

**POLICY AND PROCEDURE FOR COUNCIL OF GOVERNORS:
 RAISING CONCERNS**

Version:	3
Ratified by:	Senior Managers Operational Group
Date ratified:	June 2015
Title of originator/author:	Secretary to the Trust
Title of responsible committee/group:	Council of Governors
Date issued:	August 2015
Review date:	May 2018
Relevant Staff Groups:	Council of Governors

This document is available in other formats, including easy read summary versions and other languages upon request. Should you require this please contact the Equality and Diversity Lead on 01278 432000

DOCUMENT CONTROL

Reference Number	Version	Status	Author
RZ/Nov14/CGRC	3	Final	Secretary to the Trust
Amendments	<ul style="list-style-type: none"> the change from “Members Council” to “Council of Governors” and from “Council Members” to “Governors”; the revised “NHS Foundation Trusts Code of Governance”; the establishment of an Independent Panel for Advising Governors; 		
<p>Document objectives: This document describes the process by which the Council of Governors can engage with the Board of Directors in circumstances when they have concerns about the performance of the Board of Directors, compliance with the conditions of the Trust’s licence or the welfare of the Trust (Para A.5.6 of the Monitor Code of Governance).</p> <p>Further this document describes how the Council of Governors should inform Monitor if the Trust is at risk of breaching the terms of its authorisation if these concerns cannot be resolved at a local level. This provision is informed by A.5.8 of the Monitor Code of Governance, which states that:</p> <p>“The Council of Governors should only exercise its power to remove the chairman or any non-executive directors after exhausting all other means of engagement with the Board of Directors”.</p> <p>The Council of Governors also have the option to refer a question about whether the Trust has failed or is failing to act in line with its Constitution to the Independent Panel of Advising Governors. This provision is informed by A 5.14 of the Monitor Code of Governance, which states that:</p> <p>“Governors have the right to refer a question to the independent panel for advising governors. More than 50% of governors who vote must approve this referral. The Council should ensure dialogue with the Board of Directors takes place before considering such a referral, as it may be possible to resolve questions in this way.”</p>			
Intended recipients: All Governors, the Board of Directors, and Members of the Trust.			
Committee/Group Consulted: Council of Governors, Board			
Monitoring arrangements and indicators: Monitoring will be by Senior Independent Director and the Council of Governors			
Training/resource implications: General awareness for all Trust staff. Specifically all in-patient staff to understand Data Protection implications of this policy.			
Approving body and date	Trust Board		Date: 26 May 2015
Formal Impact Assessment	Impact Part 1		Date: June 2015
Ratification Body and date	Senior Managers Operational Group		Date: June 2015
Date of issue	August 2015		
Review date	May 2018		

Contact for review	Secretary to the Trust
Lead Director	Director of Governance and Corporate Development

CONTRIBUTION LIST Key individuals involved in developing the document

Name	Designation or Group
Roger Powell	Senior Independent Director/Non Executive Director
Ria Zandvliet	Secretary to the Trust
Sheila Harvey	Lead Governor
All Governors	Council of Governors
Andrew Sinclair	EIA / Head of Corporate Business

CONTENTS

Section	Summary of Section	Page
Doc	Document Control	2
Cont	Contents	4
1	Introduction	5
2	Purpose & Scope	5
3	Duties and Responsibilities	6
4	Explanations of Terms used	6
5	Procedures	8
6	Equality Impact Assessment	11
7	Monitoring Compliance and Effectiveness	11
8	Counter Fraud	11
9	Relevant Care Quality Commission (CQC) Registration Standards	11
10	References, Acknowledgements and Associated documents	12

1. INTRODUCTION

- 1.1 It is the Trust's policy to treat the concerns of Governors with all due seriousness and to resolve them as expeditiously as possible according to a predetermined and agreed procedure. Nevertheless, it is also the Trust's intention that all efforts should be made to resolve such issues informally wherever possible before invoking this procedure.
- 1.2 This policy has been written in response to the recommendations contained in paragraphs A 5.6 and A.5.8 of *The NHS Foundation Trust Code of Governance* (Monitor, 2013)
- 1.3 In the case of less serious concerns, or matters which can be resolved informally, then the Governors should approach the Chairman or Secretary to the Trust or the Lead Governor.
- 1.4 Over and above the procedure for raising concerns, the Governors are encouraged to engage with the Chairman and the Board of Directors through a number of formal and informal routes including:
- the working groups of the Council of Governors;
 - members' days;
 - discussion at Council of Governors meetings.
- 1.5 The Council of Governors have the option to refer a question about whether the Trust has failed or is failing to act in line with its Constitution, or Chapter 5 of the NHS Act 2006, to the Independent Panel of Advising Governors. This provision is informed by paragraph A.5.14 of the *NHS Foundation Trust Code of Governance* (Monitor, 2013).

2. PURPOSE AND SCOPE

- 2.1 The purpose of this policy is to describe the methods by which Governors may raise:
- serious concerns about the performance of the Board of Directors, compliance with the conditions of the Trust's licence or the welfare of the Trust;
 - minor concerns;
 - concerns relating to failing to act in line with the Trust's Constitution or Chapter 5 of the NHS Act 2006.
- 2.2 This policy is not to be invoked for minor issues or issues that relate to the performance of an individual member of the Board of Directors.

2.3 Governors and Directors must ensure that full confidentiality is maintained in relation to all issues covered by this policy throughout all stages of its application.

3. DUTIES AND RESPONSIBILITIES

3.1 Chairman

The Trust Chairman acts as the link between the Council of Governors and the Board of Directors. He or she will have the principal role in dealing with any serious concerns raised by the Council of Governors, and will involve the Chief Executive as necessary.

3.2 The Senior Independent Director (“SID”)

The Senior Independent Director (SID) shall have responsibility for dealing with concerns raised where these directly involve the Chairman or where the Chairman calls upon the SID to review an unresolved concern. She or he also has overall lead responsibility for the review of this policy and procedure.

3.3 Lead Governor

The Lead Governor has been elected by the Council of Governors to act as a channel to Monitor when there are serious concerns and to assure themselves that issues are either:

- unjustified (following investigation), and therefore require no further action;
- entirely resolved, and therefore require no further action;
- addressed by a robust action plan that is being implemented in a timely manner and monitored at the highest level; or
- escalated appropriately.

3.4 Council of Governors

The Council of Governors, as a body, has a duty to inform Monitor if the Trust is at real risk of breaching the conditions of its licence.

3.5 Secretary to the Trust

The Secretary to the Trust is responsible for administering the Raising Concern process.

4. EXPLANATIONS OF TERMS USED

- **Monitor** – the independent regulator of NHS foundation trusts;
- **Council of Governors** - the elected and appointed body which represents patients, carers, partner organisations and the wider community;

- **Governor** – any elected or appointed member of the Council of Governors, holding office at the time that the concern is raised;
- **Independent Panel for Advising Governors** - panel set up to provide advice in relation to constitutional questions or questions in relation to Chapter 5 of the NHS Act 2006;
- **Lead Governor** – elected by Council of Governors to liaise with Monitor in the circumstances described;
- **Chairman** – the Chairman of the Trust;
- **Board of Directors** – the Executive and Non-Executive Directors of the Trust;
- **Senior Independent Director** – a Non-Executive Director of the Trust who is nominated and elected by the Council of Governors in line with the Monitor Code of Governance. Her or his role is to act as an identified person with whom the Council of Governors may raise concerns where it is not possible or appropriate for the Council of Governors to raise concerns directly with the Chairman;
- Serious concern - a serious concern, in the context of this policy, must be directly related to:
 - the performance of the Board of Directors;
 - compliance with the conditions of the Trust's licence;
 - welfare of the Trust.
- **The Secretary to the Trust** – is an appointed employee of the Trust who has responsibility for advising the Board and Council of Governors (with appropriate advice from the Director of Governance and Corporate Development) on matters of process and procedure and fulfils the role that would be undertaken by a Company Secretary within a private or commercial organisation. He or she is not a Director of the Trust or a member of the Board, although he or she is in attendance at Board and Council of Governors meetings;
- **The Director of Governance and Corporate Development** – is the Executive Director with overall responsibility for Governance within the Trust, who will advise the Chief Executive, the Chairman and the Board of Directors on matters of Governance.

5. PROCEDURES

SERIOUS CONCERNS (AS SET OUT IN THE DEFINITION ABOVE)

5.1 **Evidence requirements** - Governors should not raise serious concerns unless they are supported by firm 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;

in exceptional circumstances it can be accepted that it may not be possible to produce written statements and the Lead Governor will make the decision as to the appropriate process to be followed. Anonymous evidence will not be accepted however the source of the evidence may be withheld at the discretion of the Lead Governor.

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

5.2 **Raising Concerns** - Any Governor or group of Governors who have a concern covered by this policy should in the first instance consult the Lead Governor who will consult with the Secretary to the Trust. He or she may be able to resolve the matter informally and if not, will advise the Governors on the acceptability of evidence offered and whether it is acceptable to take the concern to the Chairman.

5.2.1 The advice of the Secretary to the Trust is not binding upon the Council of Governors and the Council of Governors retain the right at all times to raise the matter with the Chairman directly.

5.2.2 The Chairman shall investigate serious concerns brought to him or her in accordance with this policy. He or she shall *inform* the Senior Independent Director (“SID”) and the Chief Executive and may *involve* the SID or Chief Executive at his or her discretion.

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

5.2.4 As soon as practicable, after the conclusion of the investigation, the Chairman shall meet with the Governor(s) who have raised concerns to present and discuss the findings. The meeting will be noted by the Secretary to the Trust. The meeting will have one of the following possible outcomes:

- Governor(s) are satisfied that their concern was unjustified. In this case, no further action is required;

- Governor(s) are satisfied that their concern has been addressed. In this case, no further action is required;
- Governor(s) are not satisfied that their concern has either been resolved during the course of the investigation or is addressed by a robust action plan that is being implemented in a timely manner and monitored at the highest level;
 - the Chairman shall then present a written report about the concern, the investigation, its findings and any actions (proposed or taken) in a closed section within the next scheduled meeting of the Council of Governors or call a closed extraordinary meeting of the Council of Governors. The Council of Governors may then agree that:
 - they are satisfied that the concern has either been resolved during the course of the investigation or is addressed by a robust action plan that is being implemented in a timely manner and monitored at the highest level; or
 - they will request further information and agree arrangements to review the matter at a future meeting.

5.2.5 If the matter is not resolved to the satisfaction of the Council of Governor(s), the Chairman shall ask the SID to review the matter. After this review the Chairman or the SID will call a closed extraordinary meeting of the Council of Governors as soon as possible in accordance with the Constitution and Standing Orders to present a written report about the concerns, the investigation, its findings and any actions (proposed or taken). The Council of Governors will review the Chairman's (and SID's) report and decide whether:

- the concerns are unjustified, and that no further action is necessary;
- the concerns have been resolved during the course of the investigation or are addressed by a robust action plan that is being implemented in a timely manner and monitored at the highest level; The Council of Governors may then agree to take no further action or to keep the matter under review at a future general meeting of the Council of Governors;
- further information is required and make appropriate arrangements to receive and review the information;
- to vote to make a formal notification to Monitor under the terms of *The NHS Foundation Trust Code of Governance*.

The seriousness of such an action cannot be overemphasised therefore such a decision can only be made if two thirds of the Council of Governors in total vote in favour of it. Only Governors present at the meeting are able to vote. This is to ensure that the decision is taken on the basis of the debate and discussion expressed in the meeting. Moreover, the names of those voting and the way they cast their votes shall be recorded in the minutes.

- 5.3 Where a Governor(s) wish(es) to raise a concern which directly involves the Chairman, or where the Governor(s) feel that for other substantial reasons they are unable to approach the Chairman, then they shall approach the SID.
- 5.4 The SID will decide if the reasons for not approaching the Chairman are reasonable. If not then she or he will direct the matter to the Chairman. Where the SID decides that the matter has been raised with him/her appropriately then she or he will follow the process outlined in paras 5.2.3 to 5.2.5 above.
- 5.5 Where the Chairman is unavailable or is likely to be unavailable for any protracted period of time then her or his place shall be taken by the Deputy Chairman.

MINOR CONCERNS

- 5.6 In the case of less serious concerns, or matters which can be resolved informally, then the Governors should approach the Chairman or Secretary to the Trust or the Lead Governor.

CONCERNS RELATING TO FAILING TO ACT IN LINE WITH THE CONSTITUTION OR CHAPTER 5 OF THE NHS ACT 2006

- 5.7 The Council of Governors have the option to refer a question about whether the Trust has failed or is failing to act in line with its Constitution, or Chapter 5 of the NHS Act 2006, to the Independent Panel of Advising Governors ("Panel"). This provision is informed by paragraph A.5.14 of the *NHS Foundation Trust Code of Governance (Monitor, 2013)*.
- 5.8 To be able to make an application to the Panel, the related matter will need to have been subject to a discussion by the Council of Governors, and more than half of the governors voting must agree that the matter should be referred to the Panel. The Panel will not be able to accept any applications without evidence that this process has been followed.
- 5.9 The Panel will also be looking for evidence of attempts to resolve the matter internally prior to seeking the advice of the Panel.

6. EQUALITY IMPACT ASSESSMENT

- 6.1 All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. In addition, the Trust has identified Learning Disabilities as an additional tenth protected characteristic. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Equality and Diversity Lead who will then actively respond to the enquiry.

7. MONITORING COMPLIANCE AND EFFECTIVENESS

- 7.1 The Council of Governors (with input from the SID) shall have responsibility for reviewing the effectiveness of this policy as part of their annual self evaluation. The policy will be reviewed on a three year basis and the SID has overall lead responsibility for the review of this policy and procedure.

8. COUNTER FRAUD

- 8.1 The Trust is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

9 RELEVANT CARE QUALITY COMMISSION (CQC) REGISTRATION STANDARDS

- 9.1 Under the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3)**, the fundamental standards which inform this procedural document, are set out in the following regulations:

Regulation 16:	Receiving and acting on complaints
Regulation 17:	Good governance
Regulation 19:	Fit and proper persons employed
Regulation 20:	Duty of candour
Regulation 20A:	Requirement as to display of performance assessments.

- 9.2 Under the **CQC (Registration) Regulations 2009 (Part 4)** the requirements which inform this procedural document are set out in the following regulations:

Regulation 18:	Notification of other incidents
----------------	---------------------------------

- 9.3 Detailed guidance on meeting the requirements can be found at <http://www.cqc.org.uk/sites/default/files/20150311%20Guidance%20for%20providers%20on%20meeting%20the%20regulations%20FINAL%20FOR%20PUBLISHING.pdf>

Relevant National Requirements

The NHS Foundation Trust Code of Governance (Monitor, 2013)

10. REFERENCES, ACKNOWLEDGEMENTS AND ASSOCIATED DOCUMENTS

10.1 Cross reference to other procedural documents

Confidentiality and Data Protection Policy

Development & Management of Organisation-wide Procedural Documents Policy and Guidance

Equality and Diversity Policy

Ethical Standards and Code of Conduct Policy

Trust's Constitution

Untoward Event Reporting Policy and procedure

Whistleblowing Policy

All current policies and procedures are accessible on the Trust internet
Trust Guidance is accessible to staff on the Trust Intranet (within
Policies and Procedures).