

Unclassified

# Council of Governors' and Board of Directors' Engagement Policy

Document Information

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Council of Governors		February 2023	
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Links or overlaps with other policies:			
<ul style="list-style-type: none"> <li>• Code of Governance for NHS Provider Trusts</li> <li>• Governor Code of Conduct</li> <li>• Monitor – Your Statutory Duties – A Reference Guide for NHS Foundation Trust Governors</li> </ul>			
<p>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.</p> <p>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.</p>			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
1.0	New Document	Feb 23	New Document	CoG and Board of Directors

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## **Executive summary**

We are proud to be a Foundation Trust and we recognise and appreciate the diverse range of skills, expertise and experience our governors bring to their role.

The relationship between our Council of Governors and our Board of Directors is key to the successful delivery of our purpose as an organisation.

Our Board of Directors and our Council of Governors are committed to building and maintaining an open and constructive working relationship. In order to achieve this, there needs clarity in relation to the respective roles and responsibilities of each which promotes a shared understanding.

The Code of Governance for NHS Provider Trusts states that each Foundation Trust should have a Policy for Engagement between the Board of Directors and the Council of Governors, which clearly sets out how the two bodies will interact with one another for the benefit of the Trust.

This policy aims to clarify the respective roles and responsibilities of our Board of Directors and our Council of Governors, and describes the information flow between the two groups.

The policy describes the involvement of governors in forward planning, through which they represent the views of local people, and the role they play in holding the Board of Directors to account.

This policy also sets out a process that will be followed should the governors have a concern about the performance of the Board of Directors, compliance with the provider licence or the welfare of the organisation.

It also describes the process should the Council of Governors have significant concerns about the performance of the Chair or any of the Non-Executive Directors.

This policy is intended to provide clear guidance and a useful framework for both our Board of Directors and our Council of Governors and has been approved by each respectively.

## 1. Introduction

- 1.1 This policy has been created in response to the recommendations contained in the Code of Governance for Provider Trusts (2022). Its purpose is to describe the methods by which governors can engage with our Board of Directors when they have concerns about the Board's performance, our compliance with our provider terms of authorisation or the welfare of our organisation.

## 2. Purpose

- 2.1 This policy:
- outlines the mechanisms by which governors and directors will interact and communicate with each other while taking into account the expanded role of governors, set out in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 (the Act), including the 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 our Board of Directors when they have concerns about the performance of the Board of Directors, compliance with our provider licence or the welfare of our organisation
  - provides details of the panel set up by NHS England for supporting governors of Foundation Trusts in their new role and to whom governors may refer a question as to whether we have failed or is failing to act in accordance with our Constitution.

## 3. Holding to account

- 3.1 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 relationship between our Council of Governors and our Board of Directors is critical and we want to make sure that we support the two bodies to have an open and constructive relationship.
- 3.2 Board members and governors should have the opportunity to meet at regular intervals. Governors should feel comfortable asking questions of Non-Executive Directors regarding the management of our organisation and directors should keep governors appropriately informed, particularly in relation to key decisions taken by the Board of Directors and how they affect both our organisation and our wider communities.
- 3.3 Governors should be satisfied that Non-Executive Directors provide appropriate challenge and bring to bear their specific skills within the decision-making function of our Board of Directors.
- 3.4 Conversations and dialogue between our Council of Governors and our Board of Directors should be regular and ongoing. However this policy, which has been agreed by both bodies, aims to outline both existing and additional mechanisms which have been agreed and which will be used to safeguard appropriate and timely communication between our Council of Governors and our Board of Directors. This will make sure that governors are supported to discharge the above new duty effectively and harmoniously while recognising the different and complimentary roles of each body.

- 3.5 In support of the duty to hold Non-Executive Directors 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 our organisation's performance of its functions or the directors' performance of their duties (and for deciding whether to propose a vote on our organisational or directors' performance). While it is hoped that this power will rarely be exercised, should this power be invoked, it must be reported in the Annual Report and Accounts. The aim of this policy is to clearly establish agreed channels of engagement which will reduce the risk of governors needing to invoke this statutory power.
- 3.6 In performing their duties, governors should keep in mind that our Board of Directors manages the organisation and continues to bear ultimate responsibility for strategic planning and performance and must 'promote the success of our organisation so as to maximise the benefits for the members of the Foundation Trust as a whole and for the public'.
- 3.7 In practice, governors fulfil their role through a variety of mechanisms. It is our organisation's responsibility to ensure that governors have the information, training and access to the Board of Directors that they need to fulfil their roles. Governors act as critical friends to our organisation and in doing so should represent the interests of stakeholders (people who use our services and their carers, our staff, people living in Torbay and South Devon, members of the public and organisations that work closely with or have an interest in our work). In addition to performing statutory duties, all our governors have advisory, guardianship, and ambassadorial roles.
- 3.8 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 are constituted to receive the annual report and accounts 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 our governors' views when setting the forward plan for our organisation, giving our governors the opportunity to feed in the views of our members and the public and to question the Non-Executive Directors if these views do not appear to be reflected in our strategy., Governors should be mindful that there may be valid reasons why member views cannot always be acted upon and, in such cases, they should have enough time to discuss these matters with Non-Executive Directors to ensure they are fully informed and understand the reasons behind the decisions made by our Board of Directors
  - since 01 October 2012, governors have also had the specific power of approval on any proposal by our Board of Directors to increase non-NHS income *by over 5% of our income or more*. Our Board of Directors must, therefore, make sure that governors are satisfied with the reasons behind any such proposals
  - governors also have the power to approve amendments to our Constitution, approve 'significant transactions' and approve any mergers, acquisitions, separation or dissolution and will need to be satisfied with the reasons behind any proposals by our Board of Directors.

- 3.9 There are already a number of mechanisms in existence for our governors to receive or seek information from, and to hold the Non-Executive Directors individually and collectively to account for the performance of our Board of Directors including:
- receiving the annual report and accounts and asking questions on their content
  - our Council of Governors meetings in which
    - our Chief Executive, other executives and Non-Executive Directors attend
    - Non-Executive Directors present on specific pre-agreed topics and answer questions
    - standing agenda items include reports on finance, performance and quality
  - 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; and
  - involvement in the development of our strategy and planning process through the holding of an annual planning session for governors led by the Director of Transformation and Partnerships.
- 3.10 The following additional measures (some of which are mandatory under the Health and Social Care Act) have, or are, being introduced. These are intended to support our governors in their extended role and to ensure that they are well briefed about the decisions which they may be required to make. They are also intended to ensure that our governors are well briefed about the context in which our Board of Directors is working including the requirements of relevant external stakeholders including the Integrated Care System, NHS England and NHS Improvement and the Care Quality Commission.
- receiving information on proposed significant transactions, mergers, acquisitions, separations or dissolutions and questioning our directors on these
  - receiving information on documents relating to non-NHS income, in particular any proposals to increase this by 5% of our total income a year or more, and questioning our directors on these
  - the holding of annual development workshops – not least in order to ensure that our governors are equipped with the skills and knowledge they require in order to fulfil their expanded role.

## 4. Raising concerns

- 4.1 Our Chair is the prime connection between our Council of Governors and our Board of Directors. However, it is recommended that any governor or group of governors (the petitioner/s) who have concerns covered by this policy should, in the first instance, consult the Director of Corporate Governance and Trust Secretary. This is because they may be able to resolve the matter informally and /or will be advise the petitioner/s on the acceptability of the evidence offered and the appropriateness of taking their concerns to the Chair. The advice of the Director of Corporate Governance and Trust Secretary is not, however, binding, and the petitioner/s retain the right at all times to raise the matter with our Chair.
- 4.2 For concerns which it would be inappropriate to raise with our Chair, the role of the Chair will be undertaken by the Senior Independent Director.

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- 4.3 Where material concerns exist regarding the performance of our Board of Directors, compliance with our provider licence or matters relating to the general wellbeing of our organisation, this policy should be followed. This policy should not 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 our Board of Directors
  - compliance with our provider licence
  - the welfare of our organisation, Torbay and South Devon NHS Foundation Trust
- 4.4 The procedure for a situation in which our Council of Governors as a whole is in dispute with our Board of Directors is covered in Annex 9 section 3.3 of our Constitution. Governors should acknowledge the overall responsibility of our Board of Directors for running our organisation and should not try to use the powers of the Council, or the provisions of this policy, to impede our Board of Directors in fulfilling its duty.
- 4.5 To support our governors in their new expanded role a 'Panel for Advising Governors of FTs' has been established who may refer a question as to whether we have failed or are failing to act in accordance with our Constitution. Our Council of Governors should only consider referring a question to the panel in exceptional circumstances, where there is uncertainty within the Council about whether we may have failed, or are failing, to act in accordance with our Constitution or with Chapter 5 of the 2006 Act, and this uncertainty cannot be resolved through repeated discussions with our Chair or another Non-Executive Director.
- 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 or digital articles, including social media, will not be accepted as prima facie evidence, but may be accepted as supporting evidence.
- 4.8 Our Chair shall investigate all concerns brought by Governors, involving other directors at his discretion. The investigation shall include a review of the evidence offered and discussions with our officers as appropriate.
- 4.9 As soon as practicable after the conclusion of the investigation our Chair will meet with our governor/s to discuss the findings. This meeting has three possible outcomes:
- governor/s are satisfied that their concerns were unjustified and withdraw them unreservedly. In this case no further action is required
  - governor/s are satisfied that their concerns have been resolved during the course of the investigation. Our Chair will write a report on the concerns and the actions taken and present this to our Council of Governors
  - the matter is not resolved to the satisfaction of our governor/s. Our Chair will call a closed extraordinary meeting of our Council of Governors as soon as possible in accordance with the terms of our Constitution to consider the matter further. The possible outcomes from that meeting are either to take no further action or, if two thirds of the governors present agree, to invoke the escalation process described in section 5.



## 5. Escalating concerns

- 5.1 At this stage of the process our Senior Independent Director (SID) takes over the lead role from our Chair. Should our SID be unavailable, or be prevented from participating because of a conflict of interests, then our Council of Governors may choose any other Non-Executive Director to fulfil the role.
- 5.2 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 our governor/s and any of our officers who have been involved. In carrying out this process the SID shall seek the agreement of all interested parties and shall have the authority to commission legal or other advice as required.
- 5.3 Once the facts are established to their satisfaction, the SID shall make a decision on the course of action to be followed in the best interests of our organisation and shall describe the reasons for that decision in a written report. The decision of our SID will be binding upon our organisation. In the first instance, our SID will present the decision and the report to the governor/s and to interested parties within our organisation.
- 5.4 Our Chair will then, at the request of our SID, call a closed extraordinary meeting of our Council of Governors as soon as possible in accordance with the terms of our Constitution. The purpose of this meeting, and the sole item on the agenda, will be for our SID to present his or her report and decision and for our Council of Governors to give their response. Three outcomes are possible:
- our Council of Governors accepts the decision of our SID. In this case no further action is necessary
  - our Council of Governors does not accept the decision of our SID but chooses not to escalate the matter further. No further action is prescribed by this policy but our Council of Governors may choose to keep the matter under review at future meetings
  - our Council of Governors 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, our governors should always seek to discuss it in the first instance with our Chair or another Non-Executive Director.
  - NHS England strongly encourages all Foundation Trusts and governors to try to resolve questions internally before posing a question to the Panel only as a last resort. Our Council of Governors should only consider referring a question to the panel in exceptional circumstances, where there is uncertainty within the Council about whether we may have failed, or are failing, to act in accordance with our Constitution or with Chapter 5 of the 2006 Act, and this uncertainty cannot be resolved through repeated discussions with our Chair or another Non-Executive Director. A governor may only refer a question to the Panel if more than half of the members of our Council of Governors voting approve the referral. Individual governors may not bring a question to the panel without the approval of our Council of Governors 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 our organisation will not necessarily be required to adhere to the Panel's decision.

## 6. Roles and responsibilities

### 6.1 Our Chair:

- acts as the prime connection between our Council of Governors and our Board of Directors. They, therefore, have the main role in dealing with any issues raised by Governors, and will involve our Chief Executive and any other directors as necessary
- ensures that our Board of Directors and our Council of Governors work together effectively and enjoy constructive working relationships (including the resolution of any disagreements)
- ensures good information from and between our Board of Directors, Committees, Council of Governors and members and between our senior management and Non-Executive Directors, members of the Council of Governors and senior management
- ensures that our Council of Governors and our Board of Directors receive accurate, timely and clear information that is appropriate for their respective duties
- ensures that our governors understand that their main role is to hold our Non- Executive Directors to account and that all requests for information should be screened for their relevance to achieving this role. Governors should receive a timely and appropriate response to legitimate concerns and questions that cannot be delivered through another established route
- ensures that there is an effective policy to ensure that internal disputes between governors can be resolved effectively
- constructs the agenda for both the meetings of our Board of Directors and our Council of Governors (with the input of others as appropriate)

### 6.2 Our Chief Executive:

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

6.3 Our Senior Independent Director (SID)

Acts as an alternative source of advice to our governors. Their function is to deal with concerns which would be inappropriate to take to our Chair, or where engagement with our Chair has not resolved the matter.

6.4 Lead Governor

Our Council of Governors appoints from within one governor to act as the Lead Governor to communicate directly with NHS England in the event that the we are at risk of breaching our terms of authorisation.

6.5 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, our Council of Governors as a body has a duty to inform NHS England and NHS Improvement if we are at risk of breaching the terms of our provider Licence.

**7. 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 NHS England.

**8. Definitions**

8.1 Petitioner/s – a governor or governors raising concerns under this policy

8.2 SID – Senior Independent Director, one of our Non-Executive Directors appointed by our Board of Directors to provide an alternative to our Chair as source of advice to our governors.

8.3 Lead Governor – the governor elected from within our Council of Governors and has a communication link with NHS England to raise formal concerns on behalf of the full Council of Governors. NHS England may choose to communicate directly with our Lead Governor where they deem it necessary.

**9. Distribution**

9.1 This policy document will be made available via ICON and our public website.

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

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**11. Key Contacts**

Emily Long	Director of Corporate Governance and Trust Secretary	<a href="mailto:emily.long6@nhs.net">emily.long6@nhs.net</a>
Sarah Fox	Corporate Governance Manager	<a href="mailto:Sarah.fox@nhs.net">Sarah.fox@nhs.net</a>
Sally-Ann Reay	Membership Manager	<a href="mailto:Sally-ann.reay@nhs.net">Sally-ann.reay@nhs.net</a>

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**1. Appendices**

Appendix 1: Rapid Equality Impact Assessment

**Appendix 1**  
**Rapid Equality Impact Assessment** *(for use when writing policies and procedures)*

<b>Policy Title</b> (and number)		<b>CoG and Board of Directors Engagement Policy</b>		<b>Version and Date</b>		V1.0 Feb 23	
<b>Policy Author</b>		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.							
<b>EQUALITY ANALYSIS:</b> How well do people from protected groups fare in relation to the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>							
<b>Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)</b>							
Age	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Sexual Orientation	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Race	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Gender	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Religion/Belief (non)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Gender Reassignment	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Pregnancy/ Maternity	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Marriage/ Civil Partnership	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
<b>Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population?</b> (substance misuse; teenage mums; carers <sup>1</sup> ; travellers <sup>2</sup> ; homeless <sup>3</sup> ; convictions; social isolation <sup>4</sup> ; refugees)						Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
<b>Please provide details for each protected group where you have indicated 'Yes'.</b>							
<b>VISION AND VALUES:</b> Policies must aim to remove unintentional barriers and promote inclusion							
Is inclusive language <sup>5</sup> used throughout?						Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Are the services outlined in the policy/procedure fully accessible <sup>6</sup> ?						Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Does the policy/procedure encourage individualised and person-centered care?						Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Could there be an adverse impact on an individual's independence or autonomy <sup>7</sup> ?						Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If 'Yes', how will you mitigate this risk to ensure fair and equal access?							
<b>EXTERNAL FACTORS</b>							
<b>Is the policy/procedure a result of national legislation which cannot be modified in any way?</b>						Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
<b>What is the reason for writing this policy?</b> (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.							
<b>Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?</b>							
Council of Governors							
<b>ACTION PLAN:</b> Please list all actions identified to address any impacts							
<b>Action</b>				<b>Person responsible</b>		<b>Completion date</b>	
n/a							
<b>AUTHORISATION:</b>							
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them							
<b>Name of person completing the form</b>		Sarah Fox		<b>Signature</b>		Sarah Fox	
<b>Validated by (line manager)</b>		Oyetona Raheem		<b>Signature</b>		Oyetona Raheem	

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

<sup>1</sup> Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user  
<sup>2</sup> Travellers may not be registered with a GP - consider how they may access/ be aware of services available to them  
<sup>3</sup> Consider any provisions for those with no fixed abode, particularly relating to impact on discharge  
<sup>4</sup> Consider how someone will be aware of (or access) a service if socially or geographically isolated  
<sup>5</sup> Language must be relevant and appropriate, for example referring to partners, not husbands or wives  
<sup>6</sup> Consider both physical access to services and how information/ communication is available in an accessible format  
<sup>7</sup> 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