



Policy for the Council of Governors to Raise Serious Concerns

Document Control Sheet

Q Pulse Reference Number	
Version Number	03
Document Author	Trust Secretary
Lead Executive Director Sponsor	Chair
Ratifying Committee	Council of Governors
Date Ratified	25 January 2016
Date Policy Effective From	31 January 2016
Next Review Date	01 February 2019
Keywords	Governors, concerns, Board, dispute, Council, compliance, licence, Monitor

Unless this copy has been taken directly from the Trust Quality Management site (Q-Pulse) there is no assurance that this is the most up to date version.

This policy supersedes all previous issues.

Version Control - Table of Revisions

All changes to the document must be recorded within the 'Table of Revisions'.

Version number	Document section/ page number	Description of change and reason (e.g. initial review by author/ requested at approval group)	Author/ Reviewer	Date revised
001	Full	Approved by Council of Governors	D Teasdale	23/01/12
002	3.5	Updated to reflect the establishment of a (Monitor) Panel to which questions should be referred by Governors and also the issue of a Licence by Monitor (replacing the Terms of Authorisation)	D Teasdale	27/01/14
003	Full	Policy converted into the new format. Minor changes throughout, including small changes to the raising concerns process. The dispute resolution process from the Constitution has now been included in the policy.	J Boyle	14/01/16

This page should not be longer than one single page.

Table of Contents

1.	Introduction	4
2.	Purpose	4
3.	Scope	4
4.	Duties - Roles & Responsibilities	4
4.1	Governors	4
4.2	Chair	5
4.3	Lead Governor	5
4.4	Senior Independent Director	5
4.5	Trust Secretary	5
5.	Glossary of Terms	5
6.	Policy Content	7
6.1	Evidence requirements	7
6.2	Confidentiality	7
6.3	Raising concerns	7
6.4	Escalation process	8
6.5	Escalation to Monitor	9
7.	Training Required for Compliance with this Policy	9
8.	Equality and Diversity	9
9.	Monitoring Compliance with and Effectiveness of this Policy	10
9.1	Compliance and Effectiveness Monitoring	10
9.2	Compliance and Effectiveness Monitoring Table for this policy	11
10.	Consultation and Review of this Policy	12
11.	Implementation of this Policy	12
12.	References	12
13.	Associated Documentation	12

1. Introduction

Monitor's Code of Governance (2014) section A.5.6 explicitly states that:

'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.'

This policy has been drafted in response to this requirement.

2. Purpose

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.

It describes the methods by which these concerns may be raised and addressed.

3. Scope

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 Trust's Licence
- Welfare of the Foundation Trust

Governors should explicitly confirm to the Trust Secretary, Chair or Senior Independent Director that they are raising a concern under this policy.

The resolution of disputes between the Council of Governors and the Board of Directors is covered within Annex 8 of the Trust's Constitution.

4. Duties - Roles & Responsibilities

4.1 Governors

Where there are serious concerns Governors have a responsibility to assure themselves that the issues are either:

- Unjustified (following investigation) and therefore, require no further action;

- Resolved and therefore, require no further action; or
- Escalated appropriately

The Council of Governors, as a body, has a duty to inform Monitor if the Trust is at risk of breaching its Licence. The Lead Governor will liaise between Monitor and the Council of Governors where, for example, Monitor has concerns about the leadership provided to an NHS Foundation Trust or in the circumstances where it would be inappropriate for the Chair to contact Monitor or vice versa.

4.2 Chair

The Trust Chair acts as the link between the Council of Governors and the Board of Directors. He/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.

4.3 Lead Governor

The Lead Governor will be informed of any serious concerns raised directly with the Trust Secretary and kept fully informed of any investigation undertaken. The Lead Governor can be the conduit for the approach to the Independent Panel for Advising Governors following the appropriate vote of the Council.

4.4 Senior Independent Director

The Senior Independent Director (SID) provides a route whereby concerns of the Council members about the performance of the Chair or the NHS Foundation Trust, can be expressed, if it is not appropriate or practical to express these concerns to the Chair.

4.5 Trust Secretary

The Trust Secretary will maintain a schedule of concerns raised which can be made available for inspection/audit and will take reasonable steps to handle concerns speedily (consistent with thorough investigation). A record of the time period, from a concern being raised to it being resolved or referred onwards, will be documented as part of the schedule.

5. Glossary of Terms

This policy uses the following terms:

Term	Description
Chair	The highest office of an organised group such as a Board or committee. The person holding the office is typically elected or appointed by the members of the group. The Chair presides over meetings of the assembled group and conducts its business in an orderly fashion. In this context

Term	Description
	the Chair is the Chair of the Board of Directors.
Code of Governance	The NHS Foundation Trust Code of Governance is a document published by Monitor which gives best practice advice on governance. NHS Foundation Trusts are required to explain, in their annual reports, any non-compliance with the code.
Constitution	A set of rules that define the operating principles for each NHS Foundation Trust. It defines the structure, principles, powers and duties of the Trust.
Governors	Elected or appointed individuals who represent Foundation Trust members or stakeholders through a Council of Governors.
Lead Governor	Governors will generally communicate with Monitor through the Trust's Chair. However, there may be instances where it would not be appropriate for the Chair to contact Monitor, or for Monitor to contact the Chair (for example, in relation to the appointment of the Chair). In such situations, we advise that the Lead Governor should communicate with Monitor. The role of Lead Governor is set out in The NHS Foundation Trust Code of Governance.
Licence	The NHS provider licence contains obligations for providers of NHS services that will allow Monitor to fulfil its duties in relation to: setting prices for NHS-funded care in partnership with NHS England; enabling integrated care; preventing anti-competitive behaviour which is against the interests of patients; supporting commissioners in maintaining service continuity; and enabling Monitor to continue to oversee the way that NHS Foundation Trusts are governed. It replaces the Terms of Authorisation.
Monitor	Monitor is the sector regulator of health care services in England.
Senior Independent Director (SID)	One of the Non-Executive Directors should be appointed as the SID by the Board of Directors, in consultation with the Council of Governors. The SID should act as the point of contact with the Board of Directors if Governors have concerns which approaches through normal channels have failed to resolve or for which such normal approaches are inappropriate. The SID may also act as the point of contact with the Board of Directors for Governors when they discuss, for example, the Chair's performance appraisal and his or her remuneration and other allowances. More detail can be

Term	Description
	found in the Code of Governance.

6. Policy Content

6.1 Evidence requirements

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

6.2 Confidentiality

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.

6.3 Raising concerns

Notwithstanding the central role of the Chair in providing the link between the Council of Governors and the Board of Directors, it is recommended that any Governor or group of Governors who have a concern covered by this policy should, in the first instance, consult the Trust Secretary (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 Governors on the acceptability of evidence offered and whether it is appropriate to take the concern to the Trust Chair.

The advice of the Trust Secretary is not, however, binding upon the Governors and they retain at all times the right to raise the matter with the Chair. For concerns which would be inappropriate to raise with the Chair, for example, regarding his or her own performance, the role of the Chair as described in this section will be undertaken by the SID.

The Trust Secretary will inform the Lead Governor of any concerns raised if he/she is not already aware of that concern.

The Chair shall investigate serious concerns brought to him/her in accordance with this policy, involving the Senior Independent Director and Chief Executive at his/her discretion.

The investigation shall include a review of the evidence and discussions with Trust

officers, as appropriate.

As soon as practicable, after the conclusion of the investigation, the Chair shall meet with the Governors to present and discuss the findings. The meeting will be facilitated by the Trust Secretary and has three possible outcomes:

- Governors are satisfied that their concern was unjustified and withdraw them unreservedly. In this case, no further action is required.
- Governors are satisfied that their concerns have been resolved during the course of the investigation. The Chair shall write a report on the concerns and the actions taken and present this at a closed section of the next scheduled meeting of the Council of Governors. If the Council of Governors agrees that the matter is resolved then no further action is required. However, should a majority of the Council of Governors disagree, then the process for escalation described in section 6.4 shall be invoked.
- The matter remains unresolved to the satisfaction of the Governors. The Chair shall call a closed Extra-Ordinary Council of Governors meeting as soon as possible in accordance with the terms of the Trust's Constitution, to consider the matter further. That meeting may choose either to take no further action or alternatively if the majority of those Governors present agree, to invoke the escalation process described in section 6.4.

6.4 Escalation process

The escalation process to be followed is in accordance with the dispute resolution process outlined in paragraphs R8 3.5.2 to R8 3.5.9 of Annex 8 of the Constitution.

The process can be summarized as follows:

- The Council of Governors, as appropriate, shall, at its next formal meeting, to be held in private session, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- The Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board (in private session). That meeting shall agree the precise wording of a Response to Disputes Statement;
- The Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board, shall immediately or as soon as is practicable, communicate the outcome to the Council of Governors and deliver the Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined above shall be repeated; and
- If, in the opinion of the Chair, or Senior Independent Director (if the dispute involves the Chair) of the Board or the Council of Governors as appropriate, and following the further discussion there is no further prospect of a full

resolution or, if at any stage in the whole process, in the opinion of the Chair, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board accordingly.

On the satisfactory completion of this disputes process the Board shall implement agreed changes.

On the unsatisfactory completion of this disputes process the view of the Board shall prevail.

6.5 Escalation to Monitor

Nothing in this procedure shall prevent the Council of Governors, if it so desires, through its nominated Lead Governor, from informing the Independent Regulator of NHS Foundation Trusts that, in the Council of Governors' opinion, the Board has not responded constructively to concerns of the Council of Governors in respect of one of the 3 key concerns covered by this policy, namely:

- The performance of the Board of Directors
- Compliance with the Trust's Licence
- Welfare of the Foundation Trust

Under the 2006 Act, as amended, Monitor has appointed a Panel for Advising Governors (the Panel) to which Governors of NHS Foundation Trusts may refer a question concerning whether their Trust has failed, or is failing, to act in accordance with its Constitution, or Chapter 5 of the 2006 Act.

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. The Panel will first decide if the referred question meets the criteria for its consideration. If the question is accepted by the Panel, the Panel will consider the available information, and is likely to request further information from the Governors and/or the Trust. The Panel will then decide whether to carry out an investigation in relation to the referred question. If an investigation is carried out, the Panel will publish a report setting out the conclusion.

If such a question or any other important issue or uncertainty arises, Governors should always seek to discuss it in the first instance with the Chair or another Non-Executive Director. Referral of a question to the Panel should be as a last resort if Governors are not able to obtain an answer to a relevant question through discussion internally.

7. Training Required for Compliance with this Policy

No formal training is required in relation to this Policy, although it will be included in induction packs for all new Governors. Governors are advised to contact the Trust Secretary for advice in relation to the content of this policy.

8. Equality and Diversity

The Trust is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on the grounds of any protected characteristic (Equality Act 2010).

9. Monitoring Compliance with and Effectiveness of this Policy

9.1 Compliance and Effectiveness Monitoring

Arrangements for the monitoring of compliance with this policy and of the effectiveness of the policy are detailed below.

10. Consultation and Review of this Policy

This policy has been reviewed in consultation with the Board of Directors and Council of Governors.

11. Implementation of this Policy

This policy will be made available to all Governors and also published on the website.

12. References

This document refers to the following guidance, including national and international standards:

- Monitor's Code of Governance (July 2014 edition)
- Monitor's Your Statutory Duties: A Reference Guide for Foundation Trust Governors (August 2013)
- NHS Act 2006

13. Associated Documentation

This policy refers to the following Trust documents:

- North East Ambulance Service NHS Foundation Trust Constitution (June 2015 edition)