

# Standing Orders

## CG10

---

Beware when using a printed version of this document. It may have been subsequently amended. Please check online for the latest version.

<b>Applies to:</b>	All NHS Resolution employees, Non-Executive Directors, contractors, secondees and consultants.
<b>Version:</b>	4.0
<b>Date of Board approval:</b>	March 2020
<b>Next Review date:</b>	March 2023
<b>Author:</b>	Catherine O'Sullivan
<b>Owner:</b>	Director of Finance and Corporate Planning

## Contents

1. Introduction .....	3
2. The Board .....	7
3. Meeting of NHS Resolution.....	10
4. Appointment of committees and sub-committees .....	16
5. Arrangement for the exercise of NHS Resolution functions by delegation.....	19
6. Overlap with other NHS Resolution policy statements/procedures, regulations and the standing financial instructions .....	20
7. Duties and obligations of Board members / Directors and Senior management..	21
8. Custody of Seal, Sealing of documents and Signature of documents.....	27
9. Document control.....	28

## 1. Introduction

### 1.1. Purpose

These Board Standing Orders (SOs) form part of the Governance Framework for NHS Resolution. All Board members, Executive Directors and Senior team members must be aware of them and be familiar with their details.

At any meeting, the Chair of the Board has the final decision on the interpretation of Board standing orders (on which they must be advised by the Chief Executive).

### 1.2. Interpretation

1.2.1. Any expression to which a meaning is given in the National Health Service Act and other Acts relating to the National Health Service or in the financial regulations made under the Acts shall have the same meaning in these standing orders and standing financial instructions and in addition:

- **Accounting officer** - the NHS Officer responsible and accountable for funds entrusted to NHS Resolution. They shall be directly accountable to Parliament for ensuring the proper stewardship of public funds and assets. This shall include arrangements for laying NHS Resolution's annual accounts before Parliament. For NHS Resolution it shall be the Chief Executive.
- **Board** - the Chair, and Non-Executive members, appointed by the Secretary of State for Health and Social Care , and the Executive members appointed by NHS Resolution
- **Budget** - a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out for a specific period, any or all of the functions of NHS Resolution.
- **Budget holder** - the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.
- **Chair of the Board** - the person appointed by the Secretary of State for Health and Social Care to lead the Board and to ensure that it successfully discharges its overall responsibility for NHS Resolution as a whole. The expression "the Chair of NHS Resolution" shall be deemed to include the Vice-Chair of NHS Resolution if the Chair is absent from the meeting or is otherwise unavailable.
- **Chief Executive** - the chief officer of NHS Resolution.
- **CNSGP** – the Clinical Negligence Scheme for General Practice a state backed indemnity scheme for general practice which covers clinical negligence claims for incidents occurring in general practice on, or after, 1 April 2019.

- **CNST** - the Clinical Negligence Scheme for Trusts, a scheme covering liabilities for alleged clinical negligence where the original incident occurred after 1 April 1995, which scheme was set up by the National Health Service (Clinical Negligence Scheme) Regulations (1996) SI 1996/251 as amended by SI 1997/527, SI 1991/1274, SI 1999/1274, SI 2000/2341, SI 2002/1073, SI 2006/2390 (R), SI 2006 (no2)/3087, SI 2013/497, SI 2014/3090, SI 2015/137 and 2015/1683.
- **Committee** - a committee or sub-committee created and appointed by NHS Resolution.
- **Committee members** - persons formally appointed by the Board to sit on or to chair specific committees.
- **Contracting and procuring** - the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.
- **Director of Finance and Corporate Planning** means the chief financial officer of NHS Resolution
- **DHSC clinical** - clinical negligence liabilities that have transferred to DHSC following the abolition of any relevant health bodies.
- **DHSC non clinical** - non-clinical negligence liabilities that have transferred to DHSC following the abolition of any relevant health bodies.
- **ELS** - the Existing Liabilities Scheme, a scheme covering liabilities for alleged clinical negligence where the original incident occurred before 1 April 1995, which scheme was set up by the National Health Service (Existing Liabilities Scheme) Regulations (1996) SI 1996/686 as amended by SI 1997/526 and SI 1999/1275, SI 2014 3090 SI 2015/137 and 2015/1683.
- **Executive member** - an officer member of NHS Resolution as referred to in the Regulations.
- **LTPS** - the Liabilities to Third Parties Scheme, a scheme for meeting liabilities to third parties in connection with any loss, damage or injury arising out of the carrying out of NHS Resolution's functions under the Regulations but excluding any liabilities to which the CNST or ELS apply, which LTPS was set up by the National Health Service (liabilities to Third Parties Scheme) Regulations 1999 (SI 1999/873) as amended by SI 2000/2385, SI 2014 3090 SI 2015/137 and 2015/1683.
- **Member** - an Executive and/or Non-Executive member of NHS Resolution. Member in relation to NHS Resolution does not include its Chair.

- **Nominated officer** - an Officer charged with the responsibility for discharging specific tasks within SOs.
- **Non-Executive member** - a non-officer member of NHS Resolution as referred to in regulations.
- **Officer** - employee of NHS Resolution or any other person holding a paid appointment or office with NHS Resolution.
- **PES** - Property Expenses Scheme, a scheme for making provision for claiming reimbursement for expenses arising from any loss of or damage to their property which scheme was set up by the National Health Service (Property Expenses Scheme) Regulations 1999 (SI 1999/874) and amended by SI 2000/2342.
- **Regulations** - the National Health Service Litigation Authority Regulations 1995 (SI 1995/2801) as amended by SI 1996/708, SI 1996/968, SI 1997/2991, SI 1998/646, SI 1998/1576, SI 1996/971, SI 2000/696, SI 2000/433, SI 2000/2649, SI 2002/2861, SI 2004/696, SI 2006/552, SI 2006/1772, SI 2013/497, SI 2014/3090, SI 2015/1683 and SI 2017/150.
- **Ex-RHAs** - the assumption by NHS Resolution of residual clinical negligence liabilities of Regional Health Authorities from 1 April 1996 under the terms of the National Health Service Litigation Authority (Transfer of Liabilities) Order 1996.
- **Scheme of delegation** - the scheme of delegation document defining the specific responsibilities placed on directors and employees of NHS Resolution which scheme was adopted in accordance with the Code of Accountability.
- **SFIs** - standing financial instructions.
- **SOs** - standing orders.
- **Vice-Chair** - the Non-Executive member appointed by NHS Resolution to take on the Chair's duties if the Chair is absent for any reason.

### 1.3. Statutory framework

- 1.3.1. NHS Resolution is a Special Health Authority, legally known in legislation as the NHS Litigation Authority which came into existence on 21 November 1995.
- 1.3.2. The principal place of business of NHS Resolution is 8th Floor, 10 South Colonnade, Canary Wharf, London E14 4PU
- 1.3.3. NHS Resolution is a Special Health Authority set up under legislation now incorporated into section 28 of the National Health Service Act 2006 and governed principally by that Act.

- 1.3.4. The functions conferred on NHS Resolution are set out in the National Health Service Litigation Authority Framework Document, of 2013 and the National Health Service Litigation Authority (Functions) Directions (Amendment) 2013 and 2015.
- 1.3.5. NHS Resolution is a body corporate and, as such, has power to contract in its own name and act as a corporate trustee.
- 1.3.6. The National Health Service Litigation Authority Regulations 1995, and as Amended, as defined below require NHS Resolution to adopt Standing Orders (“SOs”) for the regulation of its proceedings and business. In accordance with the “Directions on Financial Management” issued under HSG 96 12 in 1996, NHS Resolution must also adopt Standing Financial Instructions (“SFIs”) setting out the responsibilities of individuals
- 1.3.7. NHS Resolution will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.

### **1.4. NHS framework**

- 1.4.1. In addition to the statutory requirements the Secretary of State for Health and Social Care through the Department of Health and Social Care (DHSC) issues further directions and guidance. These are normally issued under cover of a circular or letter.
- 1.4.2. The Code of Accountability requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The code also requires the establishment of audit and remuneration committees with formally agreed terms of reference. The Codes of Conduct makes various requirements concerning possible conflicts of interest of Board members.
- 1.4.3. The Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

### **1.5. Delegation of powers**

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 6) NHS Resolution is given powers to "make arrangements for the exercise, on behalf of NHS Resolution, of any of their functions by a committee, sub-committee or joint committee appointed by virtue of SO 5 or by an officer of NHS Resolution, in each case subject to such restrictions and conditions as NHS Resolution thinks fit or as the Secretary of State for Health and Social Care may direct".

## **2. The Board**

### **2.1. Composition of the membership of NHS Resolution Board**

2.1.1. In accordance with the Regulations the composition of the Board shall be:

The Chair of NHS Resolution (appointed by the Secretary of State for Health and Social Care).

At least three, but no more than five Non-Executive members (appointed by the Secretary of State for Health and Social Care). At least three, but no more than five (but not exceeding the number of Non-Executive members) including:

- the Chief Executive;
- the Director of Finance and Corporate Planning.

2.1.2. NHS Resolution shall have not more than ten members (unless otherwise determined by the Secretary of State for Health and Social Care and set out in NHS Resolution's establishment order or such other communication from the Secretary of State for Health and Social Care).

### **2.2. Appointment of Chair and members of NHS Resolution**

2.2.1. The regulations for the appointment of the Chair and of members and their terms of office are determined by the Secretary of State for Health and Social Care and are currently set out in NHS Act 2006 and the Regulations.

### **2.3. Terms of office of the Chair and members**

2.3.1. The regulations setting out the period of tenure of office of the Chair and members and for the termination or suspension of office of the Chair and members are contained in Sections 2 to 7 of the Regulations.

### **2.4. Appointment and powers of Vice-Chair**

2.4.1. Subject to Standing Order No. 3.4.2 below, the Chair and members of NHS Resolution may appoint one of their number, who is not also an executive member, to be Vice-Chair, for such period, not exceeding the remainder of his term as a member of NHS Resolution, as they may specify on appointing them.

- 2.4.2. Any member so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair. The Chair and members may thereupon appoint another member as Vice-Chair in accordance with the provisions of Standing Order No. 3.4.1.
- 2.4.3. Where the Chair of NHS Resolution has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Vice-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Vice-Chair.

## 2.5. Joint members

- 2.5.1. Where more than one person is appointed jointly to a post in NHS Resolution which qualifies the holder for Executive membership or in relation to which an Executive member is to be appointed, those persons shall become appointed as an Executive member jointly, and shall count for the purpose of Standing Order 3.1 as one person.
- 2.5.2. Where the office of a member of the Board is shared jointly by more than one person:
- either or both of those persons may attend or take part in meetings of the Board;
  - if both are present at a meeting they should cast one vote if they agree;
  - in the case of disagreements no vote should be cast;
  - the presence of either or both of those persons should count as the presence of one person for the purposes of standing order No. 4.11 Quorum.

## 2.6. Associate members

The Board, at its discretion, may appoint Associate members of the Board who do not contribute to quorum and who have no voting rights but who, otherwise, can act as full members of the Board.

## 2.7. Role of Members

The Board will function as a corporate decision-making body, Executive and Non-Executive Members will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing NHS Resolution in carrying out its statutory and other functions.

- **Executive members** - Executive members shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

- **Chief Executive** - The Chief Executive shall be responsible for the overall performance of the executive functions of NHS Resolution. They are the Accountable Officer for NHS Resolution and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accountable Officer Memorandum for Chief Executives of NHS Resolution.
- **Director of Finance and Corporate Planning** - The Director of Finance and Corporate Planning shall be responsible for the provision of financial advice to NHS Resolution and to its Members and for the supervision of financial control and accounting systems. They shall be responsible along with Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.
- **Non-Executive members** - The Non-Executive members shall not be granted nor shall they seek to exercise any individual executive powers on behalf of NHS Resolution. They may however, exercise collective authority when acting as members of, or when chairing, a committee of NHS Resolution which has delegated powers.
- **Chair** - The Chair shall be responsible for the operation of the Board and chair all Board meetings when present. The Chair has certain delegated executive powers. The Chair must comply with the terms of appointment and with these standing orders.

The Chair shall liaise with the relevant organisation over the appointment of Non-Executive Directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance.

The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

## 2.8. Corporate role of the Board

2.8.1. All business shall be conducted in the name of NHS Resolution.

2.8.2. The Board shall define and regularly review the functions it exercises on behalf of the Secretary of State for Health and Social Care.

## 2.9. Lead roles for Board Members

The Chair will ensure that the designation of lead roles or appointments of Board members as required by DHSC or as set out in any statutory other guidance will be made in accordance with that guidance or statutory requirement.

### **3. Meeting of NHS Resolution**

#### **3.1. Calling meetings**

- 3.1.1. Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.
- 3.1.2. The Chair of NHS Resolution may call a meeting of the Board at any time.
- 3.1.3. One third or more members of the Board may requisition a meeting in writing. If the Chair refuses, or fails to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

#### **3.2. Notice of meetings and the business to be transacted**

- 3.2.1. Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every member, or sent by post to the usual place of residence of each member, so as to be available to members at least three clear days before the meeting. The notice shall be signed by the Chair or by an Executive authorised by the Chair to sign on their behalf. Want of service of such a notice on any member shall not affect the validity of a meeting.
- 3.2.2. In the case of a meeting called by members in default of the Chair calling the meeting, the notice shall be signed by those members.
- 3.2.3. No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 4.6.
- 3.2.4. A member desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 15 clear days before the meeting. The request should include appropriate supporting information. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chair.

#### **3.3. Agenda and supporting papers**

The agenda will be sent to members 6 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency. Board papers will not be tabled on the day of the meeting, other than in exceptional circumstances.

#### **3.4. Petitions**

Where a call for action or a petition which forms part of a formal consultation has been received by NHS Resolution the Chair shall include the petition as an item for the agenda of the next meeting.

### **3.5. Notice of motion**

Subject to the provision of standing orders 4.7 'Motions: Procedure at and during a meeting' and 4.8 'Motions to rescind a resolution', a member of the Board wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chair.

The notice shall be delivered at least 15 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This standing order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

### **3.6. Emergency motions**

Subject to the agreement of the Chair, and subject also to the provision of Standing Order 4.7 'Motions: Procedure at and during a meeting', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to NHS Resolution Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

### **3.7. Motions: Procedure at and during a meeting**

#### **3.7.1. Who may propose**

A motion may be proposed by the Chair of the meeting or any member present. It must also be seconded by another member.

#### **3.7.2. Contents of motions**

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before NHS Resolution Board;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

#### **3.7.3. Amendments to motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

### 3.7.4. Rights of reply to motions

- Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

- Substantive / Original motion

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

### 3.7.5. Withdrawing a motion

A motion, or an amendment to a motion, may be withdrawn.

### 3.7.6. Motions once under debate

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a member/director be not further heard;

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

## 3.8. Motion to rescind a resolution

- 3.8.1. Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the member who gives it and also the signature of three other members, and before considering any such motion of which notice shall have been given,

NHS Resolution Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

- 3.8.2. When any such motion has been dealt with by NHS Resolution Board it shall not be competent for any director/member other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

### **3.9. Chair of meeting**

- 3.9.1. At any meeting of NHS Resolution Board the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair (if the Board has appointed one), if present, shall preside.
- 3.9.2. If the Chair and Vice-Chair are absent, such member (who is not also an Executive member of NHS Resolution) as the members present shall choose shall preside.

### **3.10. Chair's ruling**

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the standing orders and standing financial instructions, at the meeting, shall be final.

### **3.11. Quorum**

- 3.11.1. No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and members (including at least one member who is also an Executive member of NHS Resolution and one member who is not) is present.
- 3.11.2. An Executive in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.11.3. If the Chair or member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.8) that person 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.

### 3.12. Voting

- 3.12.1. Save as provided in Standing Orders 4.13 - Suspension of Standing Orders and 4.14 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (i.e.: the Chair of the meeting shall have a second, and casting vote.
- 3.12.2. At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 3.12.3. If at least one third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).
- 3.12.4. If a member so requests, their vote shall be recorded by name.
- 3.12.5. In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.12.6. A manager who has been formally appointed to act up for an Executive member during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive member.
- 3.12.7. A manager attending NHS Resolution Board meeting to represent an Executive member during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive member. An Executive's status when attending a meeting shall be recorded in the minutes.
- 3.12.8. For the voting rules relating to joint members see standing order 3.5.

### 3.13. Suspension of Standing Orders

- 3.13.1. Except where this would contravene any statutory provision or any direction made by the Secretary of State for Health and Social Care or the rules relating to the Quorum (SO 4.11), any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present (including at least one member who is an Executive member of NHS Resolution and one member who is not) and that at least two-thirds of those members present signify their agreement to such suspension. The reason for the suspension shall be recorded in NHS Resolution Board's minutes.
- 3.13.2. A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Chair and members of NHS Resolution.

3.13.3.No formal business may be transacted while standing orders are suspended.

3.13.4.The Audit & Risk Committee shall review every decision to suspend standing orders.

### **3.14.Variation and amendment of standing orders**

These standing orders shall not be varied except in the following circumstances:

- upon a notice of motion understanding order 4.5;
- upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;
- that two thirds of the Board members are present at the meeting where the variation or amendment is being discussed, and that at least half of NHS Resolution's Non-Executive members vote in favour of the amendment;
- providing that any variation or amendment does not contravene a statutory provision or direction made by the Secretary of State for Health and Social Care.

### **3.15.Record of Attendance**

The names of the Chair and Directors/members present at the meeting shall be recorded.

### **3.16.Minutes**

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

No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.

### **3.17.Admission of public and the press**

3.17.1.Admission and exclusion on grounds of confidentiality of business to be transacted

- If in pursuant of Regulation 15 of the Regulations, the Secretary of State for Health and Social Care directs NHS Resolution to make an annual report to them for any particular year or for each year, the public and representatives of the press shall be afforded facilities to attend the meeting at which that report is presented but shall be required to withdraw upon NHS Resolution 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).

- The Chair (or Vice-chair) shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that NHS Resolution'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 NHS Resolution resolving as follows:

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

- Nothing in these Standing Orders shall require NHS Resolution to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of NHS Resolution.

### **3.18. Observers at NHS Resolution meetings**

NHS Resolution will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of NHS Resolution Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

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

### **4.1. Appointment of committees**

Subject to such directions as may be given by the Secretary of State for Health and Social Care, NHS Resolution Board may appoint committees of NHS Resolution.

NHS Resolution shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees.

### **4.2. Joint committees**

Any committee or joint committee appointed under this standing order may, subject to such directions as may be given by the Secretary of State for Health and Social Care or NHS Resolution or other health bodies in question, appoint sub-committees consisting wholly or partly of members of the committees or joint committee (whether or not they are members of NHS Resolution or health bodies in question) or wholly of persons who are not

members of NHS Resolution or health bodies in question or the committee of NHS Resolution or health bodies in question.

#### **4.3. Applicability of standing orders and standing financial instructions to committees**

The standing orders and standing financial instructions of NHS Resolution, as far as they are applicable, shall as appropriate apply to meetings of any committees established by NHS Resolution. In which case the term “Chair” is to be read as a reference to the Chair of other committee as the context permits, and the term “member” is to be read as a reference to a member of other committee also as the context permits.

#### **4.4. Terms of reference**

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 for Health and Social Care. Such terms of reference shall have effect as if incorporated into the Standing Orders.

#### **4.5. Delegation of powers by committees to sub-committees**

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by NHS Resolution Board.

#### **4.6. Approval of appointments to committees**

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 Executives, 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 for Health and Social Care. 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.

#### **4.7. Appointments for statutory functions**

Where the Board is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State for Health and Social Care, 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 for Health and Social Care.

## 4.8. Committees established by NHS Resolution Board

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

### 4.8.1 Audit & Risk committee

The Board has established an Audit & Risk Committee which is constituted to provide NHS Resolution Board with an independent and objective review on its financial systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The Terms of Reference will be approved by NHS Resolution Board and reviewed on a periodic basis.

A minimum of three non-executive directors be appointed, unless the Board decides otherwise, of which one must have significant, recent and relevant financial experience. The Chair of NHS Resolution will not be a member of the Audit and Risk Committee.

### 4.8.2. Remuneration and terms of service committee

A terms of service and remuneration committee will be established and constituted.

The committee will be comprised exclusively of non-executive directors, a minimum of three, who are independent of management.

The purpose of the committee will be to advise NHS Resolution Board about appropriate remuneration and terms of service for the Chief Executive and other Executive Directors including:

- all aspects of salary (including any performance-related elements/bonuses);
- provisions for other benefits, including pensions and cars;
- arrangements for termination of employment and other contractual terms.

## 4.9. Other committees

The Board has established a reserving and pricing committee (RPC) to provide assurance to the NHS Resolution Board that the case reserving methodology and practice, as well as modelling methodologies, assumptions and outputs used in pricing, are appropriate.

## **5. Arrangement for the exercise of NHS Resolution functions by delegation**

### **5.1. Delegation of functions to committees or Executives**

Subject to such directions as may be given by the Secretary of State, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order No. 5, or by an Executive of NHS Resolution subject to such restrictions and conditions as NHS Resolution thinks fit.

### **5.2. Emergency powers and urgent decisions**

The powers which the Board has reserved to itself within these Standing Orders may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two non-Executive members. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of NHS Resolution Board in public session for formal ratification.

### **5.3. Delegation to committees**

5.3.1. The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, or joint-committees, which it has formally constituted in accordance with directions issued by the Secretary of State of Health and Social Care. The constitution and terms of reference of these committees, or subcommittees, or joint committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees

#### **Delegation to Executives**

5.3.2. Those functions of NHS Resolution which have not been retained as reserved by the Board or delegated to other committee or sub-committee or joint-committee shall be exercised on behalf of NHS Resolution by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Executives to undertake the remaining functions for which they will still retain accountability to NHS Resolution.

5.3.3. The incurring of any expenditure of NHS Resolution or the giving of any approval in respect of a payment of money in relation to all and any clinical negligence or non clinical risk cases under the CNST, CNSGP, claims settled in relation to the arrangements with the Medical Defence Organisations as directed by DHSC, DHSC Liabilities, ELS Ex -RHAs, LTPS and/or the PES is delegated to the Chief Executive and/or any employee or employees of NHS Resolution in accordance with such authority levels as approved by the Board from time to time. Current authority levels are available from the Chief Executive's office.

The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.

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

#### **5.4. Duty to report non-compliance with Standing Orders and Standing Financial Instructions**

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 Board for action or ratification. All members of NHS Resolution Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## **6. Overlap with other NHS Resolution policy statements/procedures, regulations and the standing financial instructions**

### **6.1. Policy statements: general principles**

NHS Resolution Board will from time to time agree and approve Policy statements/ procedures which will apply to all or specific groups of staff employed by NHS Resolution. The decisions to approve such policies and procedures will be recorded in an appropriate “Authority” Board minute and will be deemed where appropriate to be an integral part of NHS Resolution’s Standing Orders and Standing Financial Instructions.

### **6.2. Standing Financial Instructions**

Standing Financial Instructions adopted by NHS Resolution Board in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

### **6.3. Specific guidance**

Notwithstanding the application of S.O. No. 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with all applicable law and guidance issued by the Secretary of State for Health and Social Care.

## **7. Duties and obligations of Board members / Directors and Senior management under these standing orders**

### **7.1. Declaration of interests**

#### **7.1.1. Requirements for declaring Interests and applicability to Board members**

The NHS Code of Accountability requires NHS Resolution Board members and the Chair to declare interests which are relevant and material to the NHS Board of which they are a member. All existing Board members and the Chair should declare such interests. Any Board members or Chair appointed subsequently should do so on appointment.

#### **7.1.2. Interests which are relevant and material**

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

- Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- A position of "Authority" in a charity or voluntary organisation in the field of health and social care;
- Any connection with a voluntary or other organisation contracting for NHS services.
- Research funding/grants that may be received by an individual or their department;
- Interests in pooled funds that are under separate management.

Any member of NHS Resolution Board who comes to know that NHS Resolution has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in standing order 8.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Board member shall declare his interest by giving notice in writing of such fact to NHS Resolution as soon as practicable.

#### **Advice on interests**

If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair of NHS Resolution.

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 should also be considered.

#### 7.1.3. **Recording of interests in NHS Resolution Board minutes**

At the time Board members' interests are declared, they should be recorded in NHS Resolution Board minutes.

Any changes in interests should be declared at the next NHS Resolution Board meeting following the change occurring and recorded in the minutes of that meeting.

#### 7.1.4. **Publication of declared interests in annual report**

Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in NHS Resolution's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

#### 7.1.5. **Conflicts of interest which arise during the course of a meeting**

During the course of an NHS Resolution Board meeting, if a conflict of interest is established, the member concerned and/or the Chair should withdraw from the meeting and play no part in the relevant discussion or decision.

### **7.2. Register of Interests**

7.2.1. The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board Members. In particular the Register will include details of all directorships and other relevant and material interests (as defined in SO 8.1.2) which have been declared by both executive and non-executive "Authority" Board Members.

7.2.2. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

7.2.3. The Register will be available to the public.

### **7.3. Exclusion of Chair and members in proceedings on account of pecuniary interest**

#### 7.3.1. Definition of terms used in interpreting 'Pecuniary' interest

For the sake of clarity, the following definition of terms is to be used in interpreting this standing order:

- **Spouse** - shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- **Contract** - shall include any proposed contract or other course of dealing;

- **Pecuniary interest** - Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:
  - he, or a nominee of his, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
  - he is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- **Exception to Pecuniary interests** - A person shall not be regarded as having a pecuniary interest in any contract if:
  - neither they nor any person connected with them has any beneficial interest in the securities of a company of which he or such person appears as a member, or
  - any interest that he or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract, or
  - those securities of any company in which they (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less

Provided however, that where paragraph (iii) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 8.1.2 b.

#### 7.3.2. **Exclusion in proceedings of NHS Resolution Board**

Subject to the following provisions of this Standing Order, if the Chair or a Member of NHS Resolution Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of NHS Resolution Board at which the contract or other matter is the subject of consideration, they 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.

- 7.3.3. The Secretary of State for Health and Social Care may, subject to such conditions as they may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to them in the interests of the National Health Service that the disability should be removed. (See SO No. 8.4.3 on the 'Waiver' which has been approved by the Secretary of State for Health and Social Care).

- 7.3.4. NHS Resolution Board may exclude the Chair or a Member of the 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.
- 7.3.5. Any remuneration, compensation or allowance payable to the Chair or a Member by virtue of Schedule 2 paragraph 8(2) (2006) and Schedule 5 paragraph 4(1) (2006) 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.
- 7.3.6. This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to NHS Resolution and applies to a member of any such committee or sub-committee (whether or not he is also a member of NHS Resolution) as it applies to a Member of NHS Resolution.

#### **7.4. Waiver of standing orders made by the Secretary of State for Health and Social Care**

##### **7.4.1. Power of the Secretary of State for Health and Social to make waivers**

Under regulation the Health Authority (Membership and Procedure Regulations (“the Regulations”), there is a power for the Secretary of State for Health and Social Care to issue waivers if it appears to the Secretary of State for Health and Social Care in the interests of the health service that the disability (which prevents a chair 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. A waiver has been agreed in line with sub-sections 8.4.2 to 8.4.4 below.

##### **7.4.2. Definition of ‘Chair’ for the purpose of interpreting this waiver**

For the purposes of paragraph 8.4.3.2. b (below), the “relevant chair” is:

- at a meeting of NHS Resolution, the Chair of that “Authority”;
- at a meeting of a Committee:
  - in a case where the member in question is the Chair of that Committee, the Chair of NHS Resolution;
  - in the case of any other member, the Chair of that Committee.

##### **7.4.3. Application of waiver**

A waiver will apply in relation to the disability to participate in the proceedings of NHS Resolution on account of a pecuniary interest.

It will apply to:

- A member of NHS Resolution (“the Authority”) 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:
  - services under the National Health Service Act 2006; or
  - services in connection with a pilot scheme under the National Health Service (Primary Care) Act 1997;

for the benefit of persons for whom NHS Resolution is responsible.

- Where the ‘pecuniary interest’ of the member in the matter which is the subject of consideration at a meeting at which he is present:
  - 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
  - has been declared by the relevant chair as an interest which cannot reasonably be regarded as an interest more substantial than that of the majority of other persons who:
    - are members of the same profession as the member in question, and
    - 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 NHS Resolution is responsible.

#### **7.4.4. Conditions which apply to the waiver and the removal of having a pecuniary interest**

The removal is subject to the following conditions:

- the member must disclose his interest as soon as practicable after the commencement of the meeting and this must be recorded in the minutes;
- the relevant chair must consult the Chief Executive before making a declaration in relation to the member in question pursuant to paragraph 8.4.3.2b above, except where that member is the Chief Executive;
- in the case of a meeting of NHS Resolution:
  - 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
  - may not vote on any question with respect to it.
- in the case of a meeting of a committee:

- 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
- may vote on any question with respect to it; but
- the resolution which is subject to the vote must comprise a recommendation to, and be referred for approval by, NHS Resolution Board.

#### **7.4.5. Standards of Business Conduct**

#### **7.4.6. NHS Resolution policy and national guidance**

All NHS Resolution staff and members of must comply with NHS Resolution's standards of business conduct and conflicts of interest Policy and the national guidance contained in HSG(93)5 on standards of business conduct for NHS staff.

#### **7.4.7. Interest of Officers in Contracts**

- Any officer or employee of NHS Resolution who comes to know that NHS Resolution has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in SO 8.3) has any pecuniary interest, direct or indirect, the officer shall declare their interest by giving notice in writing of such fact to the Chief Executive as soon as practicable
- 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 NHS Resolution.
- NHS Resolution will require interests, employment or relationships so declared to be entered in a register of interests of staff.

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

- Canvassing of members of NHS Resolution or of any committee of NHS Resolution directly or indirectly for any appointment under NHS Resolution 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.
- Members of NHS Resolution shall not solicit for any person any appointment under NHS Resolution 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 NHS Resolution.

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

- Candidates for any staff appointment under NHS Resolution shall, when making an application, disclose in writing to NHS Resolution whether they are related to any member or the holder of any office under NHS Resolution. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- The Chair and every member and employee of NHS Resolution shall disclose to NHS Resolution Board any relationship between themselves and a candidate of whose candidature that member or employee is aware. It shall be the duty of the Chief Executive to report to NHS Resolution Board any such disclosure made.
- On appointment, members (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to NHS Resolution whether they are related to any other member or holder of any office in NHS Resolution.
- Where the relationship to a member of NHS Resolution is disclosed, the Standing Order headed 'Disability of Chair and members in proceedings on account of pecuniary interest' (SO 8) shall apply.

## **8. Custody of Seal, Sealing of documents and Signature of documents**

### **8.1. Custody of Seal**

If the Board shall consider it appropriate NHS Resolution shall have a common seal of NHS Resolution which shall be kept by the Chief Executive or a nominated Manager in a secure place.

### **8.2. Sealing of Documents**

If NHS Resolution adopts a Common Seal, and it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

### **8.3. Register of Sealing**

The Chief Executive shall keep a register in which they, or another manager of NHS Resolution authorised by them, shall enter a record of the sealing of every document.

## 8.4. Signature of documents

Where any document will be a necessary step in legal proceedings on behalf of NHS Resolution, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

## 9. Document control

Date	Author	Version	Reason for change
December 2017	Catherine O'Sullivan	Draft V3.1	Update board composition under S02
December 2017	Catherine O'Sullivan	Draft V3.0	Removed paragraph on integrated governance as this is out of date
December 2017	Catherine O'Sullivan	Draft V3.0	Amended 6.3 Specific guidance section so it is generic to all legal and SoS requirements
February 2017	Evelyn Lucien	V3.0	Rebranded
January 2020	Catherine O'Sullivan	Draft V4.0	Added CNSGP to section titled interpretation
January 2020	Catherine O'Sullivan	DraftV4.0	Amends to DHSC
February 2020	ARC	DraftV4.0	Review by ARC
March 2020	Board	V4.0	Board Approval