

## Office of the Trust Secretary

# PROTOCOL FOR RESERVING MATTERS TO A PRIVATE BOARD MEETING

Reference:	DCM100
Version:	1.2
This version issued:	07/10/20
Result of last review:	Minor changes
Date approved by owner (if applicable):	N/A
Date approved:	06/10/20
Approving body:	Trust Board
Date for review:	October, 2023
Owner:	Helen Harris, Trust Secretary
Document type:	Miscellaneous
Number of pages:	7 (including front sheet)
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Northern Lincolnshire and Goole 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.

In accordance with the Trust's Constitution, Northern Lincolnshire & Goole NHS Foundation Trust holds its Trust Board meetings in public.

The Trust's Constitution provides, at paragraph 17.3 of Part III – Meetings of the Trust Board, that for 'special reasons', the Trust Board may resolve to meet in private session and exclude members of the public (which could include the press). This is sometimes known as 'Part II'.

Inevitably, some of the Trust's business is more appropriately considered in private session. The Board will usually consider as unsuitable for discussion in public, issues about the award of contracts, disciplinary matters and matters concerning staff or any identifiable patient. Other issues are harder to identify in advance.

In determining which matters should be reserved for private consideration, one factor that the Trust may consider is whether the information to be discussed would be exempt from disclosure under the Freedom of Information (FOI) Act 2000. If information would be exempt from disclosure under FOI laws, then it is likely that it should be considered during the private session of a Trust Board meeting.

This document has therefore been prepared in order to outline the exemptions most likely to apply to material considered by the Trust Board and to provide guidance for Directors on those matters which should be reserved for discussion within private session. **N.B.** It should be stressed however that, in order to ensure openness and transparency of decision making, the default position will remain that unless there is a clear exemption; matters will be routinely considered in public.

FOI section	Reason for Reservation	Examples
14 (1)	<p>Vexatious Requests - The Act does not oblige the Trust to comply with a request for information if the request is vexatious</p> <p>Section 14(1) may be used in a variety of circumstances where a request, or its impact on a public authority, cannot be justified</p> <p><b>Vexatious Request definition - a request that is intended merely to create frustration or annoyance</b></p>	
22*	Information Intended for Future Publication - Information where there is a settled intention to publish in the future	<ul style="list-style-type: none"> <li>Annual Report (further to the NHS Foundation Trust Accounting manual, the Annual Report can only be made public once it has been laid before</li> </ul>



	<p>corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on</p> <p>(e) the purpose of ascertaining the cause of an accident</p> <p>(i) the purpose of securing the health, safety and welfare of persons at work, and</p> <p>(j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work</p> <p><b>[Section 30 only applies to public bodies that can bring criminal proceedings or has a duty to investigate whether criminal proceedings should be brought. For Trusts the relevant section is 31(1)(g) with provisions in s. 31].</b></p>	
32	Information contained in court records	Information that we hold that was created explicitly for or was used in any court proceedings.
<p><b>Prejudice to the free and frank provision of advice, exchange of views for the purposes of deliberation, or the effective conduct of public affairs (36(2)(b)(i-ii)&amp;(c):</b></p>		
36(2)(b)(i)*	Issues, the discussion of which in public would or would be likely to inhibit the free and frank provision of advice	<p>Matters in the initial stages of enquiry; early stages of strategic thinking; sensitive 'live' issues or 'blue sky thinking', for instance addressed or discussed in:</p> <ul style="list-style-type: none"> <li>• recommendations/advice from external organisations e.g. Royal Colleges</li> <li>• recommendations made by more junior staff to more senior staff</li> </ul>

		<ul style="list-style-type: none"> <li>• professional advice tendered by professionally qualified government employees</li> <li>• advice from external sources, or advice supplied to external sources</li> <li>• options papers drafted internally</li> </ul>
36(2)(b)(ii)*	<p>Issues, the discussion of which in public would or would be likely to inhibit the free and frank exchange of views for the purpose of deliberation</p> <p>i.e. Disclosure would, or would be likely to inhibit the ability of staff and others, when deliberating or providing advice, to express themselves openly, honestly and completely, or to explore extreme options</p> <p>'Deliberation' tends to refer to the evaluation of the competing arguments or considerations that may have an influence on the course of action. It will include expressions of opinion and recommendations but will not include purely factual material or background information. The information must reveal the 'thinking process' or reflection that has gone into a decision</p>	<p>Matters in the initial stages of enquiry; early stages of strategic thinking; sensitive 'live' issues or 'blue sky thinking' discussed in:</p> <ul style="list-style-type: none"> <li>• emails</li> <li>• minutes of sub-committees (e.g. Audit, Risk &amp; Governance Committee Minutes – discussion on Fraud issues)</li> <li>• options papers drafted internally</li> </ul>
36(2)(c)*	<p>Issues, the discussion of which in public would or would be likely to prejudice the effective conduct of public affairs</p> <p>Where the disclosure would or would be likely to prejudice the Trust's ability to offer an effective public service, or to meet its wider objectives or purpose (rather than simply to function) due to the disruption caused by the disclosure and the diversion of resources in managing the impact of disclosure</p>	<ul style="list-style-type: none"> <li>• Issues the Trust is 'working through', where discussion in public may cause concern/panic</li> <li>• Discussions about future public consultations where the Trust wishes to manage the timing and</li> </ul>

		manner in which disclosures are made
38	<p>Health and Safety - Information where disclosure would or would be likely to:</p> <p>(a) endanger the physical or mental health of any individual, or</p> <p>(b) endanger the safety of any individual</p>	<ul style="list-style-type: none"> <li>• Disciplinary or grievance issues/information</li> <li>• SUI investigations</li> <li>• Service changes which could affect the employment status of employees</li> </ul>
40(2)	<p>Personal Data - Information containing the personal data of any living person, patient, staff member or any other person if disclosure would contravene any of the data protection principles in the Data Protection Act 2018. The first data protection principle requires that 'processing' personal data needs to be fair</p>	<ul style="list-style-type: none"> <li>• Reports relating to the conduct of a particular employee</li> <li>• SUI reports relating to a particular (living) patient</li> </ul>
41	<p>Information provided in confidence – Information from another person or organisation, if releasing that information would lead to a successful claim for breach of confidence</p>	<ul style="list-style-type: none"> <li>• Patient records or information contained in them (including of patients who are no longer living)</li> <li>• Some technical information from suppliers</li> </ul>
42*	<p>Legal professional privilege - Communications with solicitors and barristers, reports imparting legal advice, and information created in order to seek legal advice or to help prepare for a legal claim</p>	<ul style="list-style-type: none"> <li>• Legal advice</li> </ul>
43(2)*	<p>Commercial Interests - Disclosure of the information would be likely to damage the commercial interests of any person or organisations. Those interests may be those of the Trust, one of its suppliers or one of its customers</p>	<ul style="list-style-type: none"> <li>• Current pricing information contained in contracts or tenders, prior to the conclusion of the tender</li> <li>• Information that would</li> </ul>

		damage the Trust's negotiating position if disclosed
44	Prohibitions on Disclosure - Information, disclosure of which is prohibited by law	<ul style="list-style-type: none"><li>• Information prohibited from disclosure by a Court Order or statutory provision prohibiting disclosure</li></ul>

Those exemptions marked with an \* are subject to the public interest test. This means that they will only apply if the public interest in withholding the information is stronger than the public interest in releasing it. In some cases, this may mean that the information will be considered in the public session of the Trust Board meeting.

[References:

*FTN: The Foundations of Good Governance: A Compendium of Best Practice, 2011*

*Birmingham Children's Hospital: Protocol of Reserving Matters to a Private Board Meeting, May 2012]*

**ISSUED: OCTOBER 2020**

**REVISED: OCTOBER 2020**

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