

Engagement Policy

**Council of Governors
and the Board of Directors**

DRAFT

Introduction

We are proud to be a Foundation Trust and we recognise and appreciate the diverse ranges 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 facilitating and ensuring an open and constructive working relationship. In order achieve this, there needs to be clarity in relation to respective roles and responsibilities.

This engagement policy has been developed with the Council of Governors in recognition of the recommendations in the NHS Foundation Trust Code of Governance (2022) to address engagement between the Board of Directors and the Council of Governors.

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 principles in this policy may be applied to engagement between the Council of Governors and committees, sub-committees and joint committees of the Council of Governors and Board of Directors.

1 Purpose

1.1 This Engagement Policy (“**the Policy**”) outlines the mechanisms by which the Council of Governors and Board of Directors will interact and communicate with each other to support ongoing interaction and engagement, ensure compliance with the statutory and regulatory framework and specifically provide for those circumstances where the Council of Governors has concerns about:

- 1.1.1 the performance of the Board of Directors;
- 1.1.2 compliance with the Trust’s Provider Licence; or
- 1.1.3 other matters related to the overall wellbeing of the Trust.

1.2 This policy provides details of the panel set up by NHS England for supporting

governors of Foundation Trusts in their role and to whom governors may refer a question as to whether the Trust has failed or is failing to act in accordance with the Trust's Constitution.

2 **Definitions**

2.1 In this Policy the following definitions shall apply:

Board of Directors	means the board of directors as constituted in accordance with the Constitution;
Chair	means the person appointed in accordance with the Constitution to that position. The expression "Chair" shall be deemed to include the Vice Chair if the Chair is absent from a meeting or otherwise unavailable
Chief Executive	means the Chief Executive Officer of the Trust appointed in accordance with the Constitution
Constitution	Means the Constitution of the Trust
Council of Governors	means the council of governors as constituted in accordance with the Constitution
Independent Regulator	the Independent regulator of Foundation Trusts known as NHS England, as provided by the Health and Social Care Act 2022
Lead Governor	the Governor appointed by the Council of Governors as the Trust's lead governor pursuant to paragraph 8.7 of the Constitution
Provider Licence	means the Trust's provider licence granted by the Independent

	Regulator under section 87 of the NHS Act 2006
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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. This policy aims to outline 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 as to the performance of the Board, 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 Governors fulfil their role through a variety of mechanisms. It is the Trust'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 Gloucestershire, 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.

4 Duties of the Council of Governors

- 4.1 Governors will hold the Chair and other Non-Executive Directors to account partly through effectively undertaking the specific statutory duties summarised here
 - 4.1.1 governors are responsible for appointing the Chair and other Non-Executive Directors and may also remove them in the event of unsatisfactory performance;
 - 4.1.2 governors are constituted to receive the annual report and accounts and can use these as the basis for their questioning of Non-Executive Directors;
 - 4.1.3 governors have the power to appoint or remove the external auditor
 - 4.1.4 Board 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;

- 4.1.5 governors have 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. The Board of Directors must, therefore, make sure that governors are satisfied with the reasons behind any such proposals;
- 4.1.6 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.
- 4.1.7 Governors serve to represent their members and constituents and provide representation for their local community.

- 4.2 Informal and frequent communication between the Council of Governors and the Board of Directors are an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 4.3 There are 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,
 - Council of Governor meetings, both formal and workshop, at which Board members attend and present on specific topics and answer questions.
 - Communications via the Corporate Governance team including Governor Newsletters and Governor Log.
 - Joint Board and Governor visits to Trust services.

4.4 The Board of Directors and Council of Governors shall act in such a manner as to comply with this policy.

5 **Roles and Responsibilities in the relationship between Board and Council of Governors**

5.1 **The Chair**

5.1.1 The Chair shall act as the link between the Council of Governors and the Board of Directors and shall have the principal role in dealing with any issues raised by Governors involving the Chief Executive, and any other Director, as necessary.

5.1.2 The Chair has the most formal contact with Governors and should supplement this with informal contact where possible.

5.1.3 The Chair shall:

- (a) operate an open-door policy which encourages Governors to call and/or email as frequently as necessary if they have issues to raise;
- (b) ensure that the Board of Directors and Council of Governors work together effectively and enjoy constructive working relationships (including the resolution of any disagreements).
- (c) Ensure that the Council of Governors receive accurate, timely and clear information that is appropriate to their duties.
- (d) support informal meetings outside of formal Council of Governor meetings with the Chief Executive and/or any Director (via the office of the Trust Secretary) to answer specific questions or confirm decisions taken by the Board of Directors (where appropriate);
- (e) support the development of special interest relationships between Non-Executive Directors and Governors and facilitate a Governor and Non-Executive Director Forum on specific topics of interest, jointly chaired by the Trust Chair and Lead Governor, as and when required. This would be either in meeting or workshop style.

- (f) encourage the participation of the Board of Directors and senior employees in the induction, orientation and training of Governors.

5.2 Chief Executive

- 5.2.1 Supports the Chair in facilitating and supporting effective joint working between the Board of Directors and the Council of Governors;
- 5.2.2 With the Chair, ensures that the Council of Governors receives accurate, timely and clear information that is appropriate to its role and duties

5.3 Senior Independent Director

- 5.3.1 The Senior Independent Director ('SID') shall be available to governors if they have concerns that contact through the normal channels has failed to resolve any issues which have been raised or for which such contact is inappropriate i.e. issues relating to the Chair.

5.4 Directors

- 5.4.1 Directors, particularly Non-Executive Directors shall:
 - (a) co-operate with any requests from the Chair (via the office of the Trust Secretary) to attend informal meetings outside of formal Council of Governor' meetings to answer questions from Governors and confirm decisions taken by the Board of Directors (where appropriate);
 - (b) take an active role in the Council of Governor meetings.
 - (c) Provide relevant information to the Council of Governors regarding the work of the Trust's Board assurance committees:
 - (i) Finance and Resource Committee;
 - (ii) Audit and Assurance Committee;
 - (iii) People and Organisational Development Committee; and
 - (iv) Quality and Performance Committee

3.5.2 The Director of Integrated Governance is the lead executive with accountability for ensuring effective relations with the Council of Governors and shall meet, together with the Trust Secretary, regularly with the Lead Governor in that aim.

5.5 **Governors and Council of Governors**

5.5.1 Shall have opportunity to receive and seek information from, and hold the Non-Executive Directors individually and collectively to account for the performance of the Board via various fora including:

- (a) Receiving the annual report and accounts and asking questions on their content;
- (b) Our Council of Governor meetings in which:
 - (i) Our Chief Executive, other Executive and Non-Executive Directors attend
 - (ii) Non-Executive Directors present on specific pre-agreed topics and answer questions
 - (iii) Reports on issues relating to the statutory duties of the Governors will be presented, including but not limited to finance, quality, staff and performance topics.
- (c) 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
- (d) Involvement in the development of the Trust strategy and planning process.

5.5.2 Governors should raise any concerns (which are covered by this policy within paragraph 8) in accordance with this policy and assure themselves that such issues have been resolved.

5.5.3 Governors should, in raising any concerns, ensure that they are acting in accordance with the Governors' Code of Conduct and that there are no actual or potential conflicts of interest arising which have not been declared and which should be considered in the context of the concern

raised.

- 5.5.4 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 NHS England if the Trust is at risk of breaching the terms of the Trust's provider Licence (in accordance with paragraph 5.6.1 below).
- 5.5.5 The Lead Governor shall make themselves available to provide informal advice to any Governor who may seek it in advance of a concern being raised with the Trust Secretary in accordance with paragraph 8.3.
- 5.5.6 The Council of Governors shall observe the requirements of Annex 5 paragraph 2 of the Constitution in relation to notifying the Independent Regulator if the Trust is at risk of breaching the conditions of its Provider Licence.

5.6 Lead Governor

- 5.6.1 The 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 Trust is at risk of breaching its terms of authorisation.

5.7 Trust Secretary

- 5.7.1 The Trust Secretary shall:
 - (a) be the first point of contact for any Governor or group of Governors who wish to raise a concern covered by this policy. The Trust Secretary shall, where possible, resolve the matter informally and/or advise as to whether it is appropriate to take the concerns to the Chair;
 - (b) keep the Director of Integrated Governance and Chair apprised of matters raised by the Governors; and
 - (c) arrange informal meetings between Governors and members of the Board of Directors (including the Chair and the Chief Executive) outside of formal Council of Governor meetings to answer questions and confirm decisions taken by the Board of Directors (where appropriate), where requested to do so by the

Chair.

- (d) ensure the provision of Board Committee agendas in advance of Committee meetings to facilitate Governors being able to ask written questions on the agenda items which will be considered by the Committee and formal written responses provided.
- (e) Ensure the provision of the Agenda for Board of Director meetings (Confidential Session) to the Lead Governor to facilitate observations or questions on behalf of the Council of Governors in advance of said meeting.

6 Formal Communication

- 6.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.
- 6.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted in accordance with the processes set out in the Constitution.
- 6.3 Wherever possible and practical, written communications will be conducted by e-mail.

7 Other Communication

- 7.1 The Governors are welcome to observe public sessions of the Board of Directors and provide their observations on the same.
- 7.2 The Governors will be provided with a copy of the Agenda for Board Assurance Committees in good time to enable Governor(s) to submit written questions, if any, on agenda items. These will be tabled at the Committee meeting by the Trust Secretary and considered by the Committee. A written response will be provided to the requesting Governor. The Non-Executive Chairs of the Board Committees will attend Council of Governor meetings to discuss the work of the committees to assist the Council of Governors in their duty to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors.
- 7.3 The Chair and Lead Governor will facilitate a forum for governors and non-executive directors to explore specific areas of interest as and when required.

This will be either via a meeting or workshop format. The frequency of these meetings and the topics will be agreed between the Chair and the Lead Governor.

- 7.4 A newsletter will be sent to Governors containing relevant information and updates.
- 7.5 Governors may contact the Corporate Governance team at any time, either directly or via the Governor Log. The Corporate Governance team will endeavour to ensure a timely and appropriate response to any queries which may be raised.

8 Raising Concerns

- 8.1 Governors (operating as a group or on their own) may raise material concerns directly related to:
 - 8.1.1 the performance of the Board of Directors;
 - 8.1.2 compliance with the Trust's Provider Licence; or
 - 8.1.3 other matters related to the overall wellbeing of the Trust.
- 8.2 This policy should not be invoked for minor issues raised by an individual and unrelated to the statutory functions of the Council of Governors.
- 8.3 Governors should, in the first instance, raise any concerns with the Trust Secretary who may be able to resolve the matter informally.
- 8.4 Governors should not raise concerns that are not supported by evidence. That evidence should satisfy the following criteria:
 - any written statement must be from an identifiable person or persons, signed and that person should be willing to be interviewed about the contents of the statement;
 - other documentation must originate from a bona fide organisation and the source must be clearly identifiable. 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.
- 8.5 Where the Trust Secretary has been unable to resolve the concerns and/or has recommended that the concerns be taken to the Chair and the Director of

Integrated Governance, the Governor(s) in question should raise the concern with the Chair and Director of Integrated Governance.

- 8.6 For concerns which it would be inappropriate to raise with the Chair, the role of Chair shall be undertaken by the Senior Independent Director.
- 8.7 In advance of a Council of Governors meeting at which there is an agenda item relating to a concern raised by a Governor, the Chair shall review any evidence offered, make such enquiries and hold such discussion with Trust officers as they consider appropriate in respect of that matter.
- 8.8 Following completion of their review of the matter the Chair and/or Director of Integrated Governance or Trust Secretary shall meet with the Governor(s) who raised the concern to discuss their findings as soon as is reasonably practicable. There are three possible outcomes of this meeting:
 - 8.8.1 the Governor(s) is satisfied that the concerns were unfounded and withdraw them unreservedly. In this case no further action is required;
 - 8.8.2 the Governor(s) is satisfied that their concerns have been resolved during the investigation. The Trust Secretary, in support of the Chair, shall write a report on the concerns and the action taken and present it in the closed section of the next Council of Governors meeting. If the Council of Governors agrees that the matter is resolved no further action is required. However, should a majority of the Council of Governors disagree, the matter shall be considered for referral to the Independent Regulator's panel for advising Governors (**the “Panel”**) in accordance with paragraph 8.11 & 8.12 below; or
 - 8.8.3 The matter is not resolved to the satisfaction of the Governor(s) and the Chair shall call a closed extraordinary meeting of the Council of Governors as soon as is reasonably practicable in accordance with the Council of Governors Standing Orders to consider the matter further. The Trust Secretary shall prepare a report on the concerns to assist the Council of Governors in advance of that meeting. That meeting may resolve to take no further action, take remedial action or to consider referring the matter to the Panel in accordance with paragraph 8.11 & 8.12 below.
- 8.9 The minutes of the meeting shall record the outcome of the discussion.

- 8.10 Governors should acknowledge the overall responsibility of the Board of Directors for running the organisation and should not endeavour to use the powers of the Council, or the provisions of this policy, to impede the Board of Directors in fulfilling its duty.
- 8.11 Where paragraphs 8.8.2 and 8.8.3 apply the Council of Governors (quorate) must approve the referral and such approval shall require at least half of the Governors voting to agree to the referral.
- 8.12 To support Governors in their role a 'Panel for Advising Governors of Foundation Trusts' has been established by NHS England which may consider a referred question from the Council of Governors as to whether the Trust has failed or is failing to act in accordance with the Trust's Constitution. The Council of Governors should only consider referring a question to the Panel in exceptional circumstances, where there is uncertainty within the Council of Governors about whether the Trust has failed, or is failing, to act in accordance with the Constitution or with Chapter 5 of the 2006 Act, and this uncertainty cannot be resolved through discussions within the internal process outlined above.
- 8.13 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.
- 8.14 The Panel shall deal with any referral in accordance with its own procedures.

9 Monitoring compliance and Effectiveness

- 9.1 This policy will be kept under review by the Trust Secretary and revised in accordance with emerging best practice and guidance from NHS England.