

Council of Governors: 19.4.18

Agenda Item: CGo.4.18.5

Council of Governors Standing Orders

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| Presented by: | Director of Governance and Corporate Affairs | Author: | Jacqui Maurice, Head of Corporate Governance |
| Previously considered by: | N/A | | |

| Key points | Purpose: |
|--|-------------------------------|
| The Standing Orders were last reviewed in April 2017 by the Council of Governors. | To discuss and note |
| The Standing Orders are attached. Proposed amendments are presented in 'tracked changes'. | To discuss and gain assurance |
| The Council of Governors is asked to approve the amendments to the Council of Governors Standing Orders. | To discuss and approve |

Executive Summary:

1. There is a requirement for the Council of Governors to undertake an annual review of the Council of Governors Standing Orders.
2. The Standing Orders are attached at appendix 1. The proposed amendments are presented in track changes.
3. Under section '3. MEETINGS OF THE COUNCIL OF GOVERNORS'; it is proposed to add the following sub-section to provide flexibility with regard to holding closed meetings of the Council of Governors.

3.2.1 At the request of the Chair, the Council of Governors may hold closed meetings by telephone, video link or by email exchange. Normal rules relating to quoracy will apply to the functioning of such a meeting. These meetings will be deemed closed meetings of the Council of Governors and shall be minuted accordingly.
4. Under section '4. COMMITTEES'; it is proposed to delete the information highlighted so that it is consistent with the requirements for quoracy in the Nominations and Remuneration Committee Terms of Reference (approved in January 2018 by the Council of Governors).
5. The remaining amendments seek to align the Standing Orders with other corporate documents so that there is consistency with regard to the corporate style and terminology in use at the Foundation Trust.
6. The Council of Governors is asked to review and approve the amendments to the Standing Orders.

Financial implications:

No

Regulatory relevance:

Council of Governors: 19.4.18

Agenda Item: CGo.4.18.5

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| Monitor: | Code of Governance |
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| Equality Impact / Implications: | Choose an item. |
| | Choose an item. |
| | Choose an item. |
| | Choose an item. |
| | Choose an item. |
| | Choose an item. |
| | <p>Is there likely to be any impact on any of the protected characteristics? (Age, Disability, Gender, Gender Reassignment, Pregnancy and Maternity, Race, Religion or Belief, Sexual Orientation, Health Inequalities, Human Rights)</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, what is the mitigation against this?</p> |

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| Other: | |
|---------------|--|

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| Strategic Objective: <i>Reference to Strategic Objective(s) this paper relates to</i> | To provide outstanding care for patients |
| | To collaborate effectively with local and regional partners |
| | To deliver our financial plan and key performance targets |
| | To be in the top 20% of NHS employers |
| | To be a continually learning organisation |



Bradford Teaching Hospitals
NHS Foundation Trust

Standing Orders

Council of Governors

Document Control

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|----------------------------|---|
| Policy reference | CG03 |
| Category | Corporate Governance |
| Strategic objective | To be a continually learning organisation |

| | |
|---------------------------|--|
| Author | Trust Secretary <u>Head of Corporate Governance</u> |
| Version | 8 <u>7</u> |
| Status | Final <u>Draft</u> |
| Supersedes | Version 6 <u>7</u> |
| Executive Lead | Director of Governance and Corporate Affairs |
| Approval Committee | Council of Governors |
| Ratified by | Council of Governors |
| Date ratified | <u>19 April 2018</u> |
| Date issued | |
| Review date | <u>April 2019</u> |

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FOREWORD

This document provides a regulatory and business framework for the conduct of the Council of Governors.

INTRODUCTION

Statutory Framework

The statutory functions conferred on the Foundation Trust are set out in:

- The Health and Social Care (Community Health and Standards) Act 2003
- The National Health Service Act 2006
- The Health and Social Care Act 2012
- NHS Provider Licence

As a Public Benefit Corporation the Foundation 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.

NHS Framework

The Constitution, paragraph 7.16.6, requires the Council of Governors to adopt its own Standing Orders for its practice and procedure.

1. INTERPRETATION

1.1 In these Standing Orders, the provisions relating to interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning and, in addition:

"THE 2006 ACT" shall mean the National Health Service Act 2006.

"THE 2012 ACT" shall mean the Health and Social Care Act 2012.

"AUTHORISATION" shall mean the Authorisation of the Foundation Trust issued by the Regulator on 30 March 2004 with any amendments for the time being in force.

"TRUST" means the Bradford Teaching Hospitals NHS Foundation Trust.

"BOARD OF DIRECTORS" shall mean the Board of Directors as constituted in accordance with the Foundation Trust's Constitution.

"COUNCIL OF GOVERNORS" shall mean the Council of Governors as constituted in accordance with the Foundation Trust's Constitution.

"CHAIRMAN" means the person appointed by the Council of Governors (in accordance with Paragraph 7.12.2 b) and 7.14.2 of the Constitution) to be Chairman of the Foundation Trust.

"CHIEF EXECUTIVE" shall mean the chief officer of the Foundation Trust.

"CONSTITUTION" shall mean the constitution with any variations from time to time approved by the Board of Directors, the Council of Governors and where required, Members of the Foundation Trust in accordance with paragraph 19.0 of the Constitution

"COUNCIL OF GOVERNORS ENGAGEMENT POLICY" shall mean a policy as implemented in response to the recommendations contained in paragraphs A5.6 and A5.7 of *The NHS Foundation Trust Code of Governance* (Monitor, updated 2014)

"DIRECTOR" shall mean a member of the Board of Directors.

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

"GOVERNOR" shall mean a member of the Council of Governors as defined in Paragraph 7.0 of the Constitution.

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

"OFFICER" means an employee of the Foundation Trust.

"SECRETARY TO THE TRUST" means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary of the Foundation Trust.

"VICE-CHAIRMAN" means the public, staff or patient governor appointed by the Council of Governors in accordance with Paragraph 7.16.2 of the Constitution to

preside at meetings of the Council of Governors in the Chair~~man~~'s absence.

2. THE COUNCIL OF GOVERNORS

2.1 Duties, Roles and Responsibilities of Governors - The duties, roles and responsibilities of the Council of Governors is set out in Paragraph 7.12 of the Constitution and the role of appointed Governors is set out further in Paragraph 7.5 of the Constitution.

2.2 Composition of the Council of Governors – The composition of the Council of Governors shall be as set out in Paragraph 7.1 of the Constitution.

2.3 Appointment of the Chair~~man~~ and Non-Executive Directors - The Chair~~man~~ and Non-Executive Directors are appointed by the Council of Governors in accordance with paragraph 7.12.2 b) of the Constitution.

2.4 Terms of Office of the Chair~~man~~ - The regulations governing the period of tenure of office of the Chair~~man~~ and the termination or suspension of office of the Chair~~man~~ are contained in Paragraph 8.2 of the Constitution.

2.5 Appointment of Vice-Chair~~man~~ – The Council of Governors shall appoint a Vice-Chair~~man~~ in accordance with paragraph 7.16.2 of the Constitution. The appointment process shall be determined by the Trust Secretary.

2.6 Vice-Chair~~man~~ Length of Tenure – Governors' may self-nominate. The appointment length shall be for a period of two years. Governors may serve for a period of two years or until their period as a governor comes to an end (whichever occurs first). Governors are able to serve more than one two year length of tenure.

2.7 Termination of Tenure - Any Governor so appointed may at any time resign from the office of Vice-Chair~~man~~ by giving notice in writing to the Secretary to the Foundation Trust and the Governors of the Foundation Trust may thereupon appoint another Vice-Chair~~man~~ in accordance with paragraph 7.9.1 of the Constitution.

2.8 Role of Vice-Chair~~man~~ – The role of the Vice-Chair~~man~~ of the Council of Governors is described below. The Vice-Chair~~man~~ may preside at meetings of the Council of Governors in the following circumstances:

- At a meeting of the Council of Governors in the absence of the Chair~~man~~.
- At a meeting of the Council of Governors where matters are being considered relating to Non-Executive Directors where a conflict of interest relating to the Chair~~man~~ exists.
- When the remuneration, allowances and other terms and conditions of the Chair~~man~~ are being considered.
- When the appointment of the Chair~~man~~ is being considered, should the current Chair~~man~~ be a candidate for reappointment.
- On occasions when the Chair~~man~~ declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council of Governors.

2.8.1 The role of the Vice-Chair~~man~~ of the Council of Governors as described above and in paragraph 10.2 of these Standing Orders represents the full extent of this role.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 Admission of the Public - The provisions for the admission of the public to meetings of the Council of Governors are detailed at paragraph 7.16.3 of the Constitution.

3.2 Calling Meetings - Before each meeting of the Council of Governors, each Governor elected by a public constituency, the patient constituency or a class of the staff constituency is required to make a declaration to enable the Governor to vote at the meeting. The form of the declaration shall be as specified by the Secretary to the Trust and shall be completed immediately before the start of each meeting. The Secretary's decision on the validity of any declaration shall be final.

3.2.1 Notice of Council of Governors meetings shall be communicated to the local media and published on the Foundation Trust's website in each case as soon as practicable after Notice has been sent to the Governors.

3.2.2 Notice to Governors of meetings of the Council of Governors shall be given by post or otherwise delivered to the Governor or email if the Governor has so requested.

3.2.3 The Secretary to the Trust shall ensure that within the meeting cycle of the Council of Governors, meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

3.2.4 At the request of the Chair, the Council of Governors may hold closed meetings by telephone, video link or by email exchange. Normal rules relating to quoracy will apply to the functioning of such a meeting. These meetings will be deemed closed meetings of the Council of Governors and shall be minuted accordingly.

~~**3.2.3**~~

3.3 Chair~~man~~ of Meetings – The Chair~~man~~ of the Foundation Trust, or in his/~~her~~ absence, the Vice-Chair~~man~~, appointed under Paragraph 7.16.2 of the Constitution is to preside at meetings of the Council of Governors. If the Chair~~man~~ is absent for a period during the course of a meeting on the grounds of a declared conflict of interest the Vice-Chair~~man~~ shall preside.

3.4 Setting the Agenda - The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and that these shall be addressed prior to any other business being conducted.

3.5 Agenda items - A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included in request in writing to the Chair~~man~~ or Secretary to the Foundation Trust at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chair~~man~~.

3.6 Notices of Motion - A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair~~man~~ or Secretary to the Foundation Trust, 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 in accordance with Standing Order 3.5, subject to the Chair~~man~~'s discretion.

3.7 Withdrawal of Motion or Amendments - A motion or amendment once

moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair~~man~~.

3.8 Motion to Rescind a Resolution - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall be in writing, be in accordance with Standing Order 3.6 and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been agreed by the Council of Governors, only the Chair~~man~~ may propose a motion to the same effect within six months if he/she considers it appropriate.

3.9 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.

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

- An amendment to the motion.
- The adjournment of the discussion or the meeting.
- That the meeting proceeds to the next business.
- That the motion be now put.

3.9.2 No amendment to the motion shall be admitted if, in the opinion of the Chair~~man~~ of the meeting, the amendment negates the substance of the motion.

3.10 Chair~~man~~'s Ruling - Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair~~man~~ of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

3.10.1 Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Secretary to the Foundation Trust).

3.11 Voting – Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chair~~man~~ so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second casting vote.

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

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

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

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

3.12 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.

- 3.12.1** No discussion shall take place upon the minutes except upon their accuracy or where the Chair~~man~~ considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.12.2** Minutes of meetings will be taken and circulated in accordance with Governors' wishes.
- 3.13** **Suspension of Standing Orders** - Except where this would contravene any statutory provision, compliance with Monitor's Provider Licence or any provision of the Constitution; any one or more of the Standing Orders may be suspended at any meeting, providing that at least two-thirds of the Council of Governors are present, including one Public Governor and one Staff Governor, and that a majority of those present vote in favour of suspension.
- 3.13.1** A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.13.2** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 3.13.3** No formal business may be transacted while Standing Orders are suspended.
- 3.14** **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- the variation proposed does not contravene a statutory provision, compliance with Monitor's Provider Licence or the Constitution; and
 - unless presented by the Chair~~man~~ or the Chief Executive, a notice of a motion under Standing Order 3.6 has been given; and
 - at least two-thirds of the Governors are present, including one Public or Patient Governor and one Staff Governor; and
 - no fewer than half the Governors vote in favour of amendment.
- 3.15** **Record of Attendance** - The names of the Governors present at the meeting shall be recorded in the minutes.
- 3.16** **Quorum** - No business shall be transacted at a meeting of the Council of Governors unless ten Governors, including not less than five Public or Patient Governors, are present.
- 3.17** **Declaration of Interests** - A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. 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.
- 3.17.1** Subject to Standing Orders in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chair~~man~~, to speak to any

item under consideration.

4. COMMITTEES

- 4.1 Except as required by the Constitution, the Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a Committee.
- 4.2 The membership and terms of reference of a Nomination and Remuneration Committee shall be as agreed by the Council of Governors at a general meeting, stated in the constitution. ~~A Nomination and Remuneration Committee for a non-executive Director shall be chaired by the Chairman and will comprise of the Chairman, a minimum of three members of the Council of Governors and the Chief Executive acting in an ex officio capacity. A Nomination and Remuneration Committee for the Chairman shall be chaired by a public governor and will comprise of a minimum of three public governors, one staff governor, one partner governor and the Chief Executive acting in an ex officio capacity.~~
- 4.2.1 The proceedings of a Nomination and Remuneration Committee shall be confidential until reported to the Council of Governors. Subject to the requirements of the Constitution and these Standing Orders, the procedure of a Nomination and Remuneration Committee shall be for the Committee to determine.
- 4.2.2 The Council of Governors will not consider nominations for membership of the Board of Directors other than the recommendations of the Council of Governors Nominations and Remuneration Committee.

5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 5.1 **Declaration of Interests** – In accordance with paragraph 7.13. of the Constitution, Governors are required to declare formally any
~~- any direct or indirect pecuniary interest.~~
~~- and any other interest which is relevant and material to the business of the Foundation Trust.~~
- other interest as set out in the 'Conflicts of Interest Policy for Bradford Teaching Hospitals NHS Foundation Trust'.

The responsibility for declaring an interest is solely that of the Governor concerned. Interests should be declared to the Secretary of the Foundation Trust:

- Within 28 days of election or appointment;
- If arising later, within seven days of becoming aware of the interest.

- 5.1.1 In addition, if the Governor is present at any meeting of the Council of Governors and has an interest in any matter which is the subject of consideration, the Governor shall at that meeting and as soon as possible after its commencement disclose the fact. Paragraph 7.13.8 of the Constitution includes in a Governor's interests, the interests of the Governors co-habiting partner or spouse.
- 5.1.2 In accordance with paragraph 7.13.4 of the Constitution, any travelling or other expenses or allowances payable to a Governor shall not be treated as a pecuniary

interest. Paragraph 7.13.5 of the Constitution sets out the extent to which an indirect pecuniary interest from small shareholdings in a company does not prohibit participation in discussion and voting on the relevant matter, although the interest must still be declared.

5.1.3 If Governors have any doubt about the relevance of an interest, this should be discussed with the Secretary to the Foundation Trust.

5.1.4 Governor's directorships of companies likely or possibly seeking to do business with the Foundation Trust should be published in the Foundation Trust's Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.

5.2 Register of Interests – The Secretary to the Foundation Trust shall record any declarations of interest made in a Register of Interests kept by him/her in accordance with Paragraph 11 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.

5.2.1 The Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a member of the Foundation Trust then a charge may be made for doing so.

6. STANDARDS OF BUSINESS CONDUCT

6.1 Policy – In relation to their conduct as a Governor of the Foundation Trust, each Governor must comply with the principles outlined in HSG(93)5, 'Standards of Business Conduct for NHS staff'. In particular, the Foundation Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.

6.2 Interest of Governors in Contracts - If it comes to the knowledge of a Governor of the Foundation Trust that a contract in which he/she 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 Foundation Trust he/she shall, at once, give notice in writing to the Secretary to the Foundation Trust of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

6.2.1 A Governor of the Foundation Trust shall not solicit for any person any appointment in the Foundation Trust.

6.2.2 Informal discussions outside the Nomination and Remuneration Committee, whether solicited or unsolicited, should be declared to that Committee.

7. REMUNERATION

7.1 Governors are not to receive remuneration

8. PAYMENT OF EXPENSES TO GOVERNORS

8.1 The Foundation Trust will pay travelling expenses to Governors at the prevalent

NHS Public Transport rate for attendance at General Meetings of the Governors, or any other business authorised by the Secretary as being under the auspices of the Council of Governors.

- 8.1.2** In situations of clear personal hardship associated with the attendance of Governors at meetings described under Standing Order 8.1, the Secretary to the Foundation Trust has discretionary authority to reimburse supplementary travelling or other access costs.
- 8.1.3** Expenses will be authorised and reimbursed through the Secretary's office on receipt of a completed and signed expenses form provided by the Secretary.
- 8.1.4** A summary of expenses paid to Governors will be published in the Annual Report.

9. RESOLUTION OF DISPUTES

- 9.1** In the case of a dispute between the Board of Directors and the Council of Governors, the procedure described in the Council of Governors Engagement Policy will be followed.
 - 9.1.1** If there is no resolution after following the procedure as described within the Council of Governors Engagement Policy, then the issue will be referred to mediation. The ~~Chairman~~, Vice-~~Chairman~~ of the Council of Governors, Lead Governor and the Chief Executive shall meet within 28 days of such a resolution to agree a mediator. In default of agreement, the issue will be referred to arbitration. The Secretary of the Foundation Trust shall refer the dispute to the Chartered Institute for Arbitrators for a final resolution.
 - 9.1.2** The existence of the dispute shall not prejudice the duty of the Board of Directors in exercising their duties and responsibilities in accordance with the Constitution.

10. MISCELLANEOUS

- 10.1 Review of Standing Orders** - Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 10.2 Vice-Chairman** - In relation to any matter concerning the Council of Governors, or a Governor, outside a meeting of the Council of Governors which arises during the ~~Chairman's~~ absence, at the request of the Chief Executive the Vice-~~Chairman~~ may exercise such power as the ~~Chairman~~ would in those circumstances.
- 10.3 Lead Governor** –The Council of Governors is required to appoint one Governor to act as the Lead Governor to communicate directly with NHS Improvement in the event that the Foundation Trust is at risk of breaching the conditions of its NHS ~~P~~provider ~~L~~icence.
 - 10.3.1 Role of Lead Governor** – The role of the Lead Governor is defined in Appendix B of the NHS Foundation Trust Code of Governance.
 - 10.3.2 Appointment of Lead Governor** - Governors may self-nominate. The appointment process shall be determined by the Trust Secretary.

10.3.3 Length of Tenure of Lead Governor –The appointment length shall be for a period of two years. Governors may serve for a period of two years or until their period as a Governor comes to an end (whichever occurs first) or, the Governor chooses to resign from the role. Governors are able to serve more than one two year length of tenure.

10.4 Notice – Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.

10.5 Confidentiality - A Governor of the Foundation Trust shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.