Torbay and South Devon NHS Foundation Trust

Council of Governors' and Board of Directors' Policy of Engagement for Serious Concerns

Version 2.1, July 2026

Document Information

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Author:	Corporate Governance Manager		
Director Responsible	Trust Secretary		

Approval Route: Council of Governors and Board of Directors

Approved By:	**Date Approved:**
Council of Governors	February 2023 (V1)
Board of Directors	February 2023 (V1)
Council of Governors	February 2024 (V2)
Board of Directors	February 2024 (V2)
Council of Governors	May 2026 (V2.1)
Board of Directors	July 2026 (V2.1)

Links or overlaps with other policies:

- NHS England Code of Governance for NHS Provider Trusts
- Governor Code of Conduct
- NHS England Your Statutory Duties – A Reference Guide for NHS Foundation Trust Governors – updated in 2022 for system working and collaboration
- NHS England "Director-governor interaction in NHS foundation trusts – A best practice guide for boards of directors" (joint publication by PA Consulting and Monitor 2012)

We are committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): Sexual Orientation; Gender; Age; Gender Reassignment; Pregnancy and Maternity; Disability; Religion or Belief; Race; Marriage and Civil Partnership. In addition to these nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.

We are committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality and Diversity Policy.

Amendment History

Issue	Status	Date	Reason for Change	Authorised
1.0	New Document	Feb 23	New Document	CoG and Board of Directors
2.0	Revisions	Feb 2024	Revisions to align with Constitution/SO's & Trust policy broadly	CoG and Board of Directors
2.1	Updated	May 2026	Policy amended to align with the wishes of CoG	CoG and Board of Directors

1. Introduction

1.1. The relationship between the Council of Governors and the Board of Directors is key to the successful delivery of the Trust's functions. The Council of Governors and Board of Directors are each committed to building and maintaining an open and constructive working relationship.

1.2. The Chair is the prime connection between the Council of Governors and Board of Directors. In addition, the Trust has well established channels for business-as-usual communications and engagement between the two bodies. Informal and frequent communication are an essential feature of a positive and constructive relationship and benefits the Trust and the services it provides.

1.3. In the limited and rare circumstances described below, where Governors have very serious concerns about the functioning of the Trust, the Council of Governors collectively or whether an individual Governor remains eligible to hold the position(for example, due to actual or perceived breaches of the Governor Code of Conduct), they may wish to invoke the formal process set out in this policy.

2. Purpose

2.1. The purpose of this policy is to describe the method by which Governors can engage with the Board of Directors in circumstances when they have serious concerns about:

2.1.1. the performance of the Board of Directors,
2.1.2. compliance with the Trust's NHS Provider Licence; or
2.1.3. other matters related to the overall wellbeing of the Trust and its collaboration with system partners.

2.2. NHS England's Code of Governance for Provider Trusts (updated in 2022) ("**Provider Code of Governance**") recommends that the Council of Governors establishes a policy of engagement to govern such situations. This policy is intended to provide clear guidance for both the Board of Directors and Council of Governors and has been approved by each respectively.

2.3. The policy is not intended to interfere with the usual methods of interaction between the Board of Directors and Council of Governors or the operation of the Trust's Freedom to Speak up: Raising Concerns (Whistleblowing) Policy[1].

3. Definitions and Interpretation

3.1. The capitalised terms and expressions defined in the Constitution apply to this policy.

3.2. The phrase "overall wellbeing of the Trust" is not defined in the Provider Code of Governance. The Trust interprets the phrase to mean the Trust's ability to deliver services in a way that fulfils its purpose, aligns with its values, creating a just and fair culture and crucially ensures compliance with the Trust's NHS Provider Licence.

3.3. The policy should be read in conjunction with the Constitution and other documents relevant to the governance of the Trust, including the Trust's NHS Provider Licence, as well as the Provider Code of Governance.

3.4. If there is any discrepancy between this policy and the National Health Service Act 2006, the Constitution or the Trust's Provider Licence, then those documents shall

[1] https://www.torbayandsouthdevon.nhs.uk/uploads/raising-concerns-policy-h30.pdf

prevail over this policy. All Governors and Directors have access to these documents and should familiarise themselves with the contents of them.

3.5. A reference to the Chair shall be read as a reference to the Senior Independent Director where the Chair is unavailable or where it would be inappropriate to engage the Chair due to reasons of conflict.

4. Application of the Policy

4.1. The policy is not intended to cover minor or technical issues which can usually be resolved via the established channels of communication between Governors and the Secretary and Chair.

4.2. The policy seeks to address very serious concerns raised by Governors which cannot be resolved in the normal manner and may be invoked in relation to the following, but non-exhaustive list of situations, outlined below:

- 4.2.1. a Governor's eligibility to remain appointed in accordance with the Constitution where a subjective judgement is to be made; such as an actual or perceived breach of the Governor Code of Conduct;
- 4.2.2. breakdown of communications between the Trust and its System stakeholders;
- 4.2.3. extensive breaches of the Trust's Provider Licence whether alleged or actual;
- 4.2.4. Board of Director's failure to respond adequately to findings from external regulatory bodies such as CQC or HSE of serious failings;
- 4.2.5. absence of Board of Directors oversight over significant financial or clinical risks which subsequently materialise;
- 4.2.6. breakdown of trust between the Trust and its workforce;
- 4.2.7. major operational oversights leading to loss of continuity of service;
- 4.2.8. loss of confidence of system leaders in the Board of Directors;
- 4.2.9. failure to respond to a significant transformational opportunity.

4.3. The policy is not intended for use where Governors have concerns about the performance of the Chair or any single Non-Executive Director. In these situations, Governors are referred to NHS England guidance, including the Provider Code of Governance and the Statutory Guide for Governors[2] and, ultimately, paragraph 27 of the Constitution (appointment and removal of Chair and other Non-Executive Directors).

4.4. Concerns may be raised through the application of this Policy by Governors as a whole acting collectively, by a sub-set of Governors or by Governors individually.

4.5. Where the Council of Governors as a whole is in dispute with the Board of Directors, the procedure in Annex 4 of the Constitution applies.

5. Process for Engagement

5.1. Governors should first consult the Trust Secretary who will seek to resolve the concern informally and advise on the appropriateness of raising the matter with the Chair; as outlined in provision 4.1.

5.2. The advice of the Trust Secretary is not binding and the Governors retain the right at all times to raise the matter with the Chair. Where it would be inappropriate to raise the concern with the

[2] Governors_guide_August_2013_UPDATED_NOV_13.pdf

Trust Secretary or the Chair, the Senior Independent Director should be approached instead.

5.3. Where the matter has not been resolved informally with the support of the Trust Secretary or where Governors have been advised to raise the concern with the Chair, the Governors may raise the concern with the Chair who will seek to resolve the matter informally. Failing that, Governors should make a request for the matter to be investigated within the terms of this policy.

5.4. The Trust shall, at its discretion, appoint one of the following to investigate the concerns ("**Investigator**"):

5.4.1. the Chair;
5.4.2. the Senior Independent Director;
5.4.3. a Nominated Officer;
5.4.4. the Trust's internal auditor; or
5.4.5. an external investigator such as a professional services firm whose costs will be paid by the Trust provided the matter is not vexatious within the meaning of the Trust's Complaints Policy[3].

5.5. The Investigator is entitled to set the detailed terms of reference but will do so in line with the overall statutory roles of the Council of Governors to:

5.5.1. hold the Non-Executive Directors to account for the performance of the Board of Directors; and
5.5.2. represent the interests of the Trust's Members and the public.

The investigation will therefore focus on the Board of Directors', and particularly the Non-Executive Directors', visibility, oversight and response to the matter raised.

5.6. The Investigator may involve Directors and Officers at their discretion. Directors who are requested to participate in an investigation shall:

5.6.1. co-operate with requests of the Investigator;
5.6.2. attend meetings and produce documents;
5.6.3. answer questions raised by the Governors which form part of the investigation; and
5.6.4. confirm decisions taken by Directors or the Board of Directors (where appropriate).

5.7. Governors who have raised the concern will be invited to submit evidence to the Investigator.

5.8. Where concerns are raised with regard to a Governor's eligibility to remain appointed, in accordance with the Constitution, the procedure set out in Appendix 2 shall be followed.

5.9. The Governors and Directors agree to respect the confidentiality of the investigation.

5.10. Whilst the investigation is ongoing, with the exception of 4.2.1 where such investigation relates to an individual Governor, the Council of Governors agrees to refrain from exercising its statutory power to require one or more of the Directors to attend a Council of Governor's meeting for the purpose of obtaining information about the Trust's performance of its functions or the Directors performance of their duties (and deciding whether or not to propose a vote on the Trust's or Director's performance) in relation to the matters under investigation.

5.11. The Investigator will review the evidence gathered and will, unless the Investigator is the Chair, report their findings to the Chair. As soon as practicable after the conclusion of the

[3] Complaints Policy

investigation, the Chair will meet with the Governors who raised the concerns to discuss the findings. The meeting has three possible outcomes:

5.11.1. the Governors are satisfied that their concerns were unjustified and withdraw them unreservedly. In this case no further action is required;

5.11.2. the Governors are satisfied that their concerns will be resolved by actions to be taken in light of the investigation or will be otherwise resolved. The Chair will write a report on the concerns and the actions taken, or to be taken, and present it to the Council of Governors in the closed section of the next Council of Governors meeting;

5.11.3. the matter is not resolved to the satisfaction of the Governors. The Chair will call a closed extraordinary meeting of the Council of Governors as soon as reasonably practicable to consider the matter further. That meeting may resolve to take no further action or, if two thirds of the Governors present agree the motion, the Trust shall refer the matter to NHS England or an independent arbitrator external to the Trust such as the chair of another NHS provider.

6. Distribution

6.1. This policy document will be made available on the Trust's intranet and public website.

6.2. Awareness will be raised through Equality Impact Assessment training, all ratifying committees/groups, policies and procedures training and intranet.

7. Key Contacts

7.1. For further information about this policy, contact foundationtrust.tsdft@nhs.net.

Appendix 1

PROCEDURE FOR ASSESSING BREACH OF THE GOVERNOR CODE OF CONDUCT

1. INTRODUCTION

1.1. Where there is an alleged breach of the Code of Conduct, supported by factual evidence, the matter shall be notified in the first instance to the Lead Governor or Deputy Lead Governor, the Chair and/or Senior Independent Director (SID), together with the Trust Secretary. An initial assessment will then be undertaken to determine whether the alleged breach is considered more or less serious, in accordance with the process set out below.

2. LESS SERIOUS BREACHES

2.1. A less serious breach may be managed through informal resolution and may be considered if there is an unintentional breach of the Code, the consequences of which do not fall within the scope of what might constitute a serious breach.

2.2. Examples of a less serious breach include but are not limited to:

2.2.1. Actions which involve another Governor or impact on the CoG only, e.g. lesser/single episode misconduct at meetings or towards Trust staff, NEDs or colleagues, minor disruptive behaviour, rudeness, disrespectful of the views of other Governors, the Chair and/or Directors;

2.2.2. Inappropriate use of email or other forms of communication, abusive language or aggressive phrasing or vexatious behaviours;

2.2.3. Non-attendance at two CoG meetings or development day training and persistent non-attendance without good reason and/or tendering of apologies, in accordance with the Constitution.

2.3. The primary aim is to resolve issues as quickly as possible, so that the formal business of the CoG is not disrupted and Governors maintain their activities and duties appropriately.

3. SERIOUS BREACHES

3.1. Examples of a serious breach include but are not limited to:

3.1.1. A deliberate breach of the Code;

3.1.2. Where a Governor receives two written warnings regarding compliance with the Code within any rolling 12-month period;

3.1.3. Conduct towards any of the Trust's patients, visitors or staff which is abusive, or which adversely impacts their dignity or wellbeing and / or which is contrary to the principles of equality, diversity and inclusion;

3.1.4. A breach of the Code that is likely to bring the Trust, or the role of Governor, into disrepute;

3.1.5. Failure to manage public/media enquiries appropriately and in accordance with the Code;

3.1.6. A breach of confidentiality, including Data Protection Legislation or misuse of data received in the course of their duties as a Governor;

3.1.7. Fraud, bribery or other financial criminal activities;

3.1.8. Safeguarding issues;

4. PROCESS FOR MANAGING ALLEGED BREACH OF CODE OF CONDUCT / INFORMAL PROCESS

4.1. If an issue or concern arises regarding the conduct of another Governor, the complainant should be clear about their complaint and the remedy required. If there has been a heated exchange or misinterpretation of facts within the CoG, the Lead Governor and/or Chair may intervene and require retraction of the remarks and a formal apology at the time.

4.2. Where a Governor is concerned about the behaviour of another Governor, they should raise this directly with that Governor. Where the complainant does not feel sufficiently confident, they may obtain support from the Lead Governor, or Deputy Lead, if appropriate.

4.3. Should support from within the CoG be inappropriate, the concerned Governor should discuss the circumstances with the Trust Secretary, who may recommend an alternative advocate. If an advocate is approached, they may only act with the express agreement of the aggrieved Governor, in both action and anticipated response.

4.4. The Lead Governor and/or the Deputy Lead will facilitate the process, with the agreement of the Trust Secretary or the Chair.

4.5. Where the Governor has raised a concern and seeks a resolution which includes recognition of inappropriate behaviour and non-recurrence, this should be supported at a facilitated meeting attended by the Trust Secretary between the two Governors (with or without an advocate present).

4.6. If both Governors accept the proposal then the concern should be considered resolved.

4.7. The matter is noted on the file of the Governor whom the breach has been alleged if found to be in breach, and no further action will be taken.

4.8. Arrangements for the meeting should be agreed within five (5) working days or as soon as reasonably practicable, of the complaint being raised.

4.9. If there is no resolution at the informal meeting, where arrangements have been agreed and fulfilled, the matter will be considered through the formal process.

5. FORMAL PROCESS

5.1. Where the informal approach has failed, or the breach is considered serious, the alleged breach shall be investigated in accordance with this policy.

5.2. To avoid doubt, this provision does not apply in relation to matters listed in the Constitution which render a Governor no longer eligible hold the position of Governor where this is objective and clear as a matter of fact; for example holding a criminal conviction.

5.3. Where an allegation of a serious breach has been made an investigation shall be conducted in accordance with this policy; typically the investigation will be led by the Chair and/or the SID.

6. ALLEGED SERIOUS BREACH PROCESS

6.1. Following notification of an allegation of a serious alleged breach, which is assessed as being a potential Serious Breach, the Trust Secretary, Chair and/or the SID, together with the Lead and Deputy Lead Governor shall consider whether immediate action may be required. This may include the temporary exclusion of the Governor concerned from any meeting or temporary exclusion from their wider role. Where such action is required, the Chair/SID will be informed of the nature of the complaint and action proposed.

7. SUSPENSION OF A GOVERNOR

7.1. Suspension is the process of placing on a Governor a requirement that they do not participate in the work of the Council of Governors, while an investigation is undertaken into the allegations reported. Suspension is a neutral act; it is neither a disciplinary action nor an assumption of guilt. A suspended Governor shall continue to be required to adhere to the Governor's Code of Conduct.

7.2. At any time, the Chair is authorised to take such interim measures as may be immediately required, including the exclusion of the Governor concerned from a meeting or suspension from duties, on the basis that such measures are necessary to:

7.2.1. enable an effective investigation to be undertaken into any concern or complaint about a Governor;

7.2.2. address or prevent any significant disruption to the effective operation of any part of the Trust;

7.2.3. manage risk to the health or well-being of any Governor, employee, volunteer or patient of the Trust;

7.2.4. protect the reputation of the Trust; or

7.2.5. give effect to a proposal by the Council to impose a sanction on a Governor, until such times as the sanction is agreed by the Governor or the determination of an assessor has been received and notified to the Governor.

7.3. During any period of suspension from duties, the Governor is not permitted to:

7.3.1. attend or enter the Trust's premises unless he or she is doing so as a patient of the Trust, as a carer or family member of a patient of the Trust or with the consent of the Chair;

7.3.2. contact any of the Trust's Governors, employees, suppliers, volunteers or patients without the express prior permission of the Chair, other than in circumstances where any such contact is purely of a personal nature and unrelated to their position or duties as a Governor or in relation to this process; or

7.3.3. access any of the Trust's email or IT systems.

7.4. In these circumstances, any decision by the Chair to suspend a Governor from their duties shall be communicated to the Lead Governor and Deputy Lead Governor as soon as reasonably practicable and is effective when the Governor is notified in writing. The Governor will be required to maintain confidentiality in regards to their suspension and the process being undertaken, save that they may disclose information about the process being followed to their advocate, if appropriate.

7.5. The Chair shall notify the Council of Governors that an interim measure has been imposed as soon as reasonably practicable. The Chair shall not be required to explain the basis for imposing an interim measure. The Governor shall be removed from the Council of Governors' distribution lists for the period of the suspension.

7.6. In order to protect the legitimate interests of a Governor and any Complainant, the Council of Governors shall not be not be entitled to receive any further information regarding the use of this procedure in relation to any Governor until it is notified of any charge on which it is being asked to make a decision.

7.7. Notwithstanding the use of this procedure, a Governor is entitled to resign at any time. This will not prevent a full investigation of the complaint, if this is the required by the CoG.

7.8. Less serious and serious breaches and sanctions are defined by the Council of Governors.

8. COMMUNICATION

8.1. Where the Chair and/or Senior Independent Director together with the Trust Secretary consider the alleged breach meets the threshold of serious breach of the Code of Conduct, the Trust Secretary shall provide details of the complaint to the Governor and advise them that the matter will be investigated in accordance with this policy.

9. FORMAL COUNCIL OF GOVERNORS' HEARING

9.1. The investigation report, along with any comments from the Governor, shall be sent to the members of the COG in sufficient time to be read before the meeting at which it is to be discussed; the investigation report shall include a recommendation as to whether a breach has occurred for the assessment of the COG.

9.2. The CoG shall hold an extraordinary meeting in private to consider the investigation report; noting the recommendation and making a decision as to whether or not the recommendation should be accepted and the matter should be closed or whether a breach has occurred; the outcome of which would be dismissal.

Appendix 2
Rapid Equality Impact Assessment *(for use when writing policies and procedures)*

Policy Title (and number)	**CoG and Board of Directors' Policy of Engagement for Serious Concerns**	**Version and Date**	V2.1 May26
Policy Author	Corporate Governance Manager		

An equality impact assessment (EIA) is a process designed to ensure that a policy, project or scheme does not discriminate or disadvantage people. EIAs also improve and promote equality. Consider the nature and extent of the impact, not the number of people affected.

EQUALITY ANALYSIS: How well do people from protected groups fare in relation to the general population?
PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below

Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)

Age	Yes ☐ No☒	Disability	Yes ☐ No☒	Sexual Orientation	Yes ☐ No☒
Race	Yes ☐ No☒	Gender	Yes ☐ No☒	Religion/Belief (non)	Yes ☐ No☒
Gender Reassignment	Yes ☐ No☒	Pregnancy/ Maternity	Yes ☐ No☒	Marriage/ Civil Partnership	Yes ☐ No☒

Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers[1]; travellers[2]; homeless[3]; convictions; social isolation[4]; refugees)	Yes ☐ No☒
Please provide details for each protected group where you have indicated 'Yes'.	

VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion

Is inclusive language[5] used throughout?	Yes ☒ No☐
Are the services outlined in the policy/procedure fully accessible[6]?	Yes ☒ No☐
Does the policy/procedure encourage individualised and person-centered care?	Yes ☒ No☐
Could there be an adverse impact on an individual's independence or autonomy[7]?	Yes ☐ No☒
If 'Yes', how will you mitigate this risk to ensure fair and equal access?	

EXTERNAL FACTORS

Is the policy/procedure a result of national legislation which cannot be modified in any way?	Yes ☐ No☒

What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)

To provide the CoG with an engagement policy when working with the Trust/Trust Board of Directors.

Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?

Council of Governors

ACTION PLAN: Please list all actions identified to address any impacts

Action	**Person responsible**	**Completion date**
n/a		

AUTHORISATION:
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them

Name of person completing the form	Sarah Fox	**Signature**	*Sarah Fox*
Validated by (line manager)	Cath Parnell	**Signature**	*Cath Parnell*

Any issues Please contact Diversity & Inclusion Lead
For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdhct@nhs.net

[1] Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
[2] Travellers may not be registered with a GP - consider how they may access/ be aware of services available to them
[3] Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
[4] Consider how someone will be aware of (or access) a service if socially or geographically isolated
[5] Language must be relevant and appropriate, for example referring to partners, not husbands or wives
[6] Consider both physical access to services and how information/ communication in available in an accessible format
[7] Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy