to such directions as may be given by Monitor or the Board, appoint committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the Trust committee (whether or not they include Directors of the Trust).

5.3 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 Board.

5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

5.5 Committees may not delegate their executive powers to a committee unless expressly authorised by the Board.

5.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither Directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.

5.7 Where the Board is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State and Monitor, and where such appointments are to operate independently of the Trust, such appointment shall be made in accordance with the regulations laid down by Monitor.

5.8 Without prejudicing the formation of any other committees or sub-committees as the Board of Directors see fit, the main committees established by the Board of Directors are:

- Remuneration and Terms of Service Committee - see EL(94)40;
- Audit Committee - see Audit Committee Handbook and EL(94)40;
- Clinical Governance Committee
- Non Clinical Governance & Risk Committee
- Finance Committee.

5.9 No one other than the committee Chairman or committee members is entitled to be present at a meeting of the Audit Committee or Remuneration Committee. However other individuals may attend by the invitation of the committee or as established by these Standing Orders.

5.10 **Confidentiality**

A member of a committee or anyone in attendance at a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.

5.11 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential or embargoed.

6. DECLARATIONS OF INTEREST AND REGISTER OF INTEREST

- 6.1 Pursuant to Section 20 of Schedule 7 of the 2006, a register of Directors' and Governors' interests must be kept by each NHS Foundation Trust.
- 6.2 **Declaration of Interests**
All existing Directors (including for the purposes of this document, Non-Executive Directors) and Governors should declare relevant and material interests. Any Directors or Governors appointed or elected subsequently should do so on appointment or election.
- 6.3 Interests which should be regarded as "relevant and material" and which, for the guidance of doubt, should be included in the register, are:
- a) Directorships, including non-executive Directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - b) Ownership, part-ownership or Directorship of private companies, business 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 Authority 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 or commissioning NHS services.
 - f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
- 6.4 If Directors or Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman.
- 6.5 At the time the interests are declared, they should be recorded in the Board minutes or Governors meeting minutes as appropriate. Any changes in interests should be officially declared at the next Board meeting or Governors meeting as appropriate following the change occurring. It is the obligation of the Director or Governor to inform the Chief Executive or his nominated officer in writing within 7 clear days of becoming aware of the existence of a relevant or material interest. The Chief Executive or his nominated officer will amend the Register upon receipt within 7 clear days.
- 6.6 Directors' Directorships of companies in 6.3(a) above or in companies likely or possibly seeking to do business with the NHS 6.3(b) above) should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.7 During the course of a Board meeting or Governors meeting, if a conflict of interest is established, the Directors or Governors concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is

established. If there is a dispute as to whether a conflict of interest does exist, the majority will resolve the issue with the Chairman having the casting vote.

6.8 There is no requirement for the interests of Directors' or Governors' spouses or partners to be declared. "Subject to the requirements in 8.2 (in relation to interests in contracts)".

6.9 **Registers of Interests**

The details of Directors and Governors interests recorded in the Registers will be kept up to date by means of a regular review as necessary of the Registers by the Chief Executive or his nominated officer during which any changes of interests recently declared will be incorporated.

6.10 Subject to contrary regulations being passed, the Registers will be available for inspection by the public free of charge. The Chairman will take reasonable steps to bring the existence of the Registers to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Registers must be provided to members of the NHS Foundation Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Registers.

6.11 The registers will be reviewed by the Audit Committee at six monthly intervals.

7. DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

7.1 Subject to the following provisions of this Standing Order, if a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he 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.

7.2 The Trust shall exclude a Director from a meeting of the Trust while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

7.3 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 9 of Schedule 2 to the NHS & Community Care Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.

7.4 For the purpose of this Standing Order the Chairman or a Director shall be treated, subject to SO 7.3 and SO 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- a) he, or a nominee of his, is a Director of a company or other body;
- b) not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- c) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

and in the case of persons living together (ie married or co-habiting) the interest of one spouse or partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

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

- a) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
- b) of an interest in any company, body or person with which he is connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.6 Where a Director:

- a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

- b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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

- 7.7 Standing Order 7 applies to a committee of the Trust as it applies to the Trust and applies to any member of any such committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

8. STANDARDS OF BUSINESS CONDUCT

8.1 Policy

Staff must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff' and the Trust's own guidance. The following provisions should be read in conjunction with this document.

8.2 Interest of Officers in Contracts

If it comes to the knowledge of a Director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of married persons or co-habitees living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

8.3 An officer must 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.

8.4 Canvassing of, and Recommendations by, Directors in Relation to Appointments

Canvassing of Directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

8.5 A Director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

8.7 Relatives/ Connection to Members of the Board of Directors or Officers

Candidates for any staff appointment shall when making application disclose in writing whether they have any connection to any Director or the holder of any office under the Trust. Connected persons would include; the directors spouse, civil partner, minor children, step children (which includes equivalent relationships arising through civil partnerships), business partner(s) and companies in which the director has an interest of 20% or more. It also includes the director's parents, children or step children over the age of 18 years and any other person to whom the director has an enduring family relationship. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

8.8 The Directors and certain specified staff shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

8.9 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.

8.10 Where the relationship of an officer or another Director to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

8.11 Commercial Sponsorship

All commercial sponsorship is to be reported through the Audit Committee to ensure governance. Full guidance is contained in Annex 1.

9. TENDERING AND CONTRACT PROCEDURE

9.1 Duty to comply with Standing Orders

The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 3.38 (Suspension of SOs) is applied).

9.2 Procedures

Detailed procedures can be found in the Standing Financial Instruction (section 19).

10. DISPOSALS

10.1 Detailed procedures can be found in the Standing Financial Instruction (section 20).

11. IN-HOUSE SERVICES

11.1 Detailed procedures can be found in the Standing Financial Instruction (section 21).

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

12.1 Custody of Seal

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

12.2 Sealing of Documents

The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee thereof or where the Board has delegated its powers.

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

12.4 Register of Sealing

An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of any sealing shall be made to the Board at its next meeting or at least annually. (The report shall contain details of the seal number, the description of the document and date of sealing).

13. SIGNATURE OF DOCUMENTS

13.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.

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

14. MISCELLANEOUS

14.1 Standing Orders to be given to Directors and Officers

It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.

14.2 Documents having the standing of Standing Orders

Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into Standing Orders.

14.3 Review of Standing Orders

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

COMMERCIAL SPONSORSHIP: ETHICAL STANDARDS FOR THE NHS

“The New NHS: Modern and Dependable” places an obligation on Strategic Health Authorities (SHAs), NHS Trusts, NHS Foundation Trusts (NHSFTs), Primary Care Trusts (PCTs) and Clinical Commissioning Groups (CCGs) to work together and in collaboration with other agencies to improve the health of the population they serve and the health services provided for that population.

All health professionals including independent contractors, locum practitioners, working under NHS terms and conditions are intended to be covered by the document. The guidance contained in this document should apply equally to charitable sources of funding as well as GP Co-operatives and initiatives such as PMS, NHS Direct, Walk In Centres, Health Action Zones etc.

Collaborative partnerships with industry can have a number of benefits in the context of this obligation. An important part of that joint working will be a transparent approach to any sponsorship proposed to a CCG, PCT, SHA, NHS Trust or NHSFT, or to independent contractors and their staff. If any such partnership is to work, there must be trust and reasonable contact between the sponsoring company and the NHS. Such relationships, if properly managed, are of mutual benefit to the organisations concerned.

A previous circular on Standards of Business Conduct for NHS Staff was issued in 1993 (HSG(93)5) regarding the general standards which should be maintained by staff working in the NHS. This guidance is still extant. The purpose of the current document is to emphasise that NHS bodies and primary care contractors and their staff are accountable for achieving the best possible health care within the resources available. It advises them to consider fully the implications of a proposed sponsorship deal before entering into any arrangement. In particular it is important to seek advice when necessary from the Strategic Health Authority on the effect on other aspects of healthcare.

For the purposes of this guidance commercial sponsorship is defined as including:-

NHS funding from an external source, including funding of all or part of the costs of a member of staff, NHS research, staff, training, pharmaceuticals, equipment, meeting rooms, costs associated with meetings, meals, gifts, hospitality, hotel and transport costs (including trips abroad), provision of free services (speakers), buildings or premises.

In all these cases NHS bodies, members of NHS staff and independent contractors should use local arrangements to publicly declare sponsorship or any commercial relationship linked to the supply of goods or services and be prepared to be held to account for it. A simple ledger may suffice – to avoid unnecessary paperwork.

Where such collaborative partnerships involve a pharmaceutical company then the proposed arrangements must comply fully with the Medicines (Advertising) Regulations 1994 (regulation 21 ‘Inducements and hospitality’ attached at annex 3). Any person who contravenes regulation 21(1) is guilty of an offence, and liable, on summary conviction to a fine not exceeding £5000, and on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or both. Anyone contravening regulation 21(5) is also guilty of an offence and liable, on summary conviction to a fine not exceeding £5000.’ The MCA Guidelines on Promotion and Advertising set out the standards to be followed.

Whatever type of agreement is entered into, clinicians' judgement should always be based upon clinical evidence that the product is the best for their patients.

The arrangements in paragraph 5 do not apply to-

- personal gifts of less than £25 per gift e.g. gifts of post-it pads, pens etc. However gifts should be declared if several small gifts worth a total of over £100 are received from the same or closely related source in a 12 month period.
- Gifts from patients to GPs which are being addressed by changes to the terms of service of GPs
- Income generation schemes which will be logged separately at local level
- Discounts on particular pharmaceuticals

A model code is attached at Annex 2, for use by those who do not have an existing professional code of conduct. Where an Employer's code is used, this should be in addition to professional codes, or be for the benefit of those staff who are not regulated.

Considerations

CCGs, PCTs, Strategic Health Authorities and primary care contractors will need to consider issues such as:

Industry often wishes to have close involvement with the NHS. Quite often this may be to mutual advantage, but both partners should assess and understand the costs and benefits of any such agreement;

Purchasing decisions, including those concerning pharmaceuticals and appliances, should always be taken on the basis of best clinical practice and value for money. Such decisions should take into account their impact on other parts of the health care system, for example, products dispensed in hospital which are likely to be required by patients regularly at home;

Hospital trusts that are offered significant discounts on drugs may wish to consult the relevant CCG or PCTs about possible implications for subsequent prescribing on primary care.

When making purchasing decisions on products which originate from NHS intellectual property, ethical standards must ensure that the standard is based on best clinical practice and not on whether royalties will accrue to an NHS body;

Deals whereby sponsorship is linked to the purchase of particular products, or to supply from particular sources, are not allowed, unless as a result of a transparent tender for a defined package of goods and services, (see annex 4 on research and development);

Patient information attracts a legal duty of confidence and is treated as particularly sensitive under Data Protection legislation. Professional codes of conduct also include clear confidentiality requirements. It is extremely important therefore that NHS bodies assure themselves, taking advice when necessary, that sponsorship arrangements are both lawful and meet appropriate ethical standards;

Where a sponsorship arrangement permitting access to patient information appears to be legally and ethically sound (e.g. where the sponsor is to carry out or support NHS functions, where patients have explicitly consented), a contract should be drawn up which draws

attention to obligations of confidentiality, specifies security standards that should be applied, limits use of the information to purposes specified in the contract and makes it clear that the contract will be terminated if the conditions are not met;

Where the major incentive to entering into a sponsorship arrangement is the generation of income rather than other benefits, then income generation principles rather than sponsorship arrangements should properly govern the scheme. Such schemes should be managed in accordance with income generation requirements; i.e. they must not interfere with the duties or obligations of the trust. A memorandum trading account should be kept for all income generation schemes;

As a general rule, sponsorship arrangements involving NHS Trusts, CCGs, PCTs, Strategic Health Authorities and NHSFTs should be at a corporate, rather than individual level.

Hospitality and meetings

Industry representatives organising meetings are permitted to provide appropriate hospitality and/or meet any reasonable, actual costs, which may have been incurred. If none is required, there is no obligation, or right, to provide any such hospitality, or indeed any benefit of equivalent value.

Hospitality must be secondary to the purpose of the meeting. The level of hospitality offered must be appropriate and not out of proportion to the occasion; and the costs involved must not exceed that level which the recipients would normally adopt when paying for themselves, or that which could be reciprocated by the NHS. It should not extend beyond those whose role makes it appropriate for them to attend the meeting.

Where meetings are sponsored by external sources, that fact must be disclosed in the papers relating to the meeting and in any published proceedings.

Research and development

Guidance on research and development is contained in Annex 4.

Charitable funding

Trustees should take steps to remove any non-charitable items within charitable trust fund accounts. Examples include drug trials undertaken directly by a consultant and supported by funding from non-official sources (ie not part of the R& D programme managed by the provider). Not all consultant drug trials are non-charitable (see “NHS Charitable Funds: A Guide”, published by the Charity Commission), but, where they do not have charitable status, they should be removed from the charitable trust fund accounts. If the drug trial contract is made between industry and the NHS Foundation Trust Primary Care Trust or Clinical Commissioning Group, then the transaction should be recorded as a normal income generation scheme. In other cases, the NHS Foundation Trust or Primary Care Trust should consider other options including the transfer of responsibility back to the consultant concerned.

Examples of Potential Conflict

Some examples of potential conflict are set out at Annex 5.

Monitoring Arrangements

Employers should ensure that monitoring arrangements are established to ensure that staff register any sponsorship and are held accountable for it. This may be through scrutiny by an appropriate committee, e.g. local audit or ethics committees, as part of their normal activity, as well as through publication in the Annual Report, where this is practicable. An official register of interests should be established as part of the monitoring arrangements. At corporate level, employers should ensure that contract negotiations are conducted according to high ethical standards.

Employers finding evidence of unapproved sponsorship should act swiftly to deal with the situation and bring it within their local arrangements.

Action

Employers (e.g. NHS Trust, NHS Foundation Trust, Primary Care Trust, and Strategic HA) and independent contractors should:

Make all staff aware of NHS guidance, the legal position and appropriate professional codes of conduct, e.g. GDC, GMC, RCN, RPSGB, NMC, and Prescription Medicines Code of Practice Authority (PMCPA) codes;

Take responsibility for ensuring that they and their staff adhere to their professional code, or for unregulated staff a code devised by the organisation. The code should contain clear guidance around offers of sponsorship;

Ensure all sponsorship deals are documented through use of a register or simple ledger, held by the employer e.g. the Strategic Health Authority, NHS Trust, NHS Foundation Trust, Primary Care Trust or Clinical Commissioning Group, which can be audited as appropriate. In order to demonstrate openness, it is essential that the Register should be available on request to the public and be made available at all Board meetings;

Make it a matter of policy that offers which could possibly breach the code must be reported to the relevant Board (NHS Trusts/NHS Foundation Trusts/Primary Care Trusts/Clinical Commissioning Group/Strategic Health Authority) or Health Authority (independent contractors). Minimum standards for the reporting system should be determined locally, but ideally should include some time limit (e.g. two weeks) for the reporting of any such offers;

Ensure that all staff record with their SHA, in the interest of transparency, any financial interest in organisations (e.g. company shares or research grant) which impact upon funding, whether through contracts, sales or other arrangements that they may make with non NHS organisations.

Before entering into any sponsorship agreement, SHAs, NHS Trusts, NHS Foundation Trusts and Primary Care Trusts, Clinical Commissioning Group staff and independent contractors should:

- Satisfy themselves, with reference to information available, that there are no potential irregularities that may affect a company's ability to meet the conditions of the agreement or impact on it in any way e.g. checking financial standing by referring to company accounts;
- Assess the costs and benefits in relation to alternative options where applicable, and to ensure that the decision-making process is transparent and defensible;

- Ensure that legal and ethical restrictions on the disclosure of confidential patient information, or data derived from such information, are complied with. Additionally, disclosure for research purposes should not take place without the approval of the appropriate research ethics committee;
- Determine how clinical and financial outcomes will be monitored;
- Ensure that the sponsorship agreement has break clauses built in to enable the NHS Trust, NHS Foundation Trust, Primary Care Trust, Clinical Commissioning Group, independent contractor to terminate the agreement if it becomes clear that it is not providing expected value for money/clinical outcomes.

Existing contracts, which include any element of sponsorship agreement, should be reviewed and any clauses which do not follow the recommendations set out above should, where possible, be renegotiated to ensure that real patient need is being met.

Existing corporate governance policies and disciplinary procedures should be reviewed to ensure that they cover the need for open declaration and to enable sanctions against those failing to comply. In the event that they do not do so, the policies should be strengthened or amended. Corporate and or clinical governance policies should address the ethical implications of commercial sponsorship.

CODE OF CONDUCT

Staff and independent contractors working in the NHS should follow existing codes of conduct. Staff who are not covered by such a code are expected to:

- Act impartially in all their work;
- Refuse gifts, benefits, hospitality or sponsorship of any kind which might reasonably be seen to compromise their personal judgement or integrity, and to avoid seeking to exert influence to obtain preferential consideration. All such gifts should be returned and hospitality refused;
- Declare and register gifts, benefits, or sponsorship of any kind, in accordance with time limits agreed locally, (provided they are worth at least £25), whether refused or accepted. In addition gifts should be declared if several small gifts worth a total of over £100 are received from the same or closely related source in a 12 month period;
- Declare and record financial or personal interest (eg company shares, research grant) in any organisation with which they have to deal, and be prepared to withdraw from those dealings if required, thereby ensuring that their professional judgement is not influenced by such considerations;
- Make it a matter of policy that offers of sponsorship that could possibly breach the Code be reported to their Board (NHS Trusts/NHS Foundation Trusts/Primary Care Trust/Health Authorities) or to the Health Authority (independent contractors);
- Not misuse their official position or information acquired in the course of their official duties, to further their private interests or those of others;
- Ensure professional registration (if applicable) and/or status are not used in the promotion of commercial products or services;
- Beware of bias generated through sponsorship, where this might impinge on professional judgement and impartiality;
- Neither agree to practice under any conditions which compromise professional independence or judgement, nor impose such conditions on other professionals.

INDUCEMENTS AND HOSPITALITY

Extract from The Medicines (Advertising) Regulations 1994

- 1) Subject to paragraphs (2) and (4), where relevant medicinal products are being promoted to persons qualified to prescribe or supply relevant medicinal products, no person shall supply, offer or promise to such persons any gift, pecuniary advantage or benefit in kind, unless it is inexpensive and relevant to the practice of medicine or pharmacy.
- 2) The provisions of paragraph (1) shall not prevent any person offering hospitality (including the payment of travelling or accommodation expenses) at events for purely professional or scientific purposes to persons qualified to prescribe or supply relevant medicinal products, provided that-
 - such hospitality is at a reasonable level,
 - it is subordinate to the main scientific objective of the meeting, and
 - it is offered only to health professionals.
- 3) Subject to paragraph (4), no person shall offer hospitality (including the payment of travelling or accommodation expenses) at a meeting or event held for the promotion of relevant medicinal products unless-
 - such hospitality is reasonable in level,
 - it is subordinate to the main purpose of the meeting or event, and
 - the person to whom it is offered is a health professional.
- 4) Nothing in this regulation shall affect measures or trade practices relating to prices, margins or discounts which were in existence on 1st January 1993. No person qualified to prescribe or supply relevant medicinal products shall solicit or accept any gift, pecuniary advantage, benefit in kind, hospitality or sponsorship prohibited by this regulation.

RESEARCH AND DEVELOPMENT

Exceptionally, in the case of non-commercial research and development (R&D) originated or hosted by NHS providers, commercial sponsorship may be linked to the purchase of particular products, or to supply from particular sources. This should be in accordance with the guidance at paragraph 28 of HSG(97)32 “Responsibilities for meeting Patient Care Costs Associated with Research and Development in the NHS” (see note i). Where there is industry collaboration in such studies, companies may alternatively make a contribution towards the study’s costs, rather than supply of product.

Any funding for research purposes should be transparent. There should be no incentive to prescribe more of any particular treatment or product other than in accordance with the peer reviewed and mutually agreed protocol for the specific research intended. When considering a research proposal, whether funded in whole or part by industry, NHS bodies will wish to consider how the continuing costs of any pharmaceutical or other treatment initiated during the research will be managed once the study has ended.

Separate Guidelines exist for pharmaceutical company Sponsored Safety Assessment of Market Medicines (SAMM) which remain in force.

Where R&D is primarily for commercial purposes, NHS providers are expected to recover the full cost from the commercial company on whose behalf it is carried out. (HSG(97)32, paragraph 7). An industry-sponsored trial should not commence until an indemnity agreement is in place; see the guidelines in HSC(96)48 “NHS Indemnity, Arrangements for Clinical Negligence Claims in the NHS”. A standard form of indemnity agreement, agreed with ABPI, can be found at Annex 3 of that guidance.

The NHS should benefit from commercial exploitation of intellectual property derived from R&D that the NHS has funded, even where the intellectual property itself is owned by people outside the NHS. NHS bodies should ensure that an agreement to this effect is included in any contracts concerning R&D. The guidelines in HSC 1998/106 “Policy Framework for the Management of Intellectual Property within the NHS from R&D” should be followed.

Note - i

Paragraph 28 of HSG(97)32 states: At present, industry frequently contributes to the costs of pharmaceuticals (and other products) which are the subject of non-commercial R&D in the NHS. Although, by definition such items constitute Treatment Costs, the NHS will continue, under the Partnership Arrangements, to look to researchers and non-commercial research funders to secure such contributions before approaching the NHS for support

EXAMPLES OF POTENTIAL CONFLICT

It may be helpful to give some examples of the sorts of situations you could encounter and how they could be dealt with. These are given below:

A clinician wishes to include a new drug, manufactured by a company with which he has links e.g. company shares, research grant, in the Trust Formulary – Trust committee (e.g. Drug and Therapeutics Committee) should require declarations of interest from clinicians submitting proposals for new products to be added to formularies and ensure the decision is based on clinical and cost effectiveness information.

A pharmaceutical industry representative wishes to present the case for a new product being included on a Trust Formulary – The Trust should establish and adopt a reasonable policy on approaches from industry representatives. Industry representatives should be required to sign up to compliance with such a policy before being given access to any meetings.

Offer from a company to provide for training of staff – Employers should be careful to ensure that staff are not pressurised by sponsors of training, to alter their own activity to accord with sponsors' wishes, where these are not backed up by appropriate evidence. Training provided by industry may be above Board if it is unbiased has mutual benefit for both the NHS and the sponsoring company, is evidenced based and the hospitality is appropriate. However, participants should assess whether they may be influenced unduly and also bear in mind what benefits the company might derive (e.g. exposure to NHS, professional contacts, potential allies to use later, names of who to influence, often without the participants realising).

A manufacturer of ostomy equipment offers to sponsor a stoma nurse post in an NHS Trust – The Trust should not accept the sponsorship if it would require the stoma nurse to recommend the sponsor's in preference to other clinically appropriate appliances, nor if it requires the Trust to recommend patients to use a particular dispensing service, or withhold information about other products. Existing contracts containing any such provisions should, where possible, be urgently renegotiated.

A manufacturer of a particular type of Nicotine Replacement Therapy offers to provide their product at a reduced rate to a Health Action Zone or a Health Authority – This arrangement is acceptable provided that there is a clear clinical view that these products are appropriate to particular patients and there is no obligation to also prescribe these products to other patients for whom an alternative product would be at least as beneficial.

A pharmaceutical company offers to provide starter packs at a discounted price – This type of sponsorship is acceptable, but should always be declared in order to avoid any suspicion that subsequent prescribing might be inappropriate and linked to the provision of starter packs.

A catering company offers to provide discounted products to a NHS Foundation Trust – This agreement is acceptable, but should be routinely declared to the Health Authority.

High tech home health care provider offers to supply equipment at a reduced rate in return for business linked to a specific product – Health Authority contract negotiators should advise the company that any contract will not prejudice the provision of the most appropriate service to patients, and will not bear any relation to other contracts.

A manufacturer offers to pay the travelling costs or accommodation costs for clinicians invited to a conference to view medical products – Only clinicians with a specific interest in the products should attend and the travel costs incurred should be paid for by the Trust, unless the Chief Executive/Director of Finance and Information gives approval for the potential supplier to take responsibility for the costs. Such decisions should be taken at least at Director of Finance and Information level.