

Council of Governors: 19.7.18

Agenda Item: CGo.7.18.6

Governors Engagement Policy

Presented by:	Paul Pallister, Trust Secretary	Author:	Jacqui Maurice, Head of Corporate Governance
Previously considered by:	Council of Governors held on 19 April 2018		

Key points	Purpose:
The Governors Engagement Policy was approved by the Council of Governors in April 2016.	To discuss and note
The Council of Governors Engagement Policy was presented to the Council of Governors for review and approval on 19 April 2018 and Governors requested that the policy be reviewed in relation to the provisions within the Foundation Trust's Whistle-blowing Policy.	To discuss and note
The Engagement Policy has now been reviewed and considered in relation to the provisions within the Foundation Trust's Whistle-blowing Policy	To note and gain assurance
The Governors Engagement Policy is attached with the proposed amendments presented in 'tracked changes'.	To discuss and note
The Council of Governors is asked to approve the amendments to the Governors Engagement Policy.	To discuss and approve

Executive Summary:
<p>The Foundation Trust Code of Governance (Monitor) recommends that the Council of Governors should establish a policy for engagement with the Board of Directors for those circumstances when they have concerns about the performance of the Board of Directors, compliance with the Provider Licence or other matters related to the general wellbeing of the NHS Foundation Trust.</p> <p>The Governors Engagement Policy was previously approved by the Council of Governors in April 2016. It was presented to the Council of Governors for review and approval on 19 April 2018. The Governors requested that the policy be reviewed and considered in relation to the provisions within the Foundation Trust's Whistle-blowing Policy.</p> <p>The Trust Secretary has undertaken a review and noted that Whistle-blowing policy applies to individual Governors however, the scope of the two policies are different as it is expected that the Governors Engagement Policy will be initiated by a group rather than by an individual.</p> <p>The Engagement Policy is attached at Appendix 1 with the proposed amendments presented in track changes. The proposed amendments seek to provide;</p> <ul style="list-style-type: none"> - Consistency with regard to the corporate terminology, style and format of policies at the Foundation Trust. - Consistency with regard to the Standing Orders - Updates with regard to regulatory changes. - Consistency with the Foundation Trust's Constitution <p>The Council of Governors is asked to review and approve the amendments to the Governors Engagement Policy.</p>

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Financial implications:
No

Regulatory relevance:

Monitor:	Code of Governance
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Equality Impact / Implications:	<p>Is there likely to be any impact on any of the protected characteristics? (Age, Disability, Gender, Gender Reassignment, Pregnancy and Maternity, Race, Religion or Belief, Sexual Orientation, Health Inequalities, Human Rights)</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>If yes, what is the mitigation against this?</p>
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Other:	
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Strategic Objective: <i>Reference to Strategic Objective(s) this paper relates to</i>	To provide outstanding care for patients
	To collaborate effectively with local and regional partners
	To deliver our financial plan and key performance targets
	To be in the top 20% of NHS employers
	To be a continually learning organisation

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COUNCIL OF GOVERNORS ENGAGEMENT POLICY

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Document Control

<u>Policy reference</u>	CG05
<u>Category</u>	Corporate Governance
<u>Strategic objective</u>	To be a continually learning organisation
<u>Author</u>	Trust Secretary
<u>Version</u>	4
<u>Status</u>	Final
<u>Supersedes</u>	Version 3
<u>Executive Lead</u>	Director of Governance and Corporate Affairs
<u>Approval Committee</u>	Board of Directors
<u>Ratified by</u>	Council of Governors
<u>Date ratified</u>	
<u>Date issued</u>	
<u>Review date</u>	
<u>Target audience</u>	All staff
<u>Summary</u>	The purpose of this document is to establish a policy for engagement with the Board of Directors for those circumstances when they have concerns about the performance of the Board of Directors, compliance with the provider licence, or other matters related to the general wellbeing of the NHS Foundation Trust.
<u>Changes since last revision</u>	Minor changes to reflect the new Policy for the Development and Management of Organisation-wide Procedural Documents
<u>Monitoring arrangements</u>	The policy will be kept under review, compared with the provisions developed by other Foundation Trusts and revised in accordance with emerging best practice
<u>Training requirements</u>	None
<u>Equality Impact Assessment</u>	This Policy was assessed in February 2016 to determine whether there is a possible impact on any of the nine protected characteristics as defined in the Equality Act 2010.

Author	Chris Alcock, Trust Secretary
Version	3
Supersedes	V2, Issued 01/05/13
Ratified by	Board of Directors- Council of Governors
Date ratified	19 April 2016
Date issued	26 April 2016
Review date	April 2018

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1. Introduction

This policy has been written in response to the recommendations contained in paragraphs A.5.6 and A.5.7 of *The NHS Foundation Trust Code of Governance* (Monitor, updated 2014) whereby:

- The Council of Governors should establish a policy for engagement with the ~~b~~Board of ~~D~~irectors for those circumstances when they have concerns about the performance of the ~~B~~oard of ~~D~~irectors, compliance with the provider licence, or other matters related to the general wellbeing of the NHS ~~F~~oundation ~~T~~rust. The Council of Governors should input into the ~~b~~Board's appointment of a ~~s~~Senior ~~i~~ndependent ~~D~~irector (see A.4.1);
- The Council of Governors should ensure its interaction and relationship with the ~~b~~Board of ~~d~~irectors is appropriate and effective, in particular, by agreeing the availability and timely communication of relevant information, discussion and the setting in advance of meeting agendas and use, where possible of clear, unambiguous language.

2. Purpose and Scope

2.1 This policy should not be invoked for minor issues raised by an individual Governor. A concern, in the meaning of this policy, should be directly related to the:

- The performance of the Trust and subsequent response of the Board of Directors
- The Trust's compliance with the conditions of Monitor's NHS Improvement's Provider Licence.
- The welfare of the Foundation Trust.

2.2 Similarly, the resolution of disputes between the Council of Governors and the Board of Directors is covered in the Governors' Standing Orders and, in paragraph 18.2 of the Constitution.

Governors should acknowledge the overall responsibility of the Board of Directors for the strategic and operational running of the Foundation Trust and should not use the powers of the Council of Governors, or the provisions of this policy, to challenge unnecessarily the decisions of the Board of Directors.

3. Definitions

~~Monitor – the body corporate known as Monitor, as provided by section 61 of the 2012 Act;~~

- NHS Improvement - From 1 April 2016, NHS Improvement is the operational name for an organisation that brings together: Monitor, NHS Trust Development Authority, Patient Safety (including the National Reporting and Learning System), the Advancing Change Team, and the Intensive Support Teams

- Petitioner/s – A Governor or Governors raising concerns under this policy

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- SID – Senior Independent Director, one of the Non-Executive Directors appointed by the Board of Directors to provide an alternative to the Chairman as source of advice to Governors
- Lead Governor – The Governor elected from within the Council of Governors ~~as Vice Chair of the Council of Governors~~ and has a communication link with ~~Monitor-NHS Improvement~~ to raise formal concerns on behalf of the full Council of Governors. ~~Monitor-NHS Improvement~~ may choose to communicate directly with the Lead Governor where they deem it necessary.
- ~~Panel – the Panel means a panel of persons appointed by Monitor to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing –~~
 - ~~– to act in accordance with its constitution, or~~
 - ~~– to act in accordance with provision made by or under Chapter 5 of the 2006 Act.~~
 - ~~– A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.~~

4. Roles and Responsibilities

4.1 Chair~~man~~

The Foundation Trust Chair~~man~~ acts as the link between the Council of Governors and the Board of Directors. He or she will, therefore, have the principal role in dealing with any issues raised by Governors and will involve~~ing~~ the Chief Executive and/or other Executive Directors and Non-Executive Directors, as necessary.

4.2 Senior Independent Director

The Senior Independent Director (SID) acts as an alternative source of advice to Governors. His or her function is to deal with concerns which would be inappropriate to take to the Chair~~man~~, or where engagement with the Chair~~man~~ has not resolved the matter.

4.3 Governors

Individual Governors have a responsibility to raise concerns (as defined in this policy) and to assure themselves that issues have been resolved. In addition, the Council of Governors as a body has a duty to inform ~~Monitor-NHS Improvement~~ if the Foundation Trust is at risk of breaching the conditions of its provider licence.

4.4 Lead Governor

The Council of Governors appoints from within, one Governor to act as the Lead Governor to communicate directly with NHS Improvement (~~Monitor~~) in the event that the Foundation Trust is at risk of breaching the conditions of its provider licence.

The Trust Secretary ensures that NHS Improvement (~~Monitor~~) is kept updated with the contact details of the Lead Governor.

5. Evidence Requirements

5.1 Governors should not raise concerns that are not supported by evidence. That evidence must satisfy the following criteria:

- Any written statement must be from an identifiable person or persons who must sign the statement and indicate that they are willing to be interviewed about its contents
- Other documentation must originate from a bona fide organisation and the source must be clearly identifiable.

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

6. Raising Concerns

6.1 Notwithstanding the central role of the Chairman in providing the link between the Council of Governors and the Board of Directors, it is recommended that any Governor or group of Governors who have concerns covered by this policy (the petitioner/s) should, in the first instance, consult the Trust Secretary.

He or she might be able to resolve the matter informally and will certainly be able to advise the petitioner/s on the acceptability of the evidence offered and so whether it is appropriate to take their concerns to the Chairman.

The advice of the Trust Secretary is not, however, binding upon the petitioner/s and they retain at all times the right to raise the matter with the Chairman.

For concerns which it would be inappropriate to raise with the Chairman, for example, regarding his or her own performance, the role of the Chairman as described in this section will be undertaken by the SID.

6.2 The Chairman shall investigate all concerns brought to him/her by governors, and will involve the Chief Executive and/or the Executive Management Team or Non-Executive Directors at his/her discretion.

The investigation shall include a review of the evidence offered and discussions with Trust officers as appropriate.

6.3 As soon as practicable after the conclusion of the investigation the Chairman shall meet with the petitioner/s to discuss the findings. This meeting has three possible outcomes:

- The petitioner/s are satisfied that their concerns were unjustified and withdraw them unreservedly. In this case no further action is required.
- The petitioner/s are satisfied that their concerns have been resolved during the course of the investigation. The Chairman shall write a report on the concerns and the actions taken and present this at a closed section of the next scheduled meeting of the Council of Governors. If the Council of Governors agrees that the matter is resolved then no further action is required. However, should a majority of the Council of Governors disagree, then the process for escalation described in section 7 of this engagement policy shall be invoked.
- The matter is not resolved to the satisfaction of the petitioner/s. The Chairman shall call a closed extraordinary meeting of the Council of Governors as soon as possible in

accordance with 7.16.3 (a) of the *Foundation Trust Constitution* to consider the matter further. That meeting may choose either to take no further action or, if a majority of the Governors present agree, to invoke the escalation process described in section 7 of this engagement policy.

7. Escalating Concerns

- 7.1 At this stage of the process the SID will take the lead role for liaising with the petitioner/s. Should the SID be unavailable, or be prevented from participating because of a conflict of interests, then the Council of Governors may choose any other Non- Executive Director to fulfil the role.
- 7.2 The first duty of the SID is to establish the facts of the matter. This will be accomplished by reviewing the evidence offered by the petitioner/s, the process of the investigation and any documentation produced and also by meetings / interviews with the petitioner/s and any Trust officers involved. In carrying out this process the SID shall seek the agreement of all interested parties and shall have the authority to commission whatever legal or other advice is required.
- 7.3 Once the facts are established to his or her satisfaction, the SID shall make a decision on the course of action to be followed in the best interests of the Trust and shall describe the reasons for that decision in a written report. The decision of the SID shall be binding upon the Trust. In the first instance, the SID shall present the decision and the report to the petitioner/s and to interested parties within the organisation.
- 7.4 The SID shall then require the Chairman to call a closed extraordinary meeting of the Council of Governors, as soon as possible, in accordance with 7.16.3 of the *Foundation Trust's Constitution*. The purpose of this meeting, and the sole item on the agenda, will be for the SID to present his or her report and findings and for the Council of Governors to give its response. Then the following outcomes should be considered:
- More than half the members of the Council of Governors voting accept the findings of the SID and no further action is necessary, or;
 - More than half the members of the Council of Governors voting do not accept the findings of the SID but choose not to escalate the matter further. No further action is prescribed by this policy but the Council of Governors may choose to keep the matter under review at future meetings, or;
 - a governor, may refer a question to the Panel if more than half of the members of the Council of Governors voting approve the referral. Any such referral will be reported in the Foundation Trusts subsequent annual report. More than half the members of the Council of Governors voting do not agree with the findings of the SID. At this point the Council of Governors shall seek mediation through the appointment of mutually agreed mediators, who shall not be members of the Foundation Trust. Should such mediation fail the dispute will be determined through reference to arbitration under the terms of the Arbitration Act 1996.

8. Equality Impact Assessment

This Policy was assessed in February 2016 to determine whether there is a possible impact on any of the nine protected characteristics as defined in the Equality Act 2010. It has potential impact on:

- Disability:

It is recognised that some staff and members (public, patients and staff as defined within the eCConstitution) and the general public may require support, have specific needs or be unable to understand or read the text of this policy. In such instance it will be explained on a one-to-one basis by the Department responsible for this policy or the manager of the member of staff. Any support will be provided in confidence.

- Race and ethnicity:

It is recognised that some members (public, patients and staff as defined within the constitution) and the general public may require support, or be unable to understand or read the text of this policy. In such instance it will be explained on a one-to-one basis by members of the Governance Team.

It is has been found not to have impact on:

- Age
- Gender
- Gender reassignment
- Marriage and civil partnership
- Maternity/pregnancy
- Religion and belief
- Sexual orientation.

It has also been assessed to determine whether it impacts on human rights against the FREDA principles (Fairness, Respect, Equality, Dignity, Autonomy) and it is considered that it does not have impact. This assessment will be reviewed when the policy is next updated or sooner if evidence of further impact emerges.

9. Privacy Impact Assessment

The Privacy Impact Screening Tool was completed for this policy and no privacy implications were identified.

10. Financial Implications

9.

This policy has no financial impact.

11. Duty of Candour which includes the Being Open Framework

There are no implications associated with the Duty of Candour policy or Being Open framework in relation to this policy.

12. Patient and Public Involvement

Patients and the public were not involved in writing this policy.

13. Training Requirements

Training is not required.

14. Review

This policy will be reviewed by the Board of Directors and the Council of Governors every two years and formally recorded in the minutes of their respective meetings.

15. Monitoring Compliance and Effectiveness

The policy will be kept under review, compared with the provisions developed by other Foundation Trusts and revised in accordance with emerging best practice.

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12.16. _____ Dissemination

This policy will be made available to Trust staff via the document library on the intranet.

This policy will be distributed to all Governors.

13.17. _____ Document Management

The document management system and archiving processes for the policy will be maintained by the Health Library and Information Service.

14.18. _____ References

- Monitor (updated 2014) *The NHS Foundation Trust Code of Governance*
- Foundation Trust Constitution updated ~~November 2015~~ [January 2018](#)
- ~~2006~~ [National Health Service Act 2006](#)
- ~~2012 NHS Act~~ [Health and Social Care Act 2012](#)
- Monitor: Model Core Constitution [for NHS Foundation Trusts](#) (April 2013)
- Standing Orders [of the](#) Council of Governors.