



Policy for the Council of Governors to raise serious concerns about the board of directors

Lead executive	Chief Executive
Authors details	Head of Corporate Affairs / Safe Services

Type of document	Policy
Target audience	Governors
Document purpose	The policy describes how serious concerns on the part of Governors about the performance of the Board of Directors can be raised and addressed in relation to compliance with the Trust's licence the welfare of the Trust, all of which would impact upon service users and carers.

Approving meeting	Council of Governors	07-Apr-15
Implementation date	April 2015	

CWP documents to be read in conjunction with	
	Trust Constitution

Document change history	
What is different?	Reviewed
Appendices / electronic forms	N/A
What is the impact of change?	Low

Training requirements	There are no specific training requirements for this document.
-----------------------	---

Financial resource implications	No
---------------------------------	----

External references
1. Monitor Code of Governance, 2014

Equality Impact Assessment (EIA) - Initial assessment	Yes/No	Comments
Does this document affect one group less or more favourably than another on the basis of:		
- Race	No	
- Ethnic origins (including gypsies and travellers)	No	
- Nationality	No	
- Gender	No	
- Culture	No	
- Religion or belief	No	
- Sexual orientation including lesbian, gay and bisexual people	No	
- Age	No	

Equality Impact Assessment (EIA) - Initial assessment	Yes/No	Comments
- Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
Is there any evidence that some groups are affected differently?	No	
If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable? N/A		
Is the impact of the document likely to be negative? - If so can the impact be avoided? - What alternatives are there to achieving the document without the impact? - Can we reduce the impact by taking different action?	No N/A N/A N/A	
Where an adverse or negative impact on equality group(s) has been identified during the initial screening process a full EIA assessment should be conducted.		
If you have identified a potential discriminatory impact of this procedural document, please refer it to the human resource department together with any suggestions as to the action required to avoid / reduce this impact. For advice in respect of answering the above questions, please contact the human resource department.		
Was a full impact assessment required?	N/A	
What is the level of impact?	N/A	

Content

1	Introduction	4
2	Contents of policy	4
3	Duties and responsibilities	6
4	References and Definitions	7

1. Introduction

- 1.1 This policy is for use in circumstances where Governors have serious concerns about the performance of the Board of Directors, compliance with the Foundation Trust's licence or the welfare of the Trust.
- 1.2 It describes the methods by which these concerns may be raised and addressed, including circumstances where a matter needs to be resolved as a matter of urgency.
- 1.3 It has been written in response to the recommendations contained in paragraph A.5.6 of *The NHS Foundation Trust Code of Governance* (Monitor, July 2014).

2. Content of policy

a. Scope and Application

- 2.1 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. A serious concern, in the context of this policy, must be directly related to:

- The performance of the Board of Directors;
- Compliance with the licence
- Welfare of the Foundation Trust.

- 2.2 As set out in paragraph A.5.6 of *The NHS Foundation Trust Code of Governance* (Monitor, 2014) 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 new provider licence or other matters related to the overall wellbeing of the NHS foundation trust.

b. Confidentiality

- 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.

c. Evidence Requirements

- 2.4 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.

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

d. Raising Concerns

- 2.5 Any Governor or group of Governors who have a concern covered by this policy should in the first instance consult the Head of Corporate Affairs (who is neither a member of the Board of Directors nor Council of Governors). He or she may be able to resolve the matter informally and if not, will advise the Governor/s on the acceptability of evidence offered and whether it is acceptable to take the concern to the Trust Chair. The Head of Corporate Affairs will inform the Lead Governor of any concerns raised.

- 2.6 The advice of the Head of Corporate Affairs is not binding upon the Governor/s and they retain the right at all times to raise the matter with the Chair directly.
- 2.7 The Chair shall investigate serious concerns brought to him or her in accordance with this policy, involving the Senior Independent Director and Chief Executive at his or her discretion.
- 2.8 The investigation shall include a review of the evidence offered and discussions with Trust officers as appropriate.
- 2.9 As soon as practicable, after the conclusion of the investigation, the Chair shall meet with the Governor/s to present and discuss the findings. The meeting will be facilitated by the Trust Secretary and have three possible outcomes:
- 2.9.1 Governor/s are satisfied that their concern was unjustified. In this case, no further action is required.
- 2.9.2 Governor/s are 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 Chair 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. The Council of Governors may then agree that:

- a. 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
- b. they will request further information and agree arrangements to review the matter at a future meeting.
- 2.9.3 The matter is not resolved to the satisfaction of the Governor/s. The Chair shall call a closed extraordinary meeting of the Council of Governors as soon as possible in accordance with the *Standing Orders of the Council of Governors* 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 Chair's report and decide whether:
- a. the concerns are unjustified, and that no further action is necessary;
- b. 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 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.
- c. further information is required and make appropriate arrangements to receive and review the information;
- d. to vote to make a formal notification to the Monitor Panel for Advising Governors. 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. See section e below.
- 2.9.4 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.

2.9.5 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 paragraph 2.9 above.

2.9.5 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.

e. Raising concerns relating to failing to act in line with the Constitution or of the NHS Act 2006

2.10 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 2014)*.

2.11 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 and that dialogue with the Board of Directors has not been able to resolve the issue.

2.12 The Panel will also be looking for evidence of attempts to resolve the matter internally prior to seeking the advice of the Panel.

f. Urgent matters

2.13 Any Governor or group of Governors who have a concern covered by this policy should in the first instance consult the Head of Corporate Affairs. In the case of serious concerns which require addressing urgently a process and timescale for investigating the matter will be agreed between the Chair, Chief Executive and Lead Governor within 7 days of the concern being raised. In the event of the concern involving any safeguarding issues, the concern will be addressed via the Trust Safeguarding Adults policy or the Safeguarding Children policy.

3. Duties and Responsibilities

3.1 Chair

The Trust Chair 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 Governors, and will involve the Senior Independent Director and/or Chief Executive as necessary.

3.2 Governors

Governors have a responsibility to raise 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.

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.

3.3 **Lead Governor**

The Lead Governor will be informed of any serious concerns raised directly with the Head of Corporate Affairs and kept fully informed of any investigation undertaken.

The Lead Governor should also communicate directly with Monitor on behalf of the Council of Governors, if the Trust is at risk of significantly breaching its licence and governors' concerns cannot be satisfactorily resolved using the process set out in this policy. See section e.

4. **References & Definitions**

- 4.1 Monitor – The independent regulator of NHS foundation trusts
- 4.2 Governor/s – a Governor or Governors raising a serious concern under this policy.
- 4.3 The NHS Foundation Trust Code of Governance, July 2014.