
DATE	24 September 2013
REPORT FOR	Trust Board of Directors – Part A
REPORT FROM	Wendy Booth, Director of Clinical and Quality Assurance & Trust Secretary
CONTACT OFFICER	Wendy Booth, Director of Clinical and Quality Assurance & Trust Secretary
SUBJECT	Council of Governors Engagement Policy
BACKGROUND DOCUMENT (IF ANY)	None
REPORT PREVIOUSLY CONSIDERED BY & DATE(S)	Council of Governors Meeting on 18 September 2013
EXECUTIVE COMMENT (INCLUDING KEY ISSUES OF NOTE OR, WHERE RELEVANT, CONCERN AND / OR NED CHALLENGE THAT THE BOARD NEED TO BE MADE AWARE OF)	The report provides the updated and finalised Council of Governors Engagement Policy
HAVE THE STAFF SIDE BEEN CONSULTED ON THE PROPOSALS?	N/A
HAVE THE RELEVANT SERVICE USERS/CARERS BEEN CONSULTED ON THE PROPOSALS?	N/A
ARE THERE ANY FINANCIAL CONSEQUENCES ARISING FROM THE RECOMMENDATIONS?	NO
IF YES, HAVE THESE BEEN AGREED WITH THE RELEVANT BUDGET HOLDER AND DIRECTOR OF FINANCE, AND HAVE ANY FUNDING ISSUES BEEN RESOLVED?	N/A
ARE THERE ANY LEGAL IMPLICATIONS ARISING FROM THIS PAPER THAT THE BOARD NEED TO BE MADE AWARE OF?	NO
WHERE RELEVANT, HAS PROPER CONSIDERATION BEEN GIVEN TO THE NHS CONSTITUTION IN ANY DECISIONS OR ACTIONS PROPOSED?	YES
ACTION REQUIRED BY THE BOARD	The Board is asked to approved the updated policy

FINAL DRAFT

Chief Executive's Office

COUNCIL OF GOVERNORS ENGAGEMENT POLICY

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Northern Lincolnshire and Goole Hospitals NHS Foundation Trust actively seeks to promote equality of opportunity. The Trust seeks to ensure that no employee, service user, or member of the public is unlawfully discriminated against for any reason, including the "protected characteristics" as defined in the Equality Act 2010. These principles will be expected to be upheld by all who act on behalf of the Trust, with respect to all aspects of Equality.

1.0 Purpose

This policy:

- outlines the mechanisms by which governors and directors will interact and communicate with each other and takes into account the expanded role of governors, set out in the National Health Service Act 2006 as amended by the Health & Social Care Act 2012 (the Act), including the new duty to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors;
- 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 Licence (as granted by Monitor under the Health & Social Care 2012) or the welfare of the NHS Foundation Trust;
- provides details of the panel set up by Monitor for supporting governors of Foundation Trusts in their new role and to whom governors may refer a question as to whether the Trust has failed or is failing to act in accordance with its Constitution.

2.0 Area

Holding to Account

- 2.1** The Health and Social Care Act 2012 specifies that it is the duty of the Council of Governors to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors. The definition of this is open to interpretation, but broadly speaking this duty requires governors to question non-executive directors about how they have set the Trust's proposed strategy and forward plan and measured its performance against them, so that they are satisfied that the Board has acted to take the interests of members and of the public appropriately in to account and ensure that the Trust is not at risk of breaching its Licence. In performing this duty, governors should keep in mind that the Board of Directors manages the Trust and continues to bear ultimate responsibility for the Trust's strategic planning and performance and must promote the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.
- 2.2** The process of engagement between the Council of Governors and Board of Directors is clearly one which is already ongoing and routine, however, this policy, agreed between the Board of Directors and the Council of Governors, aims to outline existing and additional mechanisms which have been agreed and which will be used by the Trust to ensure communication between the Council of Governors and the Trust Board and ensure that governors are able to discharge the above new duty effectively, harmoniously and recognising the different and complimentary roles of each body. In support of the duty to hold to account, the Council of Governors also has the statutory power to require one or more of the directors to attend a governors' meeting for the purpose of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and for deciding whether to propose a vote on the Trust's or directors' performance). Whilst it is recognised that this power will rarely be exercised, should this power be invoked, it must be reported in the report and accounts. The aim of this policy is to have agreed levels of

engagement which will eliminate or at least minimise the need of governors to ever invoke this statutory power.

Raising Concerns

2.3 Where material concerns exist regarding the performance of the Board of Directors, compliance with the Trust's Licence or matters relating to the general well-being of the Trust, this policy should be followed. This policy is not to be invoked for minor issues raised by an individual governor. A concern, in the meaning of this policy, must be directly related to:

- the performance of the Board of Directors;
- compliance with the Trust's Licence;
- the welfare of the Foundation Trust.

2.4 The procedure for a situation in which the Council of Governors as a whole is in dispute with the Board of Directors is covered in section 43.0 of the *Trust Constitution*. Governors should acknowledge the overall responsibility of the Board of Directors for running the Trust and should not try to use the powers of the Council, or the provisions of this policy, to impede the Board in fulfilling its duty.

2.5 To support governors in their new expanded role, Monitor has set up a 'Panel for Advising Governors of FTs' who may refer a question as to whether the Trust has failed or is failing to act in accordance with its Constitution. The Council of Governors should only consider referring a question to the panel in *exceptional circumstances*, where there is uncertainty within the Council about whether the Trust may have failed, or is failing, to act in accordance with the Trust's Constitution or with Chapter 5 of the 2006 Act, and this uncertainty cannot be resolved through repeated discussions with the Chair or another Non-Executive Director. Please also see section 4.13 below.

3.0 Duties

3.1 Chairman

The Trust Chairman:

- acts as the principal link between the Council of Governors and the Board of Directors. He or she will, therefore, have the main role in dealing with any issues raised by governors, and will involve the Chief Executive and/or the Director of Finance, Planning and Performance Management and other directors as necessary;
- ensures that the Board of Directors and Council of Governors work together effectively and enjoy constructive working relationships (including the resolution of any disagreements);
- ensures good information from and between the Board of Directors, Committees, Council of Governors and members and between the Senior Management and Non-Executive Directors, members of the Council of Governors and Senior Management;

- ensures that the Council of Governors and Board of Directors receive accurate, timely and clear information that is appropriate for their respective duties;
- constructs the agendas for both the Board of Directors and Council of Governors (with the input of others as appropriate).

3.2 Chief Executive

The Trust Chief Executive:

- ensures the provision of information and support to the Board of Directors and Council of Governors and ensures that Board of Directors' decisions are implemented;
- facilitates and supports effective joint working between the Board of Directors and Council of Governors;
- supports the Chairman in his/her task of facilitating effective contributions and sustaining constructive relations between Executive and Non-Executive members of the Board of Directors, elected and appointed members of the Council of Governors and between the Board of Directors and Council of Governors;
- with the Chairman, ensures that the Council of Governors and Board of Directors receive accurate, timely and clear information that is appropriate for their respective duties;
- with the Chairman, constructs the agendas for both the Board of Directors and Council of Governors (with the input of others as appropriate).

3.3 Senior Independent Director

The Senior Independent Director (SID):

- acts as an alternative source of advice to governors and is available to members and governors if they have concerns which contact through the normal channels of Chairman, Chief Executive and Finance Director has failed to resolve or for which such contact is inappropriate.

3.4 Governors

Individual governors have a responsibility to act in accordance with this policy, 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 if the Trust is at risk of breaching the terms of its Licence.

4.0 Actions

Holding to Account

4.1 The relationship between the Council of Governors and Board of Directors is critical and there are a number of ways an open and constructive relationship can be achieved between the two. Board members and governors should have the opportunity to meet at regular intervals, governors should feel comfortable 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.

4.2 Governors will hold the chair and other non-executive directors to account partly through effectively undertaking the specific statutory duties summarised here:

- governors are responsible for appointing the chair and other non-executive directors and may also remove them in the event of unsatisfactory performance;
- governors have the right to receive the annual report and accounts of the Trust, and can use these as the basis for their questioning of non-executive directors;
- governors have the power to appoint or remove the auditor;
- directors must take account of governors' views when setting the forward plan for the Trust, giving governors the opportunity to feed in the views of trust members and the public and to question the non-executive directors if these views do not appear to be reflected in the strategy. Since 1 October 2012, where directors put a proposal in the forward plan for an activity outside of the principal purpose of the Trust, the governors must decide whether carrying on the activity, to any significant extent, interferes with the Trust's principal purpose, and must notify the directors of its determination. However, governors should understand there may be valid reasons why member views cannot always be acted upon. Governors and non-executive directors should have enough time to discuss these matters so governors can be satisfied with the reasons behind the board decisions;
- since 1 October 2012, governors have also had the specific power of approval on any proposal by the Board of Directors to increase non-NHS income by 5% a year or more. They therefore need to be satisfied with the reasons behind any such proposals;
- governors also have the power to approve amendments to the Trust's constitution, approve 'significant transactions' and approve any mergers, acquisitions, separation or dissolution and will need to be satisfied with the reasons behind any proposals.

4.3 It is clear that there are already a number of well-defined mechanisms in existence within the Trust for governors to receive or seek information from and hold the Board and the directors and non-executive directors to account including:

- receiving the agenda and minutes of Board meetings and requesting any specific papers. Governors are also invited to attend Board meetings and have the opportunity to ask questions on the contents of the Board minutes and decisions at Council of Governor meetings;
- receiving the annual report and accounts and asking questions on their content;
- receiving the monthly quality report and annual quality account and asking questions on and / or challenging their content;
- receiving in-year information updates e.g. finance and performance, quality, mortality and asking questions on and / or challenging their content;
- receiving performance appraisal information for the chair and other non-executive directors, via the Appointments & Remuneration Committee, and using this to inform decisions on remuneration for the chair and the other non-executive directors;
- the attendance of the chief executive, other executive and non-executive directors at Council of Governors meetings and using these opportunities to ask them questions;
- the attendance of the chief executive, other executive and non-executive directors at the annual review of performance of the Council of Governors;
- receiving information on internal consultations, developments and media releases;
- briefings from the Chief Executive and Chairman for governors leading on the governor / member clinics for their constituencies;
- receiving information on issues or concerns likely to generate adverse media interest and providing governors with the opportunity to raise questions or seek information or assurances;
- involvement of governors in the Trust's strategy and planning process through the holding of an annual planning session for governors led by the Director of Finance, Planning & Performance.

4.4 The following additional measures (some of which are mandatory under the Health & Social Care Act) and which are intended to support governors in their extended role and to ensure that governors are well briefed about the decisions which they may be required to make and about the context in which the Board of Directors is working including the requirements of relevant external stakeholders including Commissioners, Monitor and the CQC, have and are being introduced :

- engagement with directors to share concerns or raise questions about performance, such as by way of joint meetings between the Council of Governors and non-executive directors with or without the Chairman (and in private if required);
- a briefing from the Chairman and Chief Executive to precede each meeting of the Council of Governors. The briefing will cover the agenda and any matters on

the agenda which the Chairman and Chief Executive consider requires special attention. There will be sufficient time for governors to ask questions on any item on the agenda;

- receiving information on proposed significant transactions, mergers, acquisitions, separations or dissolutions and questioning the directors on these;
- receiving information on documents relating to non-NHS income, in particular any proposals to increase this by 5% a year or more, and questioning the directors on these;
- the holding of annual development workshops – not least in order to ensure that Governors are equipped with the skills and knowledge they require in order to fulfil their expanded role;
- the attendance of the Chair of the Governor Steering Group at meetings to set the agenda for the Council of Governors;
- each Council of Governors meeting to be preceded by a briefing for governors from the Chairman and Chief Executive;
- the submission of a formal monthly briefing from the Trust Board to governors on key decisions made following each Board meeting;
- the provision of an annual report to the Governor Steering Group from each Trust Board sub-committee chair to include the outcome of the annual review of performance and in turn a report from the Steering Group to the full Council of Governors;
- governors have already taken the decision to elect a Lead Governor and specific responsibilities in terms of governor and board engagement might also be built into the role description for this position. There are already joint meetings between the Chairman and Lead Governor. These are being formalised to include an agenda for and written record of the meeting. The Trust Secretary will attend part of these meetings. Date and times of these meetings will be published in the Annual Calendar of Events and will be available to all members of the Council of Governors. The highlights report of the most recent meeting of the Board of Directors will be a standing item on the agenda for the meeting. The minutes from these meetings will be submitted to the Steering Group;
- the direct involvement of individual governors with the NED appraisal process, possibly through the Lead Governor;
- Non-Executive Directors will, in future, chair the plenary sessions at Annual Review of Performance of the Council of Governors.

4.5 Additional statutory means available to governors for holding non-executive directors to account (where serious concerns exist and in extreme circumstances):

- dialogue with Monitor via the lead governor. **Note:** “The existence of a lead governor does not, in itself, prevent any governor making contact with Monitor directly if they feel it is necessary” but see also 4.13 below;

- putting questions to the new Monitor Governor Panel where the circumstances meet the requirements in the 2012 Act – see section 4.13 below.

Raising Concerns

4.6 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.

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

4.8 Notwithstanding the central role of the Chairman in providing the link between the Council of Governors and the Board of Directors, it is highly recommended that any governor or group of governors who have concerns covered by this policy should, in the first instance, consult the Trust Secretary for advice and guidance. He or she will seek to resolve the matter informally and will certainly be able to advise the governor/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 governor/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.

4.9 The Chairman shall investigate all concerns brought to him by governors, involving the Chief Executive and/or the Director of Finance & Performance Management at his discretion. The investigation shall include a review of the evidence offered and discussions with trust officers as appropriate.

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

- the governor/s are satisfied that their concerns were unjustified and withdraw them unreservedly. In this case no further action is required;
- the governor/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 to the Council of Governors.
- the matter is not resolved to the satisfaction of the governor/s. The Chairman shall call a closed extraordinary meeting of the Council of Governors as soon as possible in accordance with the terms of the *Trust Constitution* to consider the matter further. That meeting may choose either to take no further action or, if two thirds of the governors present agree, to invoke the escalation process described from section 4.11 onwards.

Escalating Concerns

- 4.11 At this stage of the process the SID takes over the lead role from the Chairman. 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.
- 4.12 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 governor/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.
- 4.13 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 governor/s and to interested parties within the organisation.
- 4.14 The Chairman shall then, at the request of the SID, call a closed extraordinary meeting of the Council of Governors as soon as possible in accordance with the terms of the *Trust 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 decision and for the council to give its response. Three outcomes are possible:
- the council accepts the decision of the SID. In this case no further action is necessary
 - the council does not accept the decision of the SID but chooses 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

the council votes to refer a question for legal review or make a formal notification to the Panel for Advising Governors of FTs. The seriousness of the latter cannot be overemphasised. If such a question or any other important issue or uncertainty arises, governors should always seek to discuss it in the first instance with the Chair or another Non-Executive Director. Monitor strongly encourages all FTs and governors to try to resolve questions internally before posing a question to the Panel only as a last resort. The Council of Governors should only consider referring a question to the panel in *exceptional circumstances*, where there is uncertainty within the council about whether the Trust may have failed, or is failing, to act in accordance with the Trust's Constitution or with Chapter 5 of the 2006 Act, and this uncertainty cannot be resolved through repeated discussions with the Chair or another Non-Executive Director. A governor may only refer a question to the Panel if more than half of the members of the Council of Governors voting approve the referral. Individual governors may not bring a question to the panel without the approval of the Council as a whole. The panel will then decide whether to carry out an investigation on a question referred to it. If an investigation is carried out, the panel will publish a report on the conclusion. It is noted that the Trust will not necessarily be required to

adhere to the panel's decision.

5.0 Monitoring Compliance and Effectiveness

This policy will be kept under review, compared with the provisions developed by other foundation trusts and revised in accordance with emerging best practice and guidance from Monitor.

6.0 References

- 6.1** Monitor (2010) *The NHS Foundation Trust Code of Governance (due to be updated)*.
- 6.2** *Trust Constitution*.
- 6.3** Monitor (2012) *Your statutory duties: a draft reference guide for NHS Foundation Trust governors*

7.0 Definitions

- 7.1** Monitor – The independent regulator of NHS foundation trusts
- 7.2** Petitioner/s – A governor or governors raising concerns under this policy
- 7.3** SID – Senior Independent Director, one of the non-executive directors appointed by the board to provide an alternative to the Chairman as source of advice to governors.

8.0 Dissemination

- 8.1** This policy will be made available to trust staff as a controlled document in the Chief Executive's section of the intranet.
- 8.2** This policy will be distributed in hard copy to all governors as soon as possible after their election or appointment and whenever it is revised.

The electronic master copy of this document is held by Document Control, Office of the Director of Clinical and Quality Assurance & Trust Secretary, NL&G NHS Foundation Trust.

Document comparison by Workshare Professional on 29 January 2013 16:19:10

Input:	
Document 1 ID	interwovenSite://IDMS1MAN/ADMIN/11547913/1
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Description	#11548184v1<ADMIN> - NLAG engagement policy amends
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Statistics:	
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