# DOCUMENT HISTORY

- The composite version of the Standing Orders, Standing Financial Instructions, Reservation of Powers & Scheme of Delegation from which this was extracted was originally prepared by M O'Connell & H Thorn in late 2003/early-mid 2004, based on the then current DoH Corporate Governance Framework Manual for PCTs [believed to be Version 4, August 2002].
- It was subsequently amended to reflect the views of Internal Audit, following their report "TOPCT 03/04 – Review of SOs & SFIs", as part of the 2004/05 Internal Audit Plan (see Ian Whyte's memo of 23rd September 2004 to Steve Wallwork). The aim of the Internal Audit review was to confirm that the SOs, SFIs & Scheme of Delegation had been drawn up in line with the DoH model (Corporate Governance Framework for PCTs & PCT model Care Trusts, Version 6, August 2003), that the Board had approved them and that there were reasons for all major differences.
- It was then further amended in January 2005 to reflect the PCT's use of the Shared Services Centre in Bristol.

**Further Amendments in May 2005:**

- As per Version 6, Standing Order 2.14 was added ("2.14 **Patients Forum Representative** – Paragraph 15 of the NHS Reform and Health Care Professions Act 2002 provides that a *Patient Forum be established with membership appointed by the Commission for Patient Involvement*."). Accordingly, the former footnote was deleted ("Subject to legislation it is intended that in future there should be Patient's Forum representation on PCT Boards. The Model Standing Orders will be amended to reflect this at the appropriate time.").
- As per Version 6, Standing Order 5.3, "at least one public health member" amended to "Director of Public Health", and the position changed in the list.
- As per Version 6, Appendix B to Standing Orders amended to read:

  **"1) Code of Conduct for Managers**

  The Code of Conduct for Managers as issued October 2002 together with the Managing for Excellence good practice document as issued October 2002 shall be adhered to as if part of these Standing Orders. All managers should be made aware of the Code of Conduct for Managers and advised this forms part of their standard terms and conditions of service.

  **2) Standards of Business Conduct for NHS Staff**

  The Standards of Business Conduct for NHS Staff as issued January 1993 (refer www.doh.gov.uk/publications) shall be complied with as if part of these Standing Orders.

  The "Standards of Business Conduct" pages were retained for information, despite not being included in Version 6.

- Deleted from SO 4.1 "or the South West Peninsula Health Authority", as per Version 6.
- Minor corrections to SO 4.2 i. to v to include StHAs, local authorities, etc.
- Modified in preparation for the proposed Care Trust, as per Appendix 4 of the Corporate Governance Framework Manual for PCTs, Version 6.

- Amended the title page and footers in May 2005 to reflect the above changes, i.e. Corporate Gov Manual V6, August 2003 (as per the Internal Audit report). Also updated the index pages.

**Further Amendments in November 2005:**

- Reference added re Care Trust Establishment and relevant order, PCT amended to Care Trust/PCT and PCT amended to CT as appropriate throughout.
- Functions of the Care Trust amended to include reference to the Partnership Agreement with Torbay Council and the specific schedule detailing the delegated functions, including powers to delegate.
- Reference to Patient Forum amended to Patient and Public Involvement Forum appointed by the PPI Commission.

Torbay NHS
Primary Care Trust

# STANDING ORDERS

## Corporate Governance Framework Manual
## For Primary Care Trusts

## Version 6 - August 2003

***[Originally based on Version 4, August 2002, as audited and amended against V6 in September 2004]***

**(amended January 2005 to take into account Shared Services)**

# TORBAY PRIMARY CARE TRUST

## STANDING ORDERS (Care Trust Version)

# CONTENTS

## INTRODUCTION

### Statutory Framework

The Torbay Primary Care Trust (the Primary Care Trust) is a statutory body which originally came into existence on 1 October 2000 under The Torbay Primary Care Trust (Establishment) Order 2000 No 2154, (the Establishment Order). On 1 October 2005 it changed its name to Torbay Care Trust under The Torbay Primary Care Trust (Change of Name) Order 2005 No 2627, (Establishment) Amendment Order 2005-11-23.

The principal place of business of the Care Trust is Bay House, Riviera Park Nicholson Road, Torquay, TQ2 7TD.

Care Trusts/Primary Care Trusts (PCTs) are governed by Act of Parliament, mainly the National Health Service Act 1977 (NHS Act 1977), the National Health Service and Community Care Act 1990 (NHS & CC Act 1990) as amended by the Health Authorities Act 1995, the Health Act 1999 and the Health and Social Care Act 2001.

Functions are conferred on Care Trusts/PCTs by directions issued by Health Authorities and in addition, in the case of Torbay Care Trust, as detailed in Schedule 1 of the Partnership Agreement with Torbay Council. The statutory functions to be conferred on the Care Trust are set out in the Primary Care Trusts (Functions)(England) Regulations 2000 as amended by the Primary Care Trusts (Functions)(England) Amendment Regulations 2001 and the Primary Care Trusts (Functions)(England) Amendment Regulations 2002. These Regulations set out the functions which a health authority must direct a Care Trust/PCT to perform, and those functions which they must not direct a Care Trust/PCT to perform. Other functions are left to the health authority's discretion. In addition the National Health Service Act 1977 (Schedule 5a, paragraph

12) as inserted by the Health Act 1999 confers a general power directly on Care Trusts/PCTs to do certain things ancillary to their main functions, such as the power to acquire land, make contracts and accept gifts.
As a statutory body, the Care Trust has specified 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 Care Trust also has statutory powers under Section 28A of the NHS Act 1977, as amended by the Health Act 1999, to fund projects jointly planned with local authorities, voluntary organisations and other bodies.

The Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations (SI 2000 No. 89) the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (No.2) (England) Regulations 2002 (SI 2002 No. 557 require the Care Trust to adopt Standing Orders for the regulation of its proceedings and business. In accordance with the Primary Care Trust (Functions) Directions 2000 as amended by the Primary Care Trust (Functions) (Amendment) Directions 2002, the Care Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

**NHS Framework**

In addition to the statutory requirements the Secretary of State through the Department of Health issues further directions and guidance. These are normally issued under cover of a circular or letter.

The Code of Accountability – (see Section 1.3.2 of the Corporate Governance Framework Manual) - 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 the Executive Committee and 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 (see Section 1.3.1 of the Corporate Governance Framework Manual) makes various requirements concerning possible conflicts of interest of Board members.

The Code of Practice on Openness in the NHS (to be revised in light of the Freedom of Information Act) sets out the requirements for public access to information on the NHS.

**Delegation of Powers**

The Primary Care Trust (Functions) Directions 2000 as amended by the Primary Care Trust (Functions) (Amendment) Directions 2002, confer on the Care Trust powers to delegate and make arrangements for delegation. Further powers to delegate and make arrangements for delegation are provided through the Partnership Agreement with Torbay Council. The Care Trust Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO 4) the Care Trust is given powers to "make arrangements for the exercise, on behalf of the Care Trust of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 5 or by an officer of the Care Trust, in each case subject to such restrictions and conditions as the Care Trust thinks fit or as the Secretary of State may direct". Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). (See Section 1.8 and Appendix 2 of the Corporate Governance Framework Manual.) This document has effect as if incorporated into the Standing Orders.

## 1. INTERPRETATION

1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Care Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive or Secretary.

1.2 Any expression to which a meaning is given in the National Health Service Act 1977, National Health Service and Community Care Act 1990 and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in this interpretation and in addition:

1.2.1 **"Accountable Officer"** means the NHS Officer responsible and accountable for funds entrusted to the Care Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Care Trust it shall be the Chief Executive.

1.2.2 **"CT"** means the Torbay Care Trust.

1.2.3 **"Board"** means the Chairman, officer and non-officer members of the CT collectively as a body.

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

1.2.5 **"Chairman of the Board (or CT)"** is the person appointed by Secretary of State for Health as advised by the Independent Appointments Commission to lead the Board and to ensure that it successfully discharges its overall responsibility for the CT as a whole. The expression "the Chairman of the CT" shall be deemed to include the Vice-Chairman of the CT if the Chairman is absent from the meeting or is otherwise unavailable.

1.2.6 **"Chairman of the Executive Committee"** means the person elected by the members of the Executive Committee to be Chairman in accordance with the Primary Care Trust Executive Committees (Membership) Directions 2000 as amended by the Primary Care Trust Executive Committees (Membership) (No.2) (Amendment) Directions 2002,

1.2.7 **"Chief Executive"** means the chief officer of the CT.

1.2.8 "**Care Governance Committee"** means a committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of health care for which the [CT] has responsibility.

1.2.9 **"Commissioning"** means the process for determining the need for and for obtaining the supply of healthcare and related services by the CT within available resources.

1.2.10 **"Committee"** means a committee appointed by the CT.

1.2.11 **"Committee members"** means persons formally appointed by the Board to sit on or to chair specific committees.

1.2.12 **"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.

1.2.13 **"Director of Finance"** means the chief financial officer of the CT.

1.2.14 **"Director of Public Health"** means a public health professional who is a specialist in Public Health or a consultant in Public Health medicine who may hold the post of Director of Public Health

1.2.15 **"Executive Committee"** means the committee appointed in accordance with regulation 9(1) of the Primary Care Trust (Membership, Procedure and Administration Arrangements) Regulations 2000 as amended by *the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (No.2) (England) Regulations 2002 (SI 2002 No. 557)* to exercise such functions of the CT as are specified in directions given by the Secretary of State. Directions for membership of the Executive Committee are set out in the *Primary Care Trust Executive Committees (Membership) Directions 2000* as amended by

the *Primary Care Trust Executive Committees (Membership) (No.2) (Amendment) directions 2002,.*

1.2.16 **"Member"** means officer or non-officer member of the Board or the Executive Committee as the context permits. Member in relation to the Board does not include its Chairman.

1.2.17 **"Membership, Procedure and Administration Arrangements Regulations"** means *the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000 (SI (2000) 89)* ), as amended by *the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (No.2) (England) Regulations 2002 (SI 2002 No. 557) and the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (England) Regulations 2003 (SI 2003 No. 1616)*

1.2.18 **"Nominated officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

1.2.19 **"Non-officer member"** means a member of the CT who is not an officer of the Trust and is not to be treated as an officer by virtue of regulation 1(3) of the Membership, Procedure and Administration Arrangements Regulations.

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

1.2.21 **"Officer member**" means a member of the CT who is either an officer of the CT or is to be treated as an officer by virtue of regulation 1(3) (i.e. the Chairman of the CT Executive Committee or any person nominated by such a Committee for appointment as a CT member).

1.2.22 **"Part II services"** means general medical services, general dental services, general ophthalmic services or pharmaceutical services under the NHS ACT 1977.

1.2.23 **"Healthcare Professional Member"** means a member of the Executive Committee, who is a member of a regulated health care profession as defined by the NHS Reform and Healthcare Professions Act 2002.

1.2.24 **"Secretary"** means a person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chairman and monitor the CT's compliance with the law, Standing Orders, and Department of Health guidance. [Standing Orders may provide for the appointment of a Secretary.]

1.2.25 **"SFIs"** means Standing Financial Instructions.

1.2.26 **"SOs"** means Standing Orders.

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

## 2. THE CARE TRUST

2.1 All business shall be conducted in the name of the Care Trust.

2.2 All funds received in trust shall be held in the name of the Care Trust as corporate trustee.

2.3 The powers of the Care Trust established under statute shall be exercised by the Board meeting in public session except as otherwise provided for in Standing Order 4.

2.4 The Board shall define and regularly review the functions it exercises on behalf of the Strategic Health Authority, the Secretary of State and Torbay Council.

2.5 The Board has resolved that certain powers and decisions may only be exercised 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 **Composition of the Board** - In accordance with the Membership, Procedure and Administration Arrangements Regulations the composition of the Board shall be:

The *Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000 (SI (2000) 89)* ), were amended by *the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (No.2) (England) Regulations 2002 (SI 2002 No. 557),* so that the composition of the Board may be varied without the requirement for Parliament to amend individual Establishment Orders. The regulations were also amended to cover transitional arrangements to allow those PCTs already operating with 14 members (plus the Chair) to increase their membership to 16 for a transitional period to be able to accommodate the requirement for a Director of Public Health and a corresponding additional lay member.

*2.6.1 The Chairman of the CT*

*2.6.2 Up to 7 non-officer members (appointed by the Secretary of State as advised by the Independent Appointments Commission). Of these non-officer members there should be:*

- *At least one local authority member nominated to the Care Trust Board by Torbay Council executive. Members of the local authority's Scrutiny Panel cannot be nominated;*
- *At least one representative of users of local services;*
- *Other members identified through the Independent Appointments Commission process.*

*2.6.3 up to 7 officer members (but not exceeding the number of non-officer members) including:*

- *the Chief Executive;*
- *the Director of Finance;*
- *the Chairman of the Executive Committee;*
- *the Director of Public Health;*
- *at least one person professionally qualified, or managerially responsible for services delegated to the Care Trust by the local authority;*
- *at least one person, but not more than 3, appointed by the Chairman of the CT following nomination by the Executive Committee;*
- *officers of the CT, other than the Chief Executive and Director of Finance, appointed by the Chairman and non-officer members of the CT.*

2.6.4 The CT shall have not more than 14 members (subject to the transitional arrangements referred to above) (excluding the Chair).

2.7 **Appointment of the Chairman and Members of the CT** - Paragraph 4 of Schedule 5A to the 1977 Act, as inserted by the Health Act 1999, provides that the Chairman is appointed by the Secretary of State, as advised by the Independent Appointments Commission. Otherwise the appointment and tenure of office of the Chairman and members are set out in the Membership, Procedure and Administration Arrangements Regulations.

2.8 **Terms of Office of the Chairman and Members** - The regulations setting out the period of tenure of office of the Chairman and members and for the termination or suspension of office of the Chairman and members are contained in 2 to 4 of the Membership, Procedure and Administration Arrangements and Administration Regulations.

2.9 **Appointment and Powers of Vice-Chairman** Subject *to SO 2.10 below, the Chairman and members of the PCT may appoint one of their number, who is not also an officer member, to be Vice-Chairman, for such period, not exceeding the remainder of his term as a member of the Trust, as they may specify on appointing him.*

2.10 *Any member so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman. The Chairman and members may thereupon appoint another member as Vice-Chairman in accordance with the provisions of Standing Order 2.9*

2.11 *Where the Chairman of the CT has died or has ceased to hold office, or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Vice-Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice-Chairman.*

2.12 **Joint Members** - *Where more than one person is appointed jointly to a post mentioned in regulation 2(4)(a) of the Membership, Procedure and Administration Arrangements Regulations those persons shall count for the purpose of Standing Order 2.6 as one person.*

2.13 **Officer Members appointed by the Chairman of the CT following nomination by the Executive Committee** - *Where only one such person is appointed that person shall be a member of the Executive Committee. Where more than one person is appointed at least two shall be members of that committee.* Such officer members, including the Chairman of the Executive Committee shall include at least one medical practitioner and one nurse.

2.14 **Patient and Public Involvement Forum Representative** – Paragraph 15 of the NHS Reform and Health Care Professions Act 2002 provides that a *Patient and Public Involvement Forum be established with membership appointed by the Commission for Patient and Public Involvement.*

## 3. MEETINGS OF THE PCT BOARD

3.1 **Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend all formal meetings of the CT (Board) but shall be required to withdraw upon the CT (Board) resolving as follows:

"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" (Section 1(2) Public Bodies (Admission to Meetings) Act 1960).

3.2 The Chairman (or Vice-Chairman) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the CT's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:

"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public" (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).

3.3 Nothing in these Standing Orders shall require the CT (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.

3.4 **Calling Meetings** - Ordinary meetings of the Board shall be held at such times and places as the Board may determine.

3.5 *The Chairman of the CT may call a meeting of the CT (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 members, has been presented to him/her, 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 CT's Headquarters, *such one third or more members may forthwith call a meeting.*

3.6 **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 authorised by the Chairman to sign on his behalf shall be delivered to every member, or sent by post to the usual place of residence of such member, so as to be available to him at least three clear days before the meeting.*

3.7 *Want of service of the notice on any member shall not affect the validity of a meeting.*

3.8 *In the case of a meeting called by members in default of the Chairman, those members shall sign the notice and no business shall be transacted at the meeting other than that specified in the notice.*

3.9 Agendas will be sent to members 6 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency. Failure to serve such a notice on more than three members will invalidate the meeting. A notice shall be presumed to have been served one day after posting.

3.10 Before each meeting of the Board a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the CT's office at least three clear days before the meeting. (required by the Public Bodies (Admission to Meetings) Act 1960 S.I.(4)(a).)

3.11 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)

3.12 A member desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.

3.13 **Petitions** - Where a petition has been received by the CT the Chairman of the Board shall include the petition as an item for the agenda of the next Board meeting.

3.14 **Chairman of Meeting** - *At any meeting of the Board, the Chairman of the Board, if present, shall preside. If the Chairman is absent from the meeting the Vice-Chairman, if there is one and he/she is present, shall preside. If the Chairman and Vice-Chairman are absent such member (who is not also an officer of the Trust) as the members present shall choose shall preside.*

3.15 If the Chairman is absent temporarily on the grounds of a declared conflict of interest the Vice-Chairman, if present, shall preside. If the Chairman and Vice-Chairman are absent, or are disqualified from participating, such non-executive member as the members present shall choose shall preside.

3.16 **Notices of Motion** - A member of the Board 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.

3.17 **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.

3.18 **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 member who gives it and also the signature of 4 other Board members. When any such motion has been disposed of by the Board, it shall not be competent for any member other than the Chairman to propose a motion to the same effect within 6 months, however the Chairman may do so if he/she considers it appropriate.

3.19 **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.

3.20 When a motion is under discussion or immediately prior to discussion it shall be open to a member 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.
- that the motion be now put. (*)
- a motion under Section 1 (2) of the Public Bodies (Admission to Meetings) Act 1960 resolving to exclude the public (including the press).

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

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.

3.21 **Chairman's Ruling** - Statements of members made at meetings of the Board 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 final.

3.22 **Voting** - *Every question at a meeting shall be determined by a majority of the votes of the Chairman of the meeting and members present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.*

3.23 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 members present so request.

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

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

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

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

3.28 **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.*

3.29 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.

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

3.31 **Joint Members** - *Where more than one person shares the office of a member of the Board jointly:*

*(a) either or both of those persons may attend or take part in meetings of the Board;*
*(b) if both are present at a meeting they should cast one vote if they agree;*
*(c) in the case of disagreements no vote should be cast;*
*(d) the presence of either or both of those persons should count as the presence of one person for the purposes of SO 3.39 (Quorum).*

3.32 **Suspension of Standing Orders** - Except where this would contravene any statutory provision or any direction made by the Secretary of State, 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 officer and one non-officer member, and that a majority of those present vote in favour of suspension.

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

3.34 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and members of the Board.

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

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

3.37 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:

- a notice of motion under Standing Order 3.16 has been given; and
- no fewer than half the total of the CT's non-officer members vote in favour of amendment; and
- at least two-thirds of the Board members are present; and
- the variation proposed does not contravene a statutory provision or direction made by the Secretary of State.

3.38 **Record of Attendance** - *The names of the Chairman and members present at the meeting shall be recorded* in the minutes.

3.39 **Quorum** - *No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and members appointed, (including, on or after the operational date of the Trust, one officer member and two non-officer members, one of which non-officer members shall be a local authority nominated member as identified in SO 2.6.2 bullet point 1), are present. [During the preparatory period of the Care Trust no business may be transacted unless the number present is not less than 3.]*

3.40 An officer in attendance for an officer member but without formal acting up status may not count towards the quorum.

3.41 If the Chairman or member 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 Standing Order 6 or 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.

## 4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Subject to such directions as may be given by the Secretary of State for Health or Torbay Council under the terms of the Partnership Agreement between it and the Care Trust, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:

- by a committee, sub-committee or,
- appointed by virtue of Standing Order 5.1 or 5.2 below or by an officer of the Trust,
- or by another body as defined in Standing Order 4.2 below,

In each case subject to such restrictions and conditions as the Trust thinks fit.

4.2 S16B of the NHS Act 1977 allows for regulations to provide for the functions of PCTs to be carried out by third parties. In accordance with The Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000, as amended by the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (No 2) (England) Regulations 2002 and the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (England) Regulations 2003 the functions of the CT may also be carried out in the following ways:

i. by another PCT;

ii. jointly with anyone or more of the following: Strategic Health Authorities, NHS Trusts, other PCTs or Local Authorities;

iii by a Special Health Authority (SHA) or by a committee, sub-committee or officer of a SHA;

iv. by arrangement with the appropriate Strategic Health Authority or PCT, by a joint committee or joint sub-committee of the PCT and one or more other health service bodies;

v. in relation to arrangements made under s63 (1) of the Health Services and Public Health Act 1968, jointly with one or more Strategic Health Authorities, Special Health Authorities, NHS Trusts or other PCTs.

Where a function is delegated by these Regulations to another PCT or Special Health Authority, then the PCT or Special Health Authority exercises the function in its own right; the CT has responsibility to ensure that the proper delegation is in place. In other situations, i.e. delegation to committees, sub committees or officers, the CT retains full responsibility.

4.3 The Care Trust has responsibility for the social care related local authority functions delegated to it by Torbay Council. It cannot delegate these responsibilities unless it is given express permission to do so within the Partnership Agreement or Scheme of Delegation document with Torbay Council.

4.4 **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-officer members. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Executive Committee and the Board in public session for ratification.

4.5 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by the Executive Committee, other committees, or sub-committees, or joint-committees, which it has formally constituted in accordance with directions issued by the Secretary of State or the Strategic Health Authority. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board or by the Executive Committee in respect of its sub-committees.

4.6 When the Board is not meeting as the CT in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the CT in public session.

4.7 **Delegation to Officers** - Those functions of the CT which have not been retained as reserved by the Board or delegated to the Executive Committee, other committee or sub-committee or joint-committee shall be exercised on behalf of the CT by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain an accountability to the CT.

4.8 The Chief Executive shall prepare a Scheme of Delegation identifying his/her 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.

4.9 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with statutory or Department of Health requirements. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

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

4.11 **Overriding Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Executive Committee and the Board for action or ratification. All members of the Board and Executive Committee and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## 5. COMMITTEES

5.1 ***Membership of the Executive Committee*** *shall be such as the Trust may from time to time approve in writing.*

*5.2 The Executive Committee shall have no more than 18 members.*

*5.3 The members shall comprise:*

- *Chief Executive*
- *Director of Finance*
- *One officer from Torbay Council, having been nominated by it (one such person from each partner local authority)*
- *At least one Public Health member*
- *Up to 14 health care professionals, e.g. GPs, nurses, AHPs, pharmacists, Optometrists, Consultants.*

  *There is a minimum requirement for at least 1 GP and 1 nurse to be on the Executive Committee. N.B. (No one profession should be in the majority)*

*5.4 Membership of the Executive Committee should be decided locally to reflect the functions of the CT.*

*5.5 For Care Trusts:*

*i. The members of the Executive Committee may include officers of the Care Trust other than the Chief Executive and Director of Finance who are not professional or public health members, and*

*ii professional members shall include a number of professionals who are employed by the Care Trust in connection with the provision of services under Part 1 of the 1977 Act or under a pilot scheme under the 1997 Act, or assist with the provision of such services by the Trust, or health related local authority functions.*

*5.6 The number of professional and public health members shall exceed the number of other members.*

*5.7 For Care Trusts the Executive Committee shall have a majority of members who are not:*

- *Medical practitioners*
- *Nurses*
- *Professionals specified in paragraph 5.5.ii above.*

*5.8* *Appointment, termination of tenure of office, suspension and disqualification for appointment shall be conducted in accordance with the Primary Care Trust Executive Committees (Membership) Directions 2003.*

*5.9* *The Chairman of the Care Trust shall appoint one of the members of the Executive Committee (not including the Chief Executive or Finance Director of the Care Trust) as Chairman of the Executive Committee, and another member as Vice-Chairman, following nomination by that committee.*

*5.10* *Subject to such directions* (and to guidance issued by the Department of Health) *as may be given by the Secretary of State, the Care Trust may and, if directed by him, shall appoint other committees of the Care Trust, or together with one or more Strategic Health Authorities or other Trusts, appoint joint committees, consisting wholly or partly of the Chairman and members of the Care Trust or other health service bodies or wholly of persons who are not members of the Care Trust or other health service bodies in question.*

*5.11* *A committee or joint committee appointed under this regulation may, subject to such directions as may be given by the Secretary of State or the Care Trust or other health service bodies in question, appoint sub-committees consisting wholly or partly of members of the committee or joint committee (whether or not they are members of the Care Trust or other health service bodies in question); or wholly of persons who are not members of the Care Trust or other health service bodies or the committee of the Care Trust or other health service bodies in question.*

5.12 The Standing Orders of the Care Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of the Executive Committee and any committees established by the Care Trust. In which case the term "Chairman" is to be read as a reference to the Chairman of the Executive Committee, or other committee as the context permits, and the term "member" is to be read as a reference to a member of the Executive Committee, or other committee also as the context permits. (There is no requirement to hold meetings of committees, including the Executive Committee, established by the Care Trust in public.)

5.13 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 and shall be in accordance with any legislation and regulation or direction issued by the Secretary of State. Such terms of reference shall have effect as if incorporated into the Standing Orders.

5.14 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board or Executive Committee in the case of sub-committees established by the Executive Committee.

5.15 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither members nor officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board as defined by the Secretary of State. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

5.16 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 where such appointments are to operate independently of the Board such appointment shall be made in accordance with the regulations and directions made by the Secretary of State.

5.17 The committees, sub-committees, and joint-committees established by the Board are:

| | |
|---|---|
| Executive Committee | See The Primary Care Trust Executive Committee (Membership) Directions 2003. |

| | |
|---|---|
| Audit and Assurance Committee | See section 1.4 of the Corporate Governance Framework Manual |
| Remuneration and Terms of Service Committee | See section 1.5 of the Corporate Governance Framework Manual |
| Governance Committee | See HSC 1999/065 |

5.18 The sub-committees established by the Governance Committee are:

| | |
|---|---|
| Care Governance Committee | See HSC 1999/065 |
| Risk Management Group | See HSC 1998/070 |

## 6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 **Declaration of Interests** - The Code of Accountability requires Board members and members of the Executive Committee to declare interests which are relevant and material to the NHS board of which they are a member. All existing Board members and Executive Committee members should declare such interests. Any board members or Executive Committee members appointed subsequently should do so on appointment.

6.2 Interests which should be regarded as "relevant and material" are:

a) Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies).

b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.

c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.

d) A position of trust in a charity or voluntary organisation in the field of health and social care.

e) Any connection with a voluntary or other organisation contracting for NHS services.

f) Any other commercial interest in the decision before the meeting.

6.3 At the time Board members' and members of the Executive Committee interests are declared, they should be recorded in the Board or Executive Committee minutes. Any changes in interests should be declared at the next Board or Executive Committee meeting following the change occurring.

6.4 Board members' and members of the Executive Committee 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.

6.5 During the course of a Board or Executive Committee meeting, if a conflict of interest is established, the member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.6 There is no requirement in the Code of Accountability for the interests of Board or Executive Committee members' spouses or partners to be declared. However Standing Order 7, which is based on the Membership, Procedure and Administration Arrangements regulations, requires that the interest of members' spouses, if living together, in contracts should be declared. Therefore the interests of Board and Executive Committee members' spouses and cohabiting partners should also be regarded as relevant.

6.7 If Board or Executive Committee members have any doubt about the relevance of an interest, this should be discussed with the Chairman. Financial Reporting Standard No 8 (issued by the

Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

6.8 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Executive Committee 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 Standing Order 6.2.

6.9 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.

6.10 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 local population and to publicise arrangements for viewing it.

## 7. DISABILITY OF CHAIRMAN AND MEMBERS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

7.1 Subject to the following provisions of this Standing Order (which is taken from the Membership Procedure and Administration Regulations), *if the Chairman or a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the CT 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 Secretary of State may, subject to such conditions as he may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to him in the interests of the National Health Service that the disability shall be removed. (*The Secretary of State has approved a specific waiver – see 7.9 to 7.12 below.)

7.3 *The Board may exclude the Chairman or a member of the CT (Board) from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.*

7.4 *Any remuneration, compensation or allowances payable to the Chairman or a member by virtue of paragraph 11 of Schedule 5A to the National Health Service Act 1977 (pay and allowances) shall not be treated as a pecuniary interest for the purpose of this Standing Order*.

7.5 *For the purpose of this Standing Order the Chairman or a member shall be treated, subject to SO 7.2 and SO 7.6, 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, 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*
*(b) 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 married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.*

7.6 *The Chairman or a member 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 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration* or discussion of or in voting on, any question with respect to that contract or matter.

*7.7 Where the Chairman or a member 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 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 body, whichever is the less, and 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/her 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/her duty to disclose his/her interest.*

*7.8 The Standing Order applies to a committee* including the Executive Committee *or sub-committee and to a joint committee as it applies to the CT and applies to a member of any such committee or sub-committee (whether or not he is also a member of the CT) as it applies to a member of the CT.*

7.9 Under regulation 11(2) (repeated in SO 7.2 above) of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000 ("the Regulations") as amended by *the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (No.2) (England) Regulations 2002, and the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (England) Regulations 2003* it appears to the Secretary of State in the interests of the health service that the disability in regulation 11 (which prevents a chairman or a member from taking part in the consideration or discussion of, or voting on any question with respect to, a matter in which he has a pecuniary interest) is removed in the case of a member specified in paragraph 7.10 below who has an interest in a matter as specified in paragraphs 7.11. The disability is removed subject to the conditions set out in paragraph 7.12.

7.10 A member of the Torbay Care Trust ("the CT"), or the Executive Committee of that CT, who is a health care professional, within the meaning of regulation 5(5) of the Regulations, and who is providing or performing, or assisting in the provision or performance, of–

(a) services under the National Health Service Act 1977; or

(b) services in connection with a pilot scheme under the National Health Service (Primary Care) Act 1997;

for the benefit of persons for whom the CT is responsible.

7.11 The pecuniary interest of the member in the matter that is the subject of consideration at a meeting at which he is present: -

(a) arises by reason only of the member's role as such a professional providing or performing, or assisting in the provision or performance of, those services to those persons; and

(b) has been declared by the relevant chairman as an interest, which cannot reasonably be, regarded as an interest more substantial than that of the majority of other persons who: –

(i) are members of the same profession as the member in question, and

(ii) are providing or performing, or assisting in the provision or performance of, such of those services as he provides or performs, or assists in the provision or performance of, for the benefit of persons for whom the CT is responsible.

For the purposes of paragraph 7.11(b), the "relevant chairman" is–

(a) at a meeting of the CT, the Chairman of that CT;

(b) at a meeting of the Executive Committee–

(i) in a case where the member in question is the Chairman of that Committee, the Chairman of the CT;

(ii) in the case of any other member, the Chairman of that Committee.

7.12. The removal is subject to the following conditions:

(a) the member must disclose his interest as soon as practicable after the commencement of the meeting and this must be recorded in the minutes;

(b) the relevant chairman must consult the Chief Executive before making a declaration in relation to the member in question pursuant to paragraph C7.11 (b) above, except where that member is the Chief Executive;

(c) in the case of a meeting of the CT,

(i) the member may take part in the consideration or discussion of the matter which must be subjected to a vote and the outcome recorded; but
(ii) may not vote on any question with respect to it.

(d) in the case of a meeting of the Executive Committee,

(i) the member may take part in the consideration or discussion of the matter which must be subjected to a vote and the outcome recorded; and
(ii) may vote on any question with respect to it; but
(iii) the resolution that is subject to the vote must comprise a recommendation to, and be referred for approval by, the CT.

## 8. STANDARDS OF BUSINESS CONDUCT POLICY

8.1 Staff should comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B). This section of Standing Orders should be read in conjunction with this document.

8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of an officer of the CT 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 CT 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.

8.3 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 CT.

The CT requires interests, employment or relationships so declared to be entered in a register of interests of staff.

8.4 **Canvassing of, and Recommendations by, Members in Relation to Appointments** - Canvassing of members of the CT or of any Committee of the CT directly or indirectly for any appointment under the CT 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 member of the Board or Executive Committee shall not solicit for any person any appointment under the CT or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the CT.

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

8.7 **Relatives of Members or Officers** - Candidates for any staff appointment under the CT shall, when making application, disclose in writing to the CT whether they are related to any member or the holder of any office under the CT. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

8.8 The Chairman and every member and officer of the CT or the Executive Committee shall disclose to the Chief Executive 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 Board or Executive Committee any such disclosure made.

8.9 On appointment, members (and prior to acceptance of an appointment in the case of officer members) should disclose to the Board or Executive Committee whether they are related to any other member or holder of any office in the CT.

8.10 Where the relationship to a member of the CT is disclosed, the Standing Order headed `Disability of Chairman and members in proceedings on account of pecuniary interest' (SO 7) shall apply.

## 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 CT shall comply with these Standing Orders (except where Standing Order 3.32 is applied).

9.2 **EU Directives Governing Public Procurement** - 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 Standing Orders.

9.3 The CT shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS".

9.4 **Formal Competitive Tendering** - The CT 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.

Where the CT elects to invite tenders for the supply of healthcare these Standing Orders shall apply as far as they are applicable to the tendering procedure.

9.5 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in (c) to (f) below) where:

(a) the estimated expenditure or income does not, or is not reasonably expected to, exceed £20,000 (this figure to be reviewed annually); or

(b) where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with;

(c) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;

(d) specialist expertise required and is available from only one source;

(e) 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;

(f) 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.

(g) Where provided for in the Capital Investment Manual.

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.

Where it is decided that competitive tendering is not applicable and should be waived by virtue of (c) to (f) above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Trust in a formal meeting.

9.6 Except where Standing Order 9.5, or a requirement under Standing Order 9.2, applies, the CT shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having

regard to their capacity to supply the goods or materials or to undertake the services or works required.

9.7 The Executive Committee shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists compiled. (Via South Devon Health Care Trust Procurement Team.) Where in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive or approval (see Appendix 1: Tendering Procedure).

9.8 Tendering procedures are set out in Appendix 1 below.

9.9 **Quotations** - are required where formal tendering procedures are waived under Standing Order 9.5 (a) or (c) and where the intended expenditure or income exceeds, or is reasonably expected to exceed £5,000.

9.10 Where quotations are required under Standing Order 9.9 they should be obtained from at least three firms/individuals as per Annex based on specifications or terms of reference prepared by, or on behalf of, the PCT.

9.11 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 quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.

9.12 All quotations should be treated as confidential and should be retained for inspection.

9.13 The Chief Executive or his nominated officer should evaluate the quotations and select the one which gives the 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.

9.14 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.

9.15 **Where tendering or competitive quotation is not required**

CTs/PCTs should adopt one of the following alternatives:

EITHER: the CT/PCT shall use the NHS Purchasing and Supplies Agency 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 CT/PCT does not use the NHS Purchasing and Supplies Agency - Where tenders or quotations are not required, because expenditure is below £5,000, the CT/PCT shall procure goods and services in accordance with procurement procedures approved by the CT/PCT.

9.16 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 CT may also determine from time to time that in-house services should be market tested by competitive tendering (Standing Order 11).

9.17 **Private Finance** - The CT should normally test for PFI when considering a capital procurement. When the Board 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 £250,000, a business case must be referred to the appropriate DoH Directorate of Health and Social Care for approval or treated as per current guidelines.

(c) The proposal must be specifically agreed by the Board.

(d) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

9.18 **Contracts** - The Board may only enter into contracts on behalf of the CT within the statutory powers delegated to it by the Secretary of State and shall comply with:

(a) these Standing Orders;

(b) the CT's Standing Financial Instructions;

(c) EU Directives and other statutory provisions;

(d) any relevant directions including the Capital Investment Manual, Estatecode and guidance on the Procurement and Management of Consultants;

(e) such of the NHS Standard Contract Conditions as are applicable.

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.

9.19 In all contracts made by the CT, the Board 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 CT.

9.20 **Personnel and Agency or Temporary Staff Contracts** - The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

9.21 **Healthcare Services Agreements** - Service agreements with NHS providers for the supply of healthcare services shall be drawn up in accordance with the NHS and Community Care Act 1990 and administered by the CT. Service agreements are not legal documents.

9.22 The Chief Executive shall nominate officers to commission service agreements with providers of healthcare in line with a commissioning plan approved by the Board.

9.23 **Cancellation of Contracts** Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the NHS and in accordance with Standing Orders 9.2 and 9.3, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 an other appropriate legislation.

9.24 **Determination of Contracts for Failure to Deliver Goods or Material** – There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to

the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

9.25 **Contracts involving Funds Held on Trust –** shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Act.

## 10. DISPOSALS

10.1 Competitive tendering or quotation procedures 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 pre-determined 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 CT;

(c) items to be disposed of with an estimated sale value of less than £5,000, 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.

## 11. IN-HOUSE SERVICES

11.1 In all cases where the Board or Executive Committee 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 Director of Finance representative. For services having a likely significant annual expenditure, a non-officer member should be a member of the evaluation team.

11.2 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.

11.3 The evaluation team shall make recommendations to the Board or Executive Committee.

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

## 12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

12.1 **Custody of Seal** - The Common Seal of the CT shall be kept by the Chief Executive in a secure place.

12.2 **Sealing of Documents** - The Seal of the CT 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 (or an officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer nominated by him/her 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 all sealings shall be made to the Board at least quarterly. (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 CT, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board or Executive Committee 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 or Executive Committee, to sign on behalf of the CT any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

## 14. MISCELLANEOUS

14.1 **Standing Orders to be given to Members and Officers** - 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 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 in 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 effect as if incorporated into Standing Orders.

14.3 **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

14.4 **Joint Finance Arrangements** - The Board may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under Section 28A of the NHS Act 1977. *The Board may confirm contracts to transfer money from the NHS to the voluntary sector or the health related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services,* using its powers under Section 28A of the NHS Act 1977, as amended by section 29 of the Health Act 1999.

14.4.1 **Grants to Voluntary Bodies –** The Board may provide financial assistance to such voluntary bodies in support of health related functions in accordance with Section 64 of the Health Services and Public Health Act 1968.

**(Standing Orders) APPENDIX A**

## 1. Invitation to Tender

1.1 All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted in either:

(a) a plain, sealed package bearing a pre-printed label supplied by the CT (or bearing the word `Tender' followed by the subject to which it relates and the latest date and time for the receipt of such tender); or

(b) in a special envelope supplied by the Trust to prospective tenderers and the tender envelopes/packages shall not bear any names or marks indicating the sender.

1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.

1.3 Every tender for building and engineering works, except for maintenance work only where Estatecode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with CONCODE. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with CONCODE and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DoH

1.4 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

## 2. Receipt, Safe Custody and Record of Formal Tenders

2.1 Formal competitive tenders shall be addressed to the Chief Executive.

2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package.

2.3 The Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on his behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3 (Opening Formal Tenders).

## 3. Opening Formal Tenders

3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the Chief Executive and not from the originating department.

3.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening.

3.3 A permanent record shall be maintained to show for each set of competitive tender invitations despatched:

(a) the names of firms/individuals invited;

(b) the names of and the number of firms/individuals from which tenders have been received;

(c) the total price (s) tendered;

(d) Closing date and time;

(e) Date and time of opening;

and the persons present at the opening shall sign the record.

3.4 Except as in Section 3.5 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialled by two of those present at the opening.

3.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure Section 3.4 unreasonable.

**4. Admissibility and Acceptance of Formal Tenders**

4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the CT and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.

4.2 Tenders received after the due time and date may be considered only if the Chief Executive or nominated officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or nominated officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.

4.3 Technically late tenders (i.e. those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.

4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.

4.5 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his offer.

4.6 Necessary discussions with a tenderer of the contents of his tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.

4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.

4.8 Where only one tender/quotation is received the Chief Executive shall, as far as practicable, ensure that the price to be paid is fair and reasonable.

4.9 A tender other than the lowest (if payment is to be made by the CT), or other than the highest (if payment is to be received by the CT) shall not be accepted unless for good and sufficient reason the

Board decides otherwise and record that decision in their minutes and in the record referred to in 3.3 above.

4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.

4.11 All Tenders should be treated as confidential and should be retained for inspection.

**5. Lists of Approved Firms**

5.1 In accordance with Standing Order 9.7 the CT shall compile, or procure from another health body or organisation approved by the Department of Health, lists of approved firms and individuals from whom tenders and quotations may be invited. The Finance Director shall keep and maintain these under review. Where compiled by the CT, the lists shall be selected from all firms who have applied for permission to tender or quote provided:

(a) in the case of building, engineering and maintenance works, the Chief Executive is satisfied on their capacity, conditions of labour, etc, and that the Director of Finance is satisfied that their financial standing is adequate.

(b) in the case of the supply of goods, materials and related services, and consultancy services the Chief Executive or the nominated officer is satisfied as to their technical competence etc, and that the Director of Finance is satisfied that their financial standing is adequate.

(c) in the case of the provision of healthcare services to the Trust by a private sector provider, the Director of Finance is satisfied as to their financial standing and the Director of Clinical Governance is satisfied as to their technical/medical competence.

5.2 The Chief Executive shall arrange for advertisements to be issued as may be necessary, and not less frequently than every third year, in trade journals and national newspapers inviting applications from firms for inclusion in the prescribed lists.

5.3 If in the opinion of the Chief Executive and the Director of Finance or the Director of Clinical Governance it is impractical to use a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.

5.4 A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list.

**(Standing Orders) APPENDIX B**

**1) Code of Conduct for Managers**

The Code of Conduct for Managers as issued October 2002 together with the Managing for Excellence good practice document as issued October 2002 shall be adhered to as if part of these Standing Orders. All managers should be made aware of the Code of Conduct for Managers and advised this forms part of their standard terms and conditions of service.

**2) Standards of Business Conduct for NHS Staff**

The Standards of Business Conduct for NHS Staff as issued January 1993 (refer www.doh.gov.uk/publications) shall be complied with as if part of these Standing Orders. (see below)

January 1993

# Standards of Business Conduct for NHS staff

**Part A**

**Prevention of Corruption Acts 1906 and 1916 - summary of main provisions**

***Acceptance of gifts by way of Inducements or rewards***

1. Under the Prevention of Corruption Acts, 1906 and 1916, it is an offence for employees corruptly to accept any gifts or consideration as an inducement or reward for:

   - doing, or refraining from doing, anything in their official capacity; or
   - showing favour or disfavour to any person in their official capacity.

2. Under the Prevention of Corruption Act 1916, any money, gift or consideration received by an employee in public service from a person or organisation holding or seeking to obtain a contract will be deemed by the courts to have been received corruptly unless the employee proves the contrary.

**Part B**

***NHS Management Executive (NHSME) - general guidelines***

***Introduction***

1. These guidelines, which are intended by the NHSME to be helpful to all NHS employers (i) and their employees, re-state and reinforce the guiding principles previously set out in Circular HM (62) 21 (now cancelled), relating to the conduct of business in the NHS.

***Responsibility of NHS employers***

2. NHS employers are responsible for ensuring that these guidelines are brought to the attention of all employees; also that machinery is put in place for ensuring that they are effectively implemented.

***Responsibility of NHS staff***

3. It is the responsibility of staff to ensure that they are not placed in a position which risks, or appears to risk, conflict between their private interests and their NHS duties. This primary responsibility applies to *all NHS Staff,* i.e. those who commit NHS resources directly (e.g. by the ordering of goods) or those who do so indirectly (e.g. by the prescribing of medicines). A further example would be staff who may have an interest in a private nursing home and who are involved with the discharge of patients to residential facilities.

***Guiding principle in conduct of public business***

4. It is a long established principle that public sector bodies, which include the NHS, must be impartial and honest in the conduct of their business, and that their employees should remain beyond suspicion. It is also an offence under the Prevention of Corruption Acts 1906 and 1916 for an employee corruptly to accept any inducement or reward for doing, or refraining from doing anything, in his or her official capacity, or corruptly showing favour, or disfavour, in the handling of contracts (see PART A).

*Staff will need to be aware that a breach of the provisions of these Acts renders them liable to prosecution and may also lead to loss of their employment and superannuation rights in the NHS*

***Principles of conduct in the NHS***

5. NHS staff are expected to:

- ensure that the interest of patients remains paramount at all times;
- be impartial and honest in the conduct of their official business;
- use the public funds entrusted to them to the best advantage of the service, always ensuring value for money.

---

*(i) In these guidelines "NHS employer" means all "for action' addressees listed on the title page of HSG (93) 5.*

6. It is also the responsibility of staff to ensure that they do **not:**

- abuse their official position for personal gain or to benefit their family or friends;
- seek to advantage or further private business or other interests, in the course of their official duties.

***Implementing the guiding principles***

***Casual gifts***

7. Casual gifts offered by contractors or others, e.g. at Christmas time, may not be in any way connected with the performance of duties so as to constitute an offence under the Prevention of Corruption Acts. Such gifts should nevertheless be politely but firmly declined. Articles of low intrinsic value such as diaries or calendars, or small tokens of gratitude from patients or their relatives, need not necessarily be refused. In cases of doubt staff should either consult their line manager or politely decline acceptance.

***Hospitality***

8. Modest hospitality provided it is normal and reasonable in the circumstances, e.g. lunches in the course of working visits, may be acceptable, though it should be similar to the scale of hospitality which the NHS as an employer would be likely to offer.

9. Staff should decline all other offers of gifts, hospitality or entertainment. If in doubt they should seek advice from their line manager.

***Declaration of interests***

10. NHS employers need to be aware of all cases where an employee, or his or her close relative or associate, has a controlling and/or significant financial interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any other activity or pursuit, which may compete for an NHS contract to supply either goods or services to the employing authority.

11. All NHS staff should therefore declare such interests to their employer, either on starting employment or on acquisition of the interest, in order that it may be known to and in no way promoted to the detriment of either the employing authority or the patients whom it serves.

12. One particular area of potential conflict of interest which may directly affect patients arises when NHS staff hold a beneficial interest in private care homes or hostels. While it is for staff to declare such interests to their employing authority, the employing authority has a responsibility to introduce whatever measures it considers necessary to ensure that its interests and those of patients are adequately safeguarded. This may

for example take the form of a contractual obligation on staff to declare any such interests. Advice on professional conduct issued by the General Medical Council recommends that when a doctor refers a patient to a private care home or hostel in which he or she has an interest, the patient must be informed of that interest before referral is made.

13. In determining what needs to be declared, employers and employees will wish to be guided by the principles set out in paragraph 5 above; also the more detailed guidance to staff contained in Part D.

14. NHS employers should:

- ensure that staff are aware of their responsibility to declare relevant interests (perhaps by including a clause to this effect in staff contracts)
- consider keeping registers of all such interests and making them available for inspection by the public.
- develop a local policy, in consultation with staff and local staff interests, for implementing this guidance. This may include the disciplinary action to be taken if an employee fails to declare a relevant interest, or is found to have abused his or her official position, or knowledge, for the purpose of self-benefit, or that of family or friends.

***Preferential treatment in private transactions***

15. Individual staff must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of their NHS employer. (This does not apply to concessionary agreements negotiated with companies by NHS management, or by recognised staff interests, on behalf of all staff - for example, NHS staff benefit schemes.)

***Contracts***

16. All staff who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to professional standards of the kind set out in the Ethical Code of the Institute of Purchasing and Supply (IPS), reproduced at PART E.

***Favouritism in awarding contracts***

17. Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of NHS Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:

- no private, public or voluntary organisation or company which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the NHS employer, such as a long-running series of previous contracts.
- each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfil them.

18. NHS employers should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff who are known to have a relevant interest play no part in the selection.

***Warnings to potential contractors***

19. NHS employers will wish to ensure that all invitations to potential contractors to tender for NHS business include a notice warning tenderers of the consequences of engaging in any corrupt practices involving employees of public bodies.

***Outside employment***

20. NHS employees are advised not to engage in outside employment which may conflict with their NHS work, or be detrimental to it. They are advised to tell their NHS employing authority if they think they may be risking a conflict of interest in this area: the NHS employer will be responsible for judging whether the interests of patients could be harmed, in line with the principles in paragraph 5 above. NHS employers may wish to consider the preparation of local guidelines on this subject.

***Private practice***

21. Consultants (and associate specialists) employed under the Terms and Conditions of Service of Hospital Medical and Dental Staff are permitted to carry out private practice in NHS hospitals subject to the conditions outlined in the handbook "A Guide to the Management of Private Practice in the NHS". (See also PM (79) 11). Consultants who have signed new contracts with Trusts will be subject to the terms applying to private practice in those contracts.

22. Other grades may undertake private practice or work for outside agencies, providing they do not do so within the time they are contracted to [he NHS, and they observe the conditions in paragraph 20 above. All hospital doctors are entitled to fees for other work outside their NHS contractual duties under "Category 2" (paragraph 37 of the TCS of Hospital Medical and Dental staff), e.g. examinations and reports for life insurance purposes. Hospital doctors and dentists in training should not undertake locum work outside their contracts where such work would be in breach of their contracted hours. Career grade medical and dental staff employed by NHS Trusts may agree terms and conditions different from the National Terms and Conditions of Service.

***Rewards for Initiative***

23. NHS employers should ensure that they are in a position to identify potential intellectual property rights (IPR), as and when they arise, so that they can protect and exploit them properly, and thereby ensure that they receive any rewards or benefits (such as royalties) in respect of work commissioned from third parties, or work carried out by their employees in the course of their NHS duties. Most IPR are protected by statute; e.g. patents are protected under the Patents Act 1977 and copyright (which includes software programmes) under the Copyright Designs and Patents Act 1988. To achieve this NHS employers should build appropriate specifications and provisions into the contractual arrangements which they enter into *before* the work is commissioned, or begins. They should always seek legal advice if in any doubt in specific cases.

24. With regard to patents and inventions, in certain defined circumstances the Patents Act gives *employees a right* to obtain some reward for their efforts, and employers should see that this is effected. Other rewards may be given voluntarily to employees who within the course of their employment have produced innovative work of outstanding benefit to the NHS. Similar rewards should be voluntarily applied to other activities such as giving lectures and publishing books and articles.

25. In the case of collaborative research and evaluative exercises with manufacturers, NHS employers should see that they obtain a fair reward for the input they provide. If such an exercise involves additional work for an NHS employee outside that paid for by the NHS employer under his or her

contract of employment, arrangements should be made for some share of any rewards or benefits to be passed on to the employee(s) concerned from the collaborating parties. Care should however be taken that involvement in this type of arrangement with a manufacturer does not influence the purchase of other supplies from that manufacturer.

26. **Commercial sponsorship for attendance at courses and conferences –** Acceptance by staff of commercial sponsorship for attendance at relevant conferences and courses is acceptable, but only where the employee seeks permission in advance and the employer is satisfied that acceptance will not compromise purchasing decisions in any way.

27. On occasions when NHS employers consider it necessary for staff advising on the purchase of equipment to inspect such equipment in operation in other parts of the country (or exceptionally, overseas), employing authorities will themselves want to consider meeting the cost, so as to avoid putting in jeopardy the integrity of subsequent purchasing decisions.

**28.** **Commercial sponsorship of posts – "linked deals"** – Pharmaceutical companies, for example, may offer sponsor, wholly or partially, a post for an employing authority. NHS employers should not enter into such arrangements, unless it has been made abundantly clear to the company concerned that the sponsorship will have no effect on purchasing decisions within the authority. Where such sponsorship is accepted, monitoring arrangements should be established to ensure that purchasing decisions are not, in fact, being influenced by the sponsorship agreement. **Under no circumstances should employers agree to "linked deals" whereby sponsorship is linked to the purchase of particular products, or supply from particular sources.**

29. **"Commercial in-confidence"** – Staff should be particularly careful of using or making public, internal information of a "commercial in-confidence" nature particularly if its disclosure would prejudice the principle of a purchasing system based on fair competition. This principle applies whether private competitors or other NHS providers are concerned and whether or not disclosure is prompted by the expectation of personal gain.

30. However, NHS employers should be careful about adopting a too restrictive view on this matter. It should certainly not be a cause of excessive secrecy on matters which are not strictly commercial per se. For example, the term "commercial in confidence" should not be taken to include information about service delivery and activity levels, which should be publicly available. Nor should it inhibit the free exchange of data for medical audit purposes, for example, subject to the normal rules governing patient confidentiality and data protection. In all circumstances the overriding consideration must be the best interest of patients.

**Part C**

**Action Checklist for NHS Managers**

References are to paragraphs in Part B of "Standards of business conduct for NHS Staff" (Annex to HSG (93)5)

***You Must:***

- Ensure that all staff are aware of this guidance (2) and (4).
- Develop a local policy and implement it (2 and 14)
- Show no favouritism in awarding contracts (e.g. to businesses run by employees, ex-employees or their friends or relatives) (17 – 18)
- Include a warning against corruption in all invitations to tender (19)
- Consider requests from staff for permission to undertake additional outside employment (20)
- Apply the terms of PM(79)11 concerning doctors' engagements in private practice (21)
- Receive rewards or royalties in respect of work carried out by employees in the course of their NHS work, and ensure that such employees receive due rewards (24)
- Similarly ensure receipt of rewards for collaborative work with manufacturers, and pass on to participating employees (25)

- Ensure that acceptance of commercial sponsorship will not influence or jeopardise purchasing decisions (26-27)
- Refuse "linked deals" whereby sponsorship of staff posts is linked to the purchase of particular products or supply from particular sources (28)
- Avoid excessive secrecy and abuse of the term "commercial in confidence" (30)

**Part D**

**Short Guide for Staff**

References are to paragraphs in Part B of "standards of business conduct for NHS staff" (Annex to HSG (93)5)

**Do:**

- Make sure you understand the guidelines on standards of business conduct, and consult your line managers if you are not sure;
- Make sure you are not in a position where your private interests and NHS duties may conflict (3);
- Declare to your employer any relevant interests (10 -14). If in doubt, ask yourself;

I. Am I, or might I be, in a position where I (or my family/friends) could gain from the connexion between my private interests and my employment?
II. Do I have access to information which could influence purchasing decisions?
III. Could my outside interest be in any way detrimental to the NHS or to patients' interests?
IV. Do I have any other reason to think I may be risking a conflict of interest?

If still unsure – **Declare it!**

- Adhere to the ethical code of the Institute of Purchasing and Supply if you are involved in any way with the acquisition of goods and services (16);
- Seek your employer's permission before taking on outside work, if there is any question of it adversely affecting your NHS duties (20). (Special guidance applies to doctors);
- Obtain your employer's permission before accepting any commercial sponsorship (26);

**Do Not:**

- Accept any gifts, inducements or inappropriate hospitality (see 7 – 9)
- Abuse your past or present official position to obtain preferential rates for private deals (15)
- Unfairly advantage one competitor over another (17) or show favouritism in awarding contracts (18)
- Misuse or make available official "commercial in confidence" information (29)

**Part E**

***Institute of Purchasing and Supply - Ethical Code***
(Reproduced by kind permission of IPS)

***Introduction***

1. The code set out below was approved by the Institute's Council on 26 February 1977 and is binding on IPS members.

***Precepts***

2. Members shall never use their authority or office for personal gain and shall seek to uphold and enhance the standing of the Purchasing and Supply profession and the Institute by:

a. maintaining an unimpeachable standard of integrity in all their business relationships both inside and outside the organisations in which they are employed;

b. fostering (he highest possible standards of professional competence amongst those for whom they are responsible;

c. optimising the use of resources [or which they are responsible to provide the maximum benefit to their employing organisation;

d. complying both with the letter and the spirit of

i. the law of the country in which they practise;

ii. such guidance on professional practice as may be issued by the Institute from time to time;

iii. contractual obligations;

e. rejecting any business practice which might reasonably be deemed improper.

***Guidance***

3. In applying these precepts, members should follow the guidance set out below:

a. Declaration of interest. Any personal interest that may impinge or might reasonably be deemed by others to impinge on a member's impartiality in any matter relevant to his or her duties should be declared.

b. Confidentiality and accuracy of information. The confidentiality of information received in the course of duty should be respected and should never be used for personal gain; information given in the course of duty should be true and fair and never designed to mislead.

c. Competition. While bearing in mind the advantages to the member's employing organisation of maintaining a continuing relationship with a supplier, any relationship which might, in the long term, prevent the effective operation of fair competition, should be avoided.

d. Business Gifts. Business gifts other than items of very small intrinsic value such as business diaries or calendars should not be accepted.

e. Hospitality. Modest hospitality is an accepted courtesy of a business relationship. However, the recipient should not allow him or herself to reach a position whereby he or she might be deemed by others to have been influenced in making a business decision as a consequence of accepting such hospitality; the frequency and scale of hospitality accepted should not be significantly greater than the recipient's employer would be likely to provide in return.

f. When it is not easy to decide between what is and is not acceptable in terms of gifts or hospitality, the offer should be declined or advice sought from the member's superior.