

# Standing Orders

**FCG-FIN-CG-01**

**Version 2.5 March 2021**



**NHS fraud.  
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Together we stop it.**

## Version control

Version	Name	Date	Comment
0.1	John Manuel	12/11/2017	First draft
0.2	John Manuel	17/11/2017	Updated, formatted draft
2.0 DRAFT	Finance & Corporate Governance	1/10/18	Annual review
2.0	Finance & Corporate Governance	November 2018	DH corrected to DHSC throughout  Amendments to para 26.2 28.4, 40.4
2.1	Finance & Corporate Governance	November 2018	Consistency of naming of “Chairperson”, “Vice Chairperson” and “Chief Financial Officer” and reference to SO 13 amended to SO 15.
2.2	Finance & Corporate Governance	November 2018	Removal of para 1.2 as transitional arrangements no longer apply. Correction in 20.7 & 25.4 to refer to SO15 Consistency job descriptions in 28.2 28.4 35.1(C)
2.3	FCG	Feb 2020 Annual review to align review date with financial year.	Name of ARC updated to ARAC Passed to Board for approval 29.4.20
2.4			Approved by Board 29.4.20
2.5	FCG	Annual review	Page 6 reference to Statutory Framework updated and minor amendments reviewed and accepted by ARAC 26.2.21.  Approved by the Board 17.3.21

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## Statutory framework

The NHS Counter Fraud Authority (NHSCFA) is a statutory body (Special Health Authority) which came into existence on 1st November 2017, created by Statutory Instrument 2017/958 (Establishment and Constitution Order) under 7(1), 28(1), (2), (4), (5) and (8), 29(2), 199(2), (4) and (5), 209(4), 272(7) and (8) and 273(4) of, and paragraphs 3, 5 and 13 of Schedule 6 to the National Health Service Act 2006. This was renewed by Statutory Instrument 2020/1071 (Establishment and Constitution, and Staff and Other Transfer Provisions (Amendment) Order) on 30<sup>th</sup> October 2020

## Main functions of the NHSCFA

The Statutory Instrument describes the main functions of the new body as follows:

“The Authority is to exercise the functions of the Secretary of State in respect of counter fraud which are identified in paragraph (2), subject to and in accordance with this article and directions to the Authority given by the Secretary of State.

- (a) The counter fraud functions the Authority is to exercise are—
- a. taking action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities, carried out against or otherwise affecting the health service in England;
  - b. taking action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities against or otherwise affecting the Secretary of State in relation to his responsibilities for the health service in England;
  - c. operational matters relating to the functions described in (a) and (b);
  - d. providing advice to bodies and persons identified in directions given by the Secretary of State to the Authority about matters relevant to counter fraud.”

## Place of business

The principal place of business of the authority is 4th Floor Skipton House, 80 London Road, London SE1 6LH.

## Framework

These Standing Orders, together with Standing Financial Instructions (SFIs), the Delegation of Powers document, Directions by the Secretary of State to the NHSCFA and any other Department of Health & Social Care (DHSC) guidance currently in force, are designed to ensure that the new body can operate in an open and transparent manner, and to the highest degree of propriety. They are also designed to ensure that the functions conferred upon the NHSCFA can be exercised in a comprehensive, integrated and professional manner.

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 their detailed provisions.

All references in these Standing Orders and the related documents to the masculine gender shall be read as equally applicable to the female gender and vice versa.

## Delegation of powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions, the NHSCFA is given powers to "make arrangements for the exercise, on behalf of the NHSCFA, of any of their functions by a committee, sub-committee or joint committee appointed by the Board or by an officer of the NHSCFA, in each case subject to such restrictions and conditions as the NHSCFA thinks fit or as the Secretary of State may direct". Delegated Powers are covered in a separate document (Reservation of Powers to the NHSCFA and Delegation of Powers). This document has the effect as if incorporated into the Standing Orders.

## Glossary of terms

"**Accountable Officer**" shall be the NHS officer responsible and accountable for funds entrusted to the NHSCFA. They shall be responsible for ensuring the proper stewardship of public funds and assets. For the NHSCFA it shall be the Chief Executive.

"**ARAC**" means Audit & Risk Assurance Committee

"**Board**" shall mean the Chairman, and non-executive members, appointed by the Secretary of State, and the executive (or officer) members appointed by the NHSCFA.

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"**Budget**" means a resource, expressed in financial terms, proposed by the NHSCFA for the purpose of carrying out, for a specific period, any or all of the functions of the NHSCFA.

"**Chairperson**" is the person appointed by the Secretary of State for Health & Social Care to lead the Board and to ensure that it successfully discharges its overall responsibility for the NHSCFA as a whole. The expression "the Chairperson of the NHSCFA" shall be deemed to include the Vice-Chairperson of the NHSCFA if the Chairperson is absent from the meeting or is otherwise unavailable.

"**Chief Executive**" means the chief officer of the NHSCFA.

"**Committee**" shall mean a committee created by the NHSCFA.

"**Committee Members**" shall be persons formally appointed by the Board to sit on or to chair specific committees.

"**Contracting and Procuring**" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

"**Director of Finance and Corporate Governance**" means the chief financial officer of the NHSCFA.

"**Member**" shall mean non-officer and/or officer member of the NHSCFA. Member in relation to the NHSCFA does not include its Chairperson.

"**Membership and Procedure Regulations**" shall mean the National Health Service Trusts (Membership and Procedure) Amendment Regulations 2014. "Nominated Officer" means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs.

"**Non-Officer Member**" means a member of the NHSCFA appointed under paragraph I(b) of Part I of Schedule 5 to the NHS Act 1977.

"**NHSCFA**" means the NHS Counter Fraud Authority.

"**Officer**" shall mean employee of the NHSCFA. In certain circumstances, "officer" may include a person who is employed by another authority or by Third Party contracted to the NHSCFA who carries out functions on behalf of the NHSCFA.

"**Officer Member**" means a member of the NHSCFA who is a member by virtue of or appointed under paragraph I (c) of Part I of Schedule 5 to the NHS Act 1977.

"**SFIs**" shall mean Standing Financial Instructions.

"**SOs**" shall mean Standing Orders.



"**Vice-chairperson**" means the non-officer member appointed by the NHSCFA to take on the Chairperson's duties if the Chairperson is absent for any reason.

## 1. Constitution of the NHSCFA

1.1 The NHSCFA shall consist of:

- the chairperson;
- in addition to the chairperson, not less than three members who are not officers of the Authority; and
- at least two but not more than three members who are officers of the Authority, and those officer members must include the persons who for the time being hold the offices of Chief Executive and Director of Finance.

## 2. Appointment and tenure of office of chairperson and non-officer members

2.1 The chairperson and members of the Authority who are not officers of the Authority (in this Schedule, "non-officer members") are to be appointed by the Secretary of State.

2.2 Subject to sub-paragraph (3) of this paragraph and to paragraph 3, the term of office of the chairperson and non-officer members is to be for such period as the Secretary of State specifies on making the appointment.

2.3 During the transitional period, the Secretary of State may make appointments under sub- paragraph (1) which:

- 1) may be terminated upon written notice by the Secretary of State; and
- 2) in any event terminate at the end of the transitional period if it not previously terminated.

2.4 Subject to paragraph 3, the chairperson and any non-officer member are, on the termination of their respective terms of appointment, to be eligible for re-appointment.

### **3. Appointment and tenure of chief executive and other officers, including interim arrangements**

- 3.1 The chairperson must, in consultation with, and with the consent of, the Secretary of State, appoint on such terms as may be approved by the Secretary of State an officer member to act temporarily as chief executive of the Authority during the transitional period and a second officer member to act temporarily as Director of Finance during the transitional period (“interim appointments”).
- 3.2 The officer member appointed to act temporarily as chief executive under sub-paragraph (1) must have knowledge of operational aspects of the health service and recent experience of heading a body or division within a body with functions in relation to the prevention, detection and investigation of fraud similar to those to be exercised by the Authority.
- 3.3 During the transitional period, the chairperson, may, with the consent of the Secretary of State:
- a. give to one or both officer members appointed under sub-paragraph (1) notice of termination of appointment; and
  - b. in any circumstances where an interim appointment has ended, make such further interim appointment, on such terms as may be approved by the Secretary of State, as the chairperson thinks fit to ensure the proper discharge of the Authority’s functions.
- 3.4 An interim appointment made under sub-paragraph (1) or (3)(b) must terminate no later than the end of the transitional period, unless, with the consent of the Secretary of State, it is extended temporarily by agreement between the person holding the appointment and the chairperson.
- 3.5 Except where the chairperson is required or chooses to make an interim appointment under sub-paragraph (1) or (3)(b), the chairperson must appoint, on such terms as may be approved by the Secretary of State, an officer member to act as chief executive of the Authority and a second officer member to act as Director of Finance of the Authority.
- 3.6 At any time, the chairperson may appoint, on such terms as may be approved by the Secretary of State, an officer member in addition to the chief executive and Director of Finance.

- 3.7 Before taking any of the actions mentioned in sub-paragraphs (1) and (3) to (6), the chairperson must obtain the written agreement of the non-officer members.
- 3.8 Where for any period the chief executive is suspended from discharging the duties of a chief executive of the Authority:
- a) the chief executive must also be suspended for that period from performing the functions ordinarily exercised by the chief executive as a member, and
  - b) any person appointed to act in place of the chief executive must also be appointed to perform the functions that the chief executive ordinarily exercised as a member of the Authority for that period.
- 3.9 The chief executive may appoint further officers who are not members of the Authority, subject, in the case of appointments at Agenda for Change grade 8b or above, to the agreement of the chairperson.
- 3.10 A person appointed under sub-paragraph (1), (3)(b), (5) or (6) is, on the termination of the terms of that appointment, eligible for re-appointment.

## 4. Disqualification for appointment

- 4.1 A person is disqualified for appointment as the chairperson or as a non-officer member if any of the following apply:
- a. the person holds a position as chairperson, member, officer, governor or director with, or is employed by, or contracted in any capacity to provide services to—
    - i. any health service body; or
    - ii. any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act;
  - b. the person has—
    - iii. within the previous five years been convicted in the United Kingdom of any criminal offence not mentioned in sub-paragraph (c) or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence not mentioned in sub-paragraph (c);
    - iv. as a consequence of that conviction, been sentenced to a sentence of imprisonment (whether suspended or not); and

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- v. neither the conviction has been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment (whether suspended or not) on appeal;
- c. the person has, on or after attaining the age of 18 years, in respect of acts or omissions occurring on or after the person's attaining the age of 18 years—
  - vi. been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence involving fraud, theft or bribery and the conviction has not been quashed on appeal; been party to an agreement which is the subject of a decision under section 31 (decisions following an investigation) of the Competition Act 1998, or subject to directions under section 32 (directions in relation to agreements) or 33 (directions in relation to conduct) arising from such a decision, including interim directions under section 35 (interim measures), of the Competition and Markets Authority in respect of prohibitions in Chapter 1 (agreements preventing, restricting or distorting competition) or Chapter 2 (abuse of dominant position) of Part 1 of the Competition Act 1998 or under Article 101(1) or 102 of the Treaty on the Functioning of the European Union, unless the decision has been successfully appealed under section 46 (appealable decisions) or 49 (further appeals) of the Competition Act 1998 and appeal proceedings have concluded; or
  - vii. been subject to, or been party to an agreement which was, the subject of a regulatory or judicial finding or decision, other than one which was successfully reviewed or appealed, in respect of matters similar to those mentioned in para (ii) pursuant to the repealed legislation mentioned in sections 1 and 17 of the Competition Act 1998;
- d. the person is the subject of a bankruptcy order within the meaning of section 381 of the Insolvency Act 1986, or of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986, or of a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB to that Act, or is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 2A to the Insolvency (Northern Ireland) Order 1989 or sequestration of the person's estate has been awarded and not recalled, or the person is a debtor who has not been discharged within the meaning of the Bankruptcy (Scotland) Act 2016), or is the subject of a bankruptcy

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restrictions order or interim bankruptcy restrictions order under Part 13 of that Act (bankruptcy restrictions orders etc);

- e. the person has been dismissed within the previous five years, otherwise than by reason of redundancy, from any paid employment with a health service body or any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act;
- f. the tenure of office of the person as the chairperson, a member, a director or a governor of a health service body has been terminated on the grounds—
  - viii. that it was not in the interests of the health service body or of the health service that the person should continue to hold the office;
  - ix. of non-attendance at meetings;
  - x. of non-disclosure of a pecuniary interest; or
  - xi. of misbehaviour, misconduct or failure to carry out the duties of the post or position held by the person;
- g. the tenure of office of the person as the chairperson, a member, a director or a governor of any person or body which is not a health service body but which provides services under a commissioning contract within the meaning of section 6E of the NHS Act has been terminated on the grounds of—
  - xii. non-disclosure of a pecuniary interest; or
  - xiii. misbehaviour, misconduct or failure to carry out the duties of the post or position held by the person;
- h. the person is subject to a disqualification order or undertaking under the Company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986, the Company Directors Disqualification (Northern Ireland) Order 2002 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual);
- i. the person has been—
  - xiv. removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or

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to which the person was privy, or which was contributed to or facilitated by the person's conduct; or

- xv. disqualified from being a charity trustee in Scotland pursuant to section 69 of the Charities and Trustee Investment (Scotland) Act 2005;
- j. the person—
  - xvi. was refused inclusion in a list maintained pursuant to regulations made under sections 91 (persons providing primary medical services), 103 (persons providing primary dental services), 123 (persons performing primary ophthalmic services) or 147A (performers of pharmaceutical services and assistants) of the NHS Act by reason of any matter concerning the person's honesty or probity;
  - xvii. was included in such a list but that inclusion is suspended or subject to conditions by reason of any matter concerning the person's honesty or probity;
  - xviii. was included in such a list but has been removed or contingently removed from that list by reason of any matter concerning the person's honesty or probity;
  - xix. is similarly prevented from providing primary medical, dental ophthalmic or pharmaceutical services elsewhere in the United Kingdom in circumstances corresponding to those set out in paragraphs (i) to (iii) in relation to England, and in relation to whether a matter concerns the person's honesty or probity, the question, in any case that is disputed by the person concerned, is to be determined by the Secretary of State or, where requested by the Secretary of State in cases not concerning the chairperson's qualification to hold office, the chairperson.

4.2 Subject to sub-paragraph (3), for the purposes of this paragraph, "health service bodies" means—

- a. the Board;
- b. a clinical commissioning group;
- c. an NHS trust;
- d. an NHS foundation trust;
- e. a special health authority;

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- f. Monitor;
  - g. a combined authority or local authority in England carrying out functions provided for in the NHS Act, pursuant to regulations under the Local Democracy, Economic Development and Construction Act 2009(c) or, as the case may be, an order under the Cities and Local Government Devolution Act 2016, or to arrangements made under section 13Z, 13ZA, 13ZB, 14Z3A or 75 of the NHS Act;
  - h. Care Quality Commission;
  - i. Health Education England;
  - j. Health Research Authority
  - k. Health and Social Care Information Centre;
  - l. Human Fertilisation and Embryology Authority;
  - m. Human Tissue Authority;
  - n. National Institute for Health and Care Excellence;
  - o. an executive agency of the Secretary of State for Health.
- 4.3 For the purposes of sub-paragraph (1)(a), in the case of an appointment of a non-officer member other than the chairperson the first reference in that sub-paragraph to “health service body” does not include reference to an NHS trust or foundation trust.
- 4.4 For the purposes of sub-paragraph (1)(b) and (c), the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted.
- 4.5 In relation to a person who would otherwise be disqualified under sub-paragraph (1)(c), the Secretary of State may in his discretion decide that a conviction for an offence of theft or fraud is not to disqualify a person from office if the offence is one it is appropriate to overlook by reason of the youth of the person at the time of the commission of the offence or the impact of the offence or other mitigating factors.
- 4.6 For the purposes of sub-paragraph (1)(e), a person is not to be treated as having been in paid employment by reason only of having been—
- a. in the case of an NHS foundation trust, the chairperson, a governor or a non-executive director of the trust;

- b. in the case of a clinical commissioning group, the chair or a member of the governing body of the group; or
- c. in the case of any other health service body, the chairperson, a member or a director of the health service body in question.

## 5. Cessation of disqualification

- 5.1 Where a person is disqualified under paragraph 3(1)(e), (f), (g), (i) or (j) that person may, after the expiry of two years beginning on the date of the dismissal, removal, refusal or suspension (as the case may be), apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification is to cease.
- 5.2 Where the Secretary of State refuses an application to remove a disqualification, no further application may be made by that person until the expiry of the period of two years beginning with the date of the application, and this sub-paragraph is to apply to any subsequent application.

## 6. Termination of tenure of office of chairperson and non-officer members

- 6.1 The chairperson or a non-officer member may resign from that office at any time during the term of that office by giving notice in writing to the Secretary of State.
- 6.2 Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Authority or of the health service that the chairperson or non-officer member should continue to hold office, the Secretary of State may forthwith terminate the chairperson's or non-officer member's tenure of office by giving the chairperson or that member notice in writing to that effect.
- 6.3 If the chairperson or a non-officer member fails to attend three successive meetings of the Authority the Secretary of State must forthwith terminate that person's tenure of office unless satisfied that—
  - the absence was due to a reasonable cause; and
  - the person in question will be able to attend meetings of the Authority within such a period as the Secretary of State considers reasonable.
- 6.4 Where a person has been appointed to be the chairperson or a non-officer member, and becomes disqualified for appointment under paragraph 3, the



chairperson or that member, as the case may be, must notify the Secretary of State in writing of such disqualification.

- 6.5 Where it comes to the notice of the Secretary of State (whether under sub-paragraph (4) or otherwise) that at the time of a person's appointment or later that person was so disqualified, the Secretary of State must forthwith declare that the person in question was not duly appointed and notify that person in writing to that effect, and upon receipt of any such notification, the person's tenure of office, if any, must be terminated, and the person must cease to act as chairperson or member, as the case may be.
- 6.6 If it appears to the Secretary of State that the chairperson or a non-officer member has failed to comply with paragraph 14 (disability on account of pecuniary interest) the Secretary of State may forthwith terminate that person's tenure of office by giving the person notice in writing to that effect.

## 7. Suspension of appointee

- 7.1 The Secretary of State may suspend a chairperson or a non-officer member ("an appointee") from office while the Secretary of State considers whether—
- to remove the appointee from office under paragraph 5(2), (3) or (6); or
  - the appointee has become disqualified for appointment under paragraph 3, or was so disqualified at the time of appointment, and if so, in the case of disqualification under paragraph 3(1)(c), whether discretion should be exercised under paragraph 3(5).
- 7.2 The Secretary of State must give notice in writing of the decision to suspend and the suspension takes effect on receipt of such notification.
- 7.3 A notice under sub-paragraph (2) may be—
- delivered in person, in which case the appointee is treated as receiving it when it is delivered; or
  - sent by first class post to the appointee's last known address, in which case the appointee is treated as receiving it on the third day after the day on which it was posted.
- 7.4 The initial period of suspension must not exceed 6 months.
- 7.5 The Secretary of State may review the appointee's suspension at any time.

- 7.6 The Secretary of State must review the appointee's suspension if requested in writing by the appointee to do so, but need not carry out a review less than 3 months after the beginning of the initial period of suspension.
- 7.7 A review must take into account any representations made by the appointee.
- 7.8 Following a review, the Secretary of State may—
- revoke the suspension; or
  - suspend the appointee for another period of not more than 6 months from the expiry of the current period.
- 7.9 The Secretary of State must revoke the suspension if at any time the Secretary of State decides that—
- there are no grounds to remove the chairperson or non-officer member from office under paragraph 5(2), (3) or (6);
  - there are such grounds but the Secretary of State does not remove the appointee from office as chairperson or non-officer member, as the case may be, under these provisions; or
  - the appointee is not disqualified for appointment under paragraph 3.

## **8. Suspension of chairperson: appointment of vice-chairperson**

- 8.1 This paragraph applies where the chairperson is suspended under paragraph 6.
- 8.2 If a vice-chairperson has been appointed under paragraph 8(1) that appointment is to cease to have effect.
- 8.3 The Secretary of State may re-appoint the person mentioned in sub-paragraph (2) or appoint another non-officer member to be the vice-chairperson.
- 8.4 The appointment of a vice-chairperson under sub-paragraph (3) is to be for a period, not exceeding the shorter of—
- a. the period for which the chairperson is suspended; and
  - b. the remainder of the non-officer member's term as a member of the Authority.

- 8.5 When the period for which a person is appointed as vice-chairperson expires, the Secretary of State may re-appoint that person, or appoint another non-officer member as vice-chairperson.
- 8.6 Any person appointed under sub-paragraph (3) or (5) may at any time resign from the office of vice-chairperson by giving notice in writing to the Secretary of State.
- 8.7 A notice given under sub-paragraph (6) is to take effect—
- a. where a date is specified in the notice as that on which the resignation is to take effect, on that date; or
  - b. in any other case, on the date that the notice is received by the Secretary of State.
- 8.8 The Secretary of State may terminate a person's appointment as vice-chairperson under sub-paragraph (3) or (5) if the Secretary of State is of the opinion that it would be in the best interests of the Authority for another non-officer member of the Authority to be vice-chairperson.
- 8.9 If—
- a. a person resigns from the office of vice-chairperson under sub-paragraph (6); or
  - b. the Secretary of State terminates a person's appointment as vice-chairperson under sub-paragraph (8),

the Secretary of State may appoint another non-officer member as vice-chairperson.

## **9. Appointment of vice-chairperson**

- 9.1 The chairperson and members may appoint one of the non-officer members to be vice-chairperson for such period, not exceeding the remainder of that non-officer member's term as a member, as they may specify on making the appointment.
- 9.2 Any member so appointed may at any time resign from the office of vice-chairperson by giving notice in writing to the chairperson.
- 9.3 This paragraph does not apply where paragraph 7 applies.

## **10. Powers of vice-chairperson**

- 10.1 This paragraph applies where—

- a. the chairperson of the Authority is suspended under paragraph 6 and a non-officer member of the Authority is appointed to be vice-chairperson under paragraph 7; or
- b. a non-officer member of the Authority is appointed to be vice-chairperson under paragraph 8, and the chairperson of the Authority—
  - i. has died or has ceased to hold office; or
  - ii. is unable to perform the chairperson's duties owing to illness, absence from England or any other cause.

10.2 Where this paragraph applies—

- a. the vice-chairperson is to act as chairperson until a new chairperson is appointed or the existing chairperson resumes the chairperson's duties, as the case may be; and
- b. the references to the chairperson of the Authority in this Order are, so long as there is no chairperson able to perform the chairperson's duties, to be taken to include references to the vice-chairperson.

## **11. Appointment of committees and sub-committees**

- 11.1 Subject to such directions as may be given by the Secretary of State, the Authority may, and if so directed by the Secretary of State, must, appoint committees of the Authority consisting wholly or partly of members of the Authority or wholly of persons who are not members of the Authority.
- 11.2 A committee appointed under this paragraph may, subject to such directions as may be given by the Secretary of State to the Authority or by the Authority to that committee, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they are members of the Authority) or wholly of persons who are not members of the Authority or the committee.
- 11.3 Subject to such directions as may be given by the Secretary of State, paragraphs 3 and 4 (disqualification and cessation of disqualification) apply to the appointment of members of committees and sub-committees appointed under this paragraph as they apply to the appointment of non-officer members of the Authority.

## **12. Arrangements for the exercise of functions**

- 12.1 Subject to such directions as may be given by the Secretary of State, the Authority may make arrangements for the exercise, on behalf of the Authority, of any of its functions by a committee or sub-committee appointed by virtue of paragraph 10 or by an officer of the Authority, in each case subject to such restrictions and conditions as the Authority thinks fit.

## **13. Meetings and proceedings**

- 13.1 The meetings and proceedings of the Authority must be conducted in accordance with the procedural requirements in paragraph 14 and with standing orders made under sub-paragraph (2).
- 13.2 Subject to the procedural requirements in paragraph 14, such directions as may be given by the Secretary of State, the Authority must make, and may vary or revoke, standing orders for the regulation of its proceedings and business, including provision for the suspension of all or any of the standing orders, and such standing orders may permit attendance at meetings by video or other televisual link subject to the chairperson being satisfied that the member so attending is clearly identifiable during the meeting.
- 13.3 Subject to such directions as may be given by the Secretary of State, the Authority may make, vary and revoke standing orders relating to the quorum, proceedings and place of meeting of any committee or sub-committee of the Authority, but subject to such standing orders, the quorum, proceedings and place of meeting are to be such as the committee or sub-committee may determine.

## **14. Procedural requirements for meetings and proceedings of the Authority**

- 14.1 The first meeting of the Authority is to be held on such day and at such place as may be fixed by the chairperson, who is to have responsibility for convening the meeting.
- 14.2 The chairperson may call a meeting of the Authority at any time.

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- 14.3 If a requisition for a meeting, signed by at least two members or one third of the total number of members, whichever is the greater number, is presented to the chairperson, and the chairperson either—
- refuses to call a meeting; or
  - without so refusing, does not within 21 days after the requisition has been presented call a meeting,
- those members may forthwith call a meeting.
- 14.4 Before each meeting of the Authority, a notice of the meeting which—
- specifies the principal business proposed to be transacted at it; and
  - is signed by the chairperson or by an officer of the Authority authorised by the chairperson to sign on the chairperson's behalf,
- must be delivered to each member, or sent by post to the member's last known address, at least seven clear days before the day of the meeting.
- 14.5 The proceedings of any meeting are not invalidated by a failure to deliver such notice to any member.
- 14.6 In the case of a meeting called under sub-paragraph (3) by members, the notice must be signed by those members and no business other than that specified in the notice is to be transacted at the meeting.
- 14.7 At any meeting of the Authority the chairperson or, in the chairperson's absence, the vice- chairperson (if there is one and the vice-chairperson is present) is to preside.
- 14.8 If the chairperson and any vice-chairperson are absent, such other non-officer member present as the other members present choose for the purpose is to preside.
- 14.9 Every question at a meeting is to be determined by a majority of votes of the members present and competent to vote on the question and, in the case of an equality of votes, the person presiding at the meeting is to have a second or casting vote.
- 14.10 No business is to be transacted at any meeting unless at least three of the members or one third of the membership, whichever is the greater number (the chairperson being included for this purpose in the reckoning), is present.
- 14.11 Minutes of the proceedings of a meeting must be prepared recording the names of the members present at that meeting, and signed at the next ensuing meeting by the person presiding at that next meeting.

## 15. Disability of chairperson and members in proceedings on account of pecuniary interest

- 15.1 Subject to the following provisions of this paragraph, if the chairperson or a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at any meeting of the Authority to which the contract, proposed contract or other matter is the subject of consideration, the chairperson or that member must at the meeting and as soon as practicable after its commencement, disclose that interest and must not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it.
- 15.2 The Secretary of State may, subject to such conditions as the Secretary of State considers appropriate to impose, remove any disability imposed by this paragraph in any case in which it appears to the Secretary of State to be in the interests of the health service that the disability should be removed.
- 15.3 The Authority may, by standing orders made under paragraph 13(b), provide for the exclusion of the chairperson or a member from a meeting of the Authority while any contract, proposed contract or other matter in which the chairperson or that member has a pecuniary interest, direct or indirect, is under consideration.
- 15.4 Any remuneration, compensation or allowances payable to the chairperson or a member by virtue of paragraph 2 to Schedule 6 of the NHS Act (pay and allowances) is not to be treated as a pecuniary interest for the purpose of this paragraph.
- 15.5 Subject to sub-paragraphs (2) and (6), the chairperson or member (in this paragraph, the “appointee”) is to be treated for the purpose of this paragraph as having an indirect pecuniary interest in a contract, proposed contract or other matter if—
- the appointee, or a nominee of the appointee, is a director of a company or other 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
  - the appointee is a business 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 two persons living together as a couple (whether or not they are spouses or civil partners) the interest of one is, if known to the other, to be deemed for the purpose of this paragraph to be an interest of the other.

15.6 An appointee is not to be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of the appointee's membership of a company or other body if the appointee has no beneficial interest in any securities of that company or other body.

## **16. Reports by the Authority**

16.1 The Authority must make such reports to the Secretary of State in such manner and at such time as the Secretary of State may direct, and must furnish to the Secretary of State such information as the Secretary of State may from time to time require.

## **17. Public meeting**

17.1 Where under paragraph 15 the Authority makes an annual report to the Secretary of State which directions mentioned in that paragraph require to be published, the Authority must present the report at a public meeting held not later than 30 days after the date on which the report was made.

## **18. Tenure of office (Chief Executive and Deputy Chief Executive)**

18.1 The Chief Executive and the Deputy Chief Executive shall hold office as a member for so long as they remain in their respective posts.

## **19. Termination and suspension of tenure of office of officer members**

19.1 An officer member of the NHSCFA shall cease to hold office as member where he ceases to hold a post in the NHSCFA, or hold the same post in it as when he commenced his term of office.



- 19.2 If the NHSCFA is of the opinion that it is not in the interest of the Authority that an appointed officer member should continue to hold office as a member, the NHSCFA shall forthwith terminate his tenure of office.
- 19.3 If an officer member of the NHSCFA is suspended from his post in the NHSCFA, he shall be suspended from performing his functions as a member for the period of his suspension. SOs 15.1 and 15.2 above shall not apply in the case of the Chief Executive.

## 20. Declarations of interests and register of interests

- 20.1 The Code of Accountability requires Board members to declare interests, which are relevant and material to the NHS Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment. References here to Board members shall mean NHSCFA members.
- 20.2 Interests which should be regarded as "relevant and material" are:
- a. Directorships, including non-executive directorships held in private companies or Plc (with the exception of those of dormant companies)
  - b. Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS
  - c. Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS
  - d. A position of trust in a charity or voluntary organisation in the field of health and social care
  - e. Any connection with a voluntary or other organisation contracting for NHS services
- 20.3 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairperson.
- 20.4 At the time Board members' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.
- 20.5 Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

- 20.6 During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 20.7 There is no requirement for the interests of Board members' spouses or partners to be declared. Note however that SO 15 which is based on the Membership and Procedure regulations requires that the interest of members' spouses, if living together, in contracts should be declared.

## 21. Register of interests

- 21.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both executive and non-executive Board members, as defined in SO 20.2.
- 21.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 21.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the public and to publicise arrangements for viewing it.

## 22. Standards of business conduct policy

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

## 23. Interest of officers in contracts

- 23.1 If it comes to the knowledge of an officer of the NHSCFA 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 NHSCFA he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of 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.

- 23.2 An officer should 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 NHSCFA.

## **24. Canvassing of, and recommendations by, members in relation to appointments**

- 24.1 Canvassing of members of the NHSCFA or of any Committee of the NHSCFA directly or indirectly for any appointment under the NHSCFA shall disqualify the candidate for such appointment. The contents of this paragraph of the SOs shall be included in application forms or otherwise brought to the attention of candidates.
- 24.2 A member of the NHSCFA shall not solicit for any person any appointment under the NHSCFA or recommend any person for such appointment, but this paragraph of this SO shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the NHSCFA.
- 24.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

## **25. Relatives of members or officers**

- 25.1 Candidates for any staff appointment under the NHSCFA shall, when making application, disclose in writing to the NHSCFA whether they are related to any member or the holder of any office under the NHSCFA. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 25.2 The Chairperson and every member and officer of the NHSCFA shall disclose to the NHSCFA any relationship between himself and a candidate, of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the NHSCFA any such disclosure made.
- 25.3 On appointment, members (and prior to acceptance of an appointment in the case of officer members) should disclose to the NHSCFA whether they are related to any other member or holder of any office under the NHSCFA.
- 25.4 Where the relationship to a member of the NHSCFA is disclosed, the SO headed 'Disability of Chairperson and members in proceedings on account of pecuniary interest' (SO 15) shall apply.

## 26. Tendering and contract procedures

### Duty to comply with Standing Orders

- 26.1 The NHSCFA shall through an MoU be supplied with Tendering and Contracting services by a third party (the NHS Business Services Authority). This contractual arrangement does not remove the requirement for the NHSCFA and its Board to assure compliance with the below expectations.
- 26.2 The procedure for making all contracts by or on behalf of the NHSCFA shall be delegated to the CEO, approved by the Board, and shall comply with these SOs, and be the responsibility of the Chief Executive.

## 27. EU directives governing public procurement

- 27.1 Directives by the Council of the European Union promulgated by the Department of Health (DoH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these SOs.
- 27.2 The NHSCFA shall comply as far as is practicable with the requirements of the NHS Executive "Capital Investment Manual". In the case of management consultancy contracts the NHSCFA shall comply as far as is practicable with NHS Executive guidance "The Procurement and Management of Consultants within the NHS".

## 28. Formal competitive tendering

- 28.1 The NHSCFA shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the DoH); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 28.2 Formal tendering procedures may be waived by the Chief Executive on the recommendation of a member of the Senior Management Team and with the advice of the Chief Financial Officer where:

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- a. the estimated expenditure or income does not, or is not reasonably expected to, exceed £15,000, (this figure to be reviewed annually); or
- b. the estimated expenditure or income does not, or is not reasonably expected to, exceed £75,000, (this figure to be reviewed annually) and one other of the conditions in (c) to (h) apply
- c. where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with;
- d. the time scale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;
- e. specialist expertise is required and is available from only one source.
- f. the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate
- g. there is a clear benefit to be gained from maintaining continuity with an earlier project. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.
- h. Where provided for in the Capital Investment Manual.

28.3 The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

28.4 Where it is decided that competitive tendering is not applicable and should be waived by virtue of (a) to (h) above the fact of the waiver and the reasons should be documented and reported by the Chief Financial Officer to the Board in a formal meeting.

28.5 Formal tendering procedures may be waived by the Board where it is decided that competitive tendering is not applicable and the estimated expenditure is expected to exceed £75,000 and one other of the conditions in (b) to (g) apply.

28.6 The NHSCFA shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. Where in the opinion of the Chief Financial Officer it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive.

## 29. Quotations

- 29.1 Quotations are required where formal tendering procedures are waived. Where the intended expenditure or income exceeds, or is reasonably expected to exceed £5,000.
- 29.2 Where quotations are required they should be obtained from at least three firms/individuals, based on specifications or terms of reference prepared by, or on behalf of, the NHSCFA.
- 29.3 Quotations should be in writing unless the Chief Executive or his nominated officer determine that it is impractical to do so, in which case quotations may be obtained by telephone. Confirmation of telephone quotations should be obtained as soon as possible and reasons why the telephone quotation was obtained should be set out in a permanent record.
- 29.4 All quotations should be treated as confidential and should be retained for inspection.
- 29.5 The Chief Executive or his nominated officer should evaluate the quotations and select the one, which gives best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 29.6 Non-competitive quotations in writing may be obtained for the following purposes:
- a. the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or his nominated officer, possible or desirable to obtain competitive quotations,
  - b. the goods/services are required urgently.

## 30. Where tendering or competitive quotation is not required

- 30.1 Where tendering or competitive quotation is not required:

EITHER: the NHSCFA shall use the NHS Supplies Authority for procurement of all goods and services unless the Chief Executive or nominated officers deem it inappropriate. The decision to use alternative sources must be documented.

OR: If the NHSCFA does not use the NHS Supplies Authority - Where tenders or quotations are not required, because expenditure is below £500, the NHSCFA

shall procure goods and services in accordance with procurement procedures approved by the NHSCFA.

- 30.2 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The NHSCFA may also determine from time to time that in-house services should be market tested by competitive tendering.

## 31. Private finance

- 31.1 When the NHSCFA proposes, or is required, to use finance provided by the private sector the following should apply:
- a. The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
  - b. Where the sum exceeds delegated limits as notified by the DoH, a business case must be referred to the appropriate DoH for approval or treated as per current guidelines.
  - c. The proposal must be specifically agreed by the NHSCFA.
  - d. The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

## 32. Contracts

- 32.1 The NHSCFA may only enter into contracts within the statutory powers delegated to it by the Secretary of State and shall comply with:
- a. these SOs;
  - b. the NHSCFA's SFIs;
  - c. EU Directives and other statutory provisions;
  - d. any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants;
  - e. such of the NHS Standard Contract Conditions as are applicable.
- 32.2 Where appropriate, contracts shall be in or embody the same terms and conditions of contract, as was the basis on which tenders or quotations were invited.

- 32.3 In all contracts made by the NHSCFA, the NHSCFA shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the NHSCFA.

## **33. Personnel and agency or temporary staff contracts**

- 33.1 The Chief Executive shall nominate officers with a delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

## **34. Disposals**

- 34.1 Competitive Tendering or Quotation procedure shall not apply to the disposal of:
- a. any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or predetermined in a reserve) by the Chief Executive or his nominated officer;
  - b. obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the NHSCFA;
  - c. items to be disposed of with an estimated sale value of less than £500, this figure to be reviewed annually;
  - d. items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
  - e. land or buildings concerning which DoH guidance has been issued but subject to compliance with such guidance.

## **35. In-house services**

- 35.1 In all cases where the NHSCFA determines that in-house services should be subject to competitive tendering the following groups shall be set up:
- a. Specification group, comprising the Chief Executive or nominated officer/s and specialist.



- b. In-house tender group, comprising a nominee of the Chief Executive and technical support.
- c. Evaluation team, comprising normally a specialist officer, a supplies officer and a Chief Financial Officer representative. For services having a likely annual expenditure exceeding £50,000, a non-officer member should be a member of the evaluation team.

35.2 All groups should work independently of each other and individual officers may be a member of more than one group but no member of the in-house tender group may participate in the evaluation of tenders.

35.3 The evaluation team shall make recommendations to the NHSCFA.

35.4 The Chief Executive shall nominate an officer to oversee and manage the contract on behalf of the NHSCFA.

## **36. Custody of seal and sealing of documents**

36.1 The Chief Executive shall keep the Common Seal of the NHSCFA in a secure place.

## **37. Sealing of documents**

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

37.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by one Executive Director and one Non-Executive Director of the NHSCFA.

## **38. Register of sealing**

38.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the NHSCFA at least quarterly (the report shall contain details of the seal number, the description of the document and date of sealing).

## 39. Signature of documents

- 39.1 Where the signature of any document will be a necessary step in legal proceedings involving the NHSCFA, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the NHSCFA shall have given the necessary authority to some other person for the purpose of such proceedings.
- 39.2 The Chief Executive or nominated officers shall be authorised, by resolution of the NHSCFA, to sign on behalf of the NHSCFA any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the NHSCFA or any committee, sub-committee or standing committee thereof or where the NHSCFA has delegated their powers on its behalf.

## 40. Standing Orders – general

- 40.1 It is the duty of the Chief Executive to ensure that existing members and officers and all new appointees are notified of and understand their responsibilities within SOs and SFIs. 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 SOs.
- 40.2 The Chairperson shall be the final authority in the interpretation of these SOs, in consultation with the Chief Executive.
- 40.3 Standing Financial Instructions and Reservation of Powers to the NHSCFA and Delegation of Powers shall have the effect as if incorporated into SOs.
- 40.4 SOs shall be reviewed annually by the NHSCFA based on recommendations made by the ARAC . The requirement for review extends to all documents having the effect as if incorporated in SOs.
- 40.5 Pursuant to SO 14.2 save where this would contravene any statutory provision or any direction made by the Secretary of State, any one or more of the SOs may be suspended at any meeting, provided that at least two thirds of the whole number of the members are present. The reason for the suspension shall be recorded in the minutes.
- 40.6 The ARAC shall review all decisions to suspend SOs and report their findings at a subsequent meeting of the NHSCFA Board.
- 40.7 Pursuant to SO 14.2 these Standing Orders shall not be varied except upon a notice or motion or recommendation put forward by the Chairperson in a report to the NHSCFA, and unless there are at least two- thirds of the whole number of

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members present, any provided the variation does not contravene a statutory provision or direction made by the Secretary of State.

- 40.8 The powers reserved to the Board within these SOs can in an emergency be exercised by the Chairperson and Chief Executive, having consulted at least two non-officer members.
- 40.9 Where the Chairperson of the NHSCFA (or, in his absence, the Vice-Chairperson) and the Chief Executive authorises urgent action in respect of a matter on behalf of the NHSCFA, which would normally have been considered by the NHSCFA itself, such action shall be reported to the next meeting of the NHSCFA.
- 40.10 All staff have a duty to comply with the NHSCFA SOs and SFIs.
- 40.11 Any member of the Board or officer of the NHSCFA who considers that there has been a failure to comply with either SOs or SFIs must notify the Chief Executive of that failure without delay [In the case of SFIs the matter should also be reported to the DoF].
- 40.12 The Chief Executive will notify the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson of the reported failure and will instigate an investigation into the circumstances.
- 40.13 The Chief Executive will advise the Chairperson or Vice-Chairperson (as the case may be) of his findings and report the outcome at the next meeting of the NHSCFA.
- 40.14 The ARAC Committee shall review all such breaches in SOs and SFIs, along with the reports on any investigations ordered by the Chief Executive.