

THE COUNCIL OF GOVERNORS PROCEDURE FOR ENGAGEMENT WITH THE BOARD OF DIRECTORS

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PROCEDURE SUMMARY
This Procedure and associated Policy outlines the mechanisms by which Governors and Directors will interact and communicate with each other to support their role in holding the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors and describes the methods by which Governors may engage with the Board when they have concerns about the performance of the Board of Directors, compliance with the Trust's provider licence, or the welfare of the Trust.
The Trust monitors the implementation of and compliance with this Policy in the following ways:
This Procedure will be subject to a three year review and implementation will be monitored by the Trust Secretary.

Services	Applicable	Comments
Trustwide	✓	

**The Director responsible for monitoring and reviewing this Procedure
is the Chief Executive Officer**

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Assurance Statement

The purpose of this Procedure is to ensure a process is in place for engagement between the Council of Governors and the Board of Directors as well as when the Council of Governors need to engage with the Board of Directors for those circumstances when they have concerns about the performance of the Board of Directors, compliance with the Trust's provider licence or the welfare of the Trust in line with the requirement A.5.6 of (Monitor's) NHSE/I *NHS Foundation Trust Code of Governance* (July 2014).

1.0 INTRODUCTION

- 1.1. This Procedure has been developed by the Council of Governors to take account of the recommendations in (Monitor's) *NHSE/I NHS Foundation Trust Code of Governance* (July 2014) provision A.5.6 to address engagement between the Council of Governors (Council) and the Board of Directors (Board)
- 1.2. This Procedure outlines the mechanisms by which the Council and the Board will interact and communicate with each other to support ongoing interaction and engagement, ensure compliance with the regulatory framework and specifically provide for those circumstances where the Council has concerns about:
 - 1.2.1. the performance of the Board of Directors
 - 1.2.2. compliance with the Trust's provider licence
 - 1.2.3. other matters related to the overall wellbeing of the Trust
- 1.3. The resolution of disputes between the Council and the Board is also covered in SO 9 of the Council's Standing Orders and SO 14.4 of the Board's Standing Orders
- 1.4. The relationship between the Council and the Board is also covered under SO 10 of the Council's Standing Orders and SO 15 of the Board's Standing Orders.

2 SCOPE

- 2.1 Informal, formal and frequent communication between the Council and the Board are an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides
- 2.2 Directors and Governors are expected to act in such a manner as to comply with this Procedure

3.0 ENGAGEMENT

- 3.1 A duty of the Council is to hold the NEDs individually and collectively to account for the performance of the Board
- 3.2 Governors and Board Directors should have the opportunity to meet at regular intervals with Governors feeling comfortable in asking questions regarding the management of the Trust and Directors should keep Governors appropriately informed, particularly about key Board decisions and how they affect the Trust and the wider community

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3.3 The relationship between the Council and Board is critical and should be based on the Trust's values (open, compassionate and empowering) as well as respect, candour and trust. There are a number of ways an open and constructive relationship can be achieved between the two; these are not limited to the examples below:

- Receiving the agenda and minutes of Board meetings and requesting any specific papers.
- Minutes of Part 1 Board of Director meetings and a summary of discussions for Part 2 Board of Director meetings.
- Governors are invited to attend Board meetings and have the opportunity to ask questions of the Board on the agenda items
- Receiving quarterly finance, quality and performance update reports at Council meetings and asking questions on and/or challenging their content
- The attendance of the CEO, other Executive and Non-Executive Directors at Council meetings and using these opportunities to ask them questions as required.
- Confidential briefing session by the CEO prior to the quarterly Council meeting with opportunity to ask questions
- Attending Annual Members Meeting
- NEDs/Governors informal meetings and local constituency meetings.
- Involvement of Governors at Quality visits with Executive and Non-Executive Directors
- Establishment of joint working groups, e.g. Membership Framework Task & Finish Group; Appointment of Auditors Working Group
- Briefing session by the ECFO on the annual accounts
- Receiving the annual report and accounts and asking questions on their content
- Receiving performance appraisal information for the Chair and other NEDs (through the Council's Remuneration Committee)
- Receiving information/being kept up to date on issues or concerns likely to generate adverse media (or in response to media coverage) and providing Governors with the opportunity to raise questions or seek information or assurances
- Receiving information on proposed significant transactions, mergers, acquisitions, separations or dissolutions, and questioning Directors on these (in the first instance through the Governors Significant Transactions Group)
- Receiving relevant development sessions/workshops/briefings by Board Directors as appropriate ensuring that Governors are equipped with the skills and knowledge they require to fulfil their role
- Involvement of Governors in the Trust's strategy and planning process through attendance at the Trust's stakeholder planning event and also through a meeting of the Governors Strategic Planning Working Group
- Chair's report on the activities of the NEDs at each Council meeting
- Reports from the chairs of Board standing committees highlighting the work and key issues reviewed by the committee on an annual rolling basis
- Views of Governors on the performance of the Chair are fed through the Senior Independent Director
- Your Voice meetings for members and the public in each of the Trust's constituencies.

4.0 RAISING CONCERNS

4.1 Governors should raise concerns through existing channels as outlined in section 3.0 of this procedure. Any concerns raised will be recorded and monitored via the relevant committee (when raised formally) or via a Governor Requested Action Log (when raised informally).

4.2 Governor(s) should not raise concerns that are not supported by evidence. In raising their concerns, Governors will need to demonstrate the following:

4.2.1 any written statement must be from an identifiable person(s) who must sign the statement and indicate that they are willing to be interviewed about its content

4.2.2 other documentation must originate from a bona fide organisation and the source must be clearly identifiable.

Newspaper or other media articles will not be accepted as prima facie evidence but may be accepted as supporting evidence.

4.3. The CEO as the Accounting Officer will routinely present reports on performance, finance and compliance at Board and Council public meetings. Any Governor or member of the public in attendance may also raise any concerns relating to the performance, finance and/or compliance through the Chair at these meetings at the time, so that issues can be addressed without delay

4.4 If the above does not address the concerns of the Governor(s), para 19.3 of the Trust's Constitution may be invoked. The clause states that the Council may require one or more of the Directors to attend a meeting of the Council for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties.

4.5 While recognising the key role of the Chair in providing the link between the Council and the Board, if concerns are identified and persist, any Governor(s) who have concerns covered by this Policy should:

4.5.1 in the first instance, consult the Trust Secretary for advice and guidance and who will seek to resolve the matter informally. The Trust Secretary will advise the Governor(s) on the issues raised and whether it is appropriate to take their concerns to the Chair

4.5.2 the advice of the Trust Secretary, however, is not binding upon the Governor(s) concerned who retain at all times the right to raise the matter with the Chair directly

4.5.3 if the above steps fail to resolve the matter or contacting the Trust Secretary or Chair (in the case of his/her own performance) was felt inappropriate, the Governor(s) should contact the SID to address the concerns

4.6 The Chair will investigate all concerns brought to him/her by Governors involving the Chief Executive and/or other Board members. The investigation will include a review of the evidence offered and discussions with Trust officers as appropriate.

4.7 As soon as practicable after the conclusion of the investigation, the Chair and Trust Secretary (or SID) will meet with the Governor(s) to discuss the findings. This meeting has three possible outcomes:

4.7.1 Governor(s) are satisfied their concerns were unjustified and withdraw them unreservedly; in this case no further action is required

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- 4.7.2 Governor(s) are satisfied their concerns have been resolved during the course of the investigation. The Chair will write a report on the concerns and the actions taken and present this at a closed session of the next scheduled meeting of the Council. If the majority of those Governors present at the meeting agree that the matter is resolved, then no further action is required. However, should a majority of the Council in attendance disagree, then the process for escalation described in section 5 will be initiated
- 4.7.3 The matter is not resolved to the satisfaction of the Governors. The Chair will call a closed extraordinary meeting of the Council as soon as possible in accordance with the Trust's Constitution to consider the matter further. The meeting may choose either to take no further action or, if the majority of those Governors present and voting agree, to initiate the escalation process described in Section 5. The Council may require one or more of the Directors to attend a meeting of the Council for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties
- 4.8 The minutes of the meeting(s) shall record the outcome of the discussions.

5.0 ESCALATING CONCERNS

- 5.1 Where the matter is not resolved following the completion of steps outlined in section 4 then the following actions will be taken.
- 5.2 The SID takes over the lead role from the Chair. Should the SID be unavailable or prevented from participating because of a conflict of interest, then the Council may choose any other Non-Executive Director to fulfil the role
- 5.3. The first duty of the SID is to establish the facts of the concern. This will be accomplished by reviewing the evidence offered by Governors, the process of the investigation and any documentation produced, and also by meetings/interviews with Governors and any Trust officers involved. In carrying out this process the SID will seek the agreement of all interested parties and will have the authority to commission whatever legal or other advice is required following internal protocols
- 5.4 Once the facts are established to the SID's satisfaction, the SID will make a decision on the course of action to be followed in the best interests of the Trust and will describe the reasons for that decision in a written report. In the first instance, the SID will present the decision and the report to Governors and to interested parties within the organisation.
- 5.5 The Chair will the, at the SID's request, call a closed extraordinary meeting of the Council as soon as possible in accordance with the Trust's Constitution. The purpose of this meeting, and the sole item on the agenda, will be for the SID to present his/her report and decision, and for the Council to give its response. Three outcomes are possible:
- 5.5.1 The Council accepts the SID's decision. No further action is necessary
- 5.5.2 The Council does not accept the SID's decision but chooses not to escalate the matter further. No action is prescribed by this Policy but the Council may choose to keep the matter under review at future meetings
- 5.5.3 The Council votes to make a formal notification to NHS England / Improvement through the Lead Governor under the terms of guidance from NHSE/I

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- 5.6 The timescale for completion of this process from raising the concern to receipt of the response should be no more than 14 calendar days unless there are exceptional circumstances resulting in agreement to an extension which is acceptable to all parties.

6.0 DISAGREEMENTS BETWEEN THE BOARD OF DIRECTORS AND COUNCIL OF GOVERNORS

- 6.1 It is important that the Council of Governors discusses and agrees with the Board how it will undertake its statutory roles and responsibilities, and any other additional roles, giving due consideration to the circumstances of the Trust and the needs of the local community and emerging good practice, as set-out in section 10.1 of the Standing Orders.
- 6.2 The Board of Directors must ensure the Council of Governors is provided with all information and involvement where a statutory decision is required by the Council is required.
- 6.3 For any statutory decisions to be made by the Council of Governors, a report will be presented establishing the context and process followed and make a recommendation to the Council of Governors.
- 6.4 The Council of Governors should consider and discuss any recommendation made prior to approving or not approving the recommendation.
- 6.5 If the Council of Governors does not approve the recommendation, the Trust Secretary must ask the Council to provide a rationale and record this in the minutes of the Council of Governors.
- 6.6 The Trust Secretary will report to the Board of Directors that the recommendation has not been approved by the Council of Governors and provide the rationale provided.
- 6.7 The Board of Directors will determine if the non-approval of the recommendation creates a significant risk to the Trust and if so, request the Senior Independent Director (SID) to undertake mediation.
- 6.8 The SID will meet with Governors who did not approve the recommendation to understand the rationale and try to find a way forward.
- 6.9 Following mediation by the SID, the Board of Directors will decide the next steps to be taken, including re-presenting the resolution to the Council of Governors.

7.0 DISPUTES

- 7.1 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (other than a consequence of his own resignation) and that person disputes the decision, he shall as soon as reasonably practicable be entitled to attend a meeting with the Chair and Chief Executive. The Chair and Chief Executive shall use their best endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chair and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.

END