

Extracts from the Foundation Trust governance documentation relating to directors' conflicts of interest

From the draft FT constitution version 13 dated 17 November 2008

29 Board of Directors - conflicts of interest of Directors

- 29.1 If a Director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it.
- 29.2 The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

From Annex 8 – Standing Orders for the practice and procedure of the Board of Governors (para 28 of the constitution) **Section 8**

1 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 1.1 The Regulatory Framework requires members of the Board of Directors to declare to the Secretary:
- 1.1.1 any pecuniary interest in any contract, proposed contract or other matter which is under consideration concerning the Foundation Trust or is to be considered by the Board of Directors; and
- 1.1.2 any interests including but not limited to any personal or family interests which are relevant and material to the business of the Foundation Trust,
- irrespective of whether those interests are direct or indirect, actual or potential.
- 1.2 All members of the Board of Directors must declare such interests as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently to the date of Authorisation must do so on appointment.
- 1.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or these SOs and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within 7 Clear Days of becoming aware of the existence of a relevant and material interest.

- 1.4 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he must at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 1.5 If a Director has declared a pecuniary interest in accordance with SO 8.9 below he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that matter is under consideration. At the time the interests are declared, they should be recorded in the Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 1.6 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by the Independent Regulator:
 - 1.6.1 directorships, including non-executive directorships held in private companies or public listed companies (with the exception of those of dormant companies);
 - 1.6.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Foundation Trust;
 - 1.6.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Foundation Trust;
 - 1.6.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care;
 - 1.6.5 any connection with a Voluntary Organisation or any other organisation contracting for or commissioning NHS or Foundation Trust services;
 - 1.6.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Foundation Trust, including but not limited to, lenders or banks.
- 1.7 Any travelling or other expenses or allowances payable to a Director in accordance with the Constitution shall not be treated as a pecuniary interest.
- 1.8 Members of the Board of Directors who hold directorships in companies likely or possibly seeking to do business with the NHS or the Foundation Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

- 1.9 A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 1.9.1 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 matter under consideration; or
 - 1.9.2 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 matter under consideration.
- 1.10 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 1.10.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
 - 1.10.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 1.11 Where a Director:
- 1.11.1 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
 - 1.11.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - 1.11.3 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,
- the Director shall not be prohibited from taking part in the consideration or discussion of the contract or matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- 1.12 In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed for the purposes of the Constitution and these SOs to be also an interest of the other.

- 1.13 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. 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.
- 1.14 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 to Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.
- 1.15 SO 8 applies to any committee, sub-committee or joint committee of the Board of Directors and applies to any member of any such committee, sub-committee or joint committee (whether or not he is also a Director).
- 1.16 **Register of interests of the Directors**
- 1.16.1 The register of interests of the Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.
- 1.16.2 It is the obligation of the Director to inform the Secretary in writing within 7 Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the register of interests of the Directors upon receipt of new or amended information as soon as is practical and, in any event, within 14 days of receipt.
- 1.16.3 The register of interests of the Directors will be available to the public and the Chairman will take reasonable steps to bring the existence of it to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the register of interests of the Directors must be provided to Members of the Foundation Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the register of interests of the Directors.
- 1.16.4 The details of Directors' interests recorded in the register of interests of the Directors will be kept up to date by means of a regular review as necessary by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

From the “user friendly” guide to the Standing Orders for the Board of Directors provided by the Trust’s solicitors

7 Declarations of Interests and Register of interests

7.1 General Interests

As a Director, you must declare any of the following interests to the Secretary:

- interests relevant to the business of the FT;
- pecuniary interests (i.e. those relating to or involving money) in any contract or other matter concerning the FT; or
- family interests of which you are aware.

Such interests should be declared as soon as you become aware of it or on appointment to the position of Director.

The form for declaring an interest is set by the Secretary and should detail the interest the required to be declared. The declaration should be delivered to the Secretary on appointment or within 7 days of the interest arising.

7.2 Interests during a meeting of the Board of Directors

If you have an interest in a matter to be discussed during a meeting, you must declare the interest at the start of the meeting, or as soon as possible once the meeting has started. You will not be permitted to vote in relation to that matter.

If you declare an interest at a meeting relating to money, the interest will be recorded in the meeting minutes.

You must declare any changes to your interests at the next relevant meeting following the change.

7.3 Examples of Interests which may need to be declared

If you answer "yes" to any of the questions listed below, you have an interest which will need to be declared:

- Do you hold a directorship (including non-executive) in a private company or public limited company?
- Do you own, part-own or hold a directorship in a private company, business or consultancy who may do business with the NHS or the FT?

- Do you have a majority or controlling share holding in an organisation which may do business with the NHS or the FT?
- Do you have a position of authority in a charity or voluntary organisation in the field of health and social care?
- Do you have any connection with a voluntary or other organisation contracting for NHS or FT services or commissioning NHS or FT services?
- Do you have any connection with any organisation entering into or having entered into financial agreement with the FT?

7.4 Pecuniary Interests

If you answer "yes" to any of the questions listed below, you have an indirect pecuniary (i.e. financial) interest in a matter being considered at a meeting and this must be declared:

- Are you a director of a company (not a public body) with which a contract is or is proposed to be made or has a direct financial interest in the matter under consideration?
- Are you a partner or are you employed by a person with whom the contract was made or (has a direct financial interest in the matter under consideration)?

You will not be treated as having a pecuniary interest by reason of:

- membership of a company (or other body) if you have no beneficial interest in any securities of that company;
- if the connection is remote or insignificant and therefore unlikely to influence you;
- any travelling or other expenses or allowances payable to you as a result of you being a Governor;
- any travelling or other expense or allowance payable to you under the Constitution;
- any remuneration, compensation or allowances payable payable under paragraph 18 to Schedule 7 of the 2006 Act.

Where you have an indirect pecuniary interest you will not be prevented from taking part in a discussion on a particular matter or from voting if the following applies:

- if your indirect pecuniary interest is a beneficial interest in securities of a company or other body; and

- the value of the securities does not exceed £5,000 or 1/100 of the value of the issued share capital (whichever is less); and
- if the securities are more than one class, the value of shares in any one class does not exceed £5,000 or 1/100 of the value of the issued share capital (whichever is less).

Note: companies of Directors likely or possibly seeking to trade with the NHS should be published in the Annual Report. This information should be kept up to date.

These provisions relate to all member of committees and sub-committees whether they are Directors or not.

You must still declare your interest even if the interest does not remove your entitlement to vote on a matter.

7.5 **Family interests**

If you have a spouse or partner or any parent, child, brother or sister who has an interest which, if it were your interest would need to be disclosed, you should disclose this interest to the Council of Governors.

If you are concerned about a particular issue and are not sure whether you have an interest which should be declared, you should always discuss your concern with the Secretary.

7.6 **Register of interests of Directors**

The register of interests will include:

- the name of each Director;
- whether he has declared any interest; and
- the interest declared.

You must inform the Secretary in writing within 7 working days of becoming aware of an interest. The Secretary will then amend the register accordingly in the following 14 working days.

The register will be available to the public and the Chairman must take steps to bring the register to the attention of the public together with the arrangements for viewing it.

If you request to see a copy of the register, it must be provided to you free of charge and in a reasonable time.

If someone else requests a copy of the register, who is not a Member of the FT, a reasonable charge can be imposed for providing this information.

From the Draft statement of FT Directors' Responsibilities and Code of Conduct version 6 dated 21 February 2008

3.5 Conflicts of Interest

3.5.1 Directors should act with the utmost integrity and objectivity and in the best interests of the Trust in performing their duties. They should not use their position for personal advantage or seek to gain preferential treatment. Any Director who has:

3.5.1.1 any pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any contract, proposed contract or other matter which is under consideration, or is to be considered by the Board of Directors; or which otherwise concerns the Trust; or

3.5.1.2 any interest which is relevant and material to the business of the Trust, as set out in Paragraph 29 (Conflicts of interests of Directors) of the Constitution and the Standing Orders for Directors shall disclose that interest in the prescribed form, to the Board of Directors and the Secretary as soon as he becomes aware of it. The Secretary will record this in the register of interests of the Directors.

3.5.2 Failure to declare a conflict of interest could result in dismissal from the Board of Directors. The Standing Orders for the Board of Directors makes provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed. If a Director is in doubt as to whether he has a conflict of interest he should seek advice from the Secretary. It is important that conflicts of interest are addressed and are actioned in the interests of the Trust and all individuals concerned.

3.5.3 Notwithstanding Paragraph 3.5.1 above, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter. If he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring. It is the obligation of the Director to inform the Secretary in writing of the existence of a pecuniary, personal, family, relevant or material interest. The Secretary must amend the register of interests of the Directors upon receipt of new or amended information as soon as is practical.

Susan Sorensen
Trust Corporate Secretary
30 Jan 2009