

WORKING TOGETHER STRATEGY - SUPPLEMENT (BOARD OF DIRECTORS AND GOVERNORS' COUNCIL)

Document Number	2010/63 v <u>54</u>
Document Title	Working Together Strategy (Board of Directors & Governors' Council)
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Author's Job Title	Trust Secretary
Department	Corporate
Ratifying Committee	Board of Directors and Governors' Council
Ratified Date	<u>November 2017</u>
Review Date	<u>November 2017</u>
Owner	Trust Chair

The Board of Directors and the Governors' Council WORKING TOGETHER STRATEGY – SUPPLEMENT

1. Introduction and Context

The Working Together Strategy is part of a suite of documents, which together provide a corporate governance framework for the effective operation of the Board of Directors and Governors' Council. The individual elements of the governance suite require the approval of both the Board of Directors and Governors' Council. The suite of documents includes:

Internal

- The Trust Constitution and Annexes
- The Governance Framework
- The Standing Orders for the Board of Directors
- The Standing Orders for the Governors' Council
- The Dispute Resolution Procedure
- The Policy for Engagement between The Governors' Council and The Board of Directors
- The Code of Conduct
- The Policy for dealing with alleged non-compliance with the Code of Conduct
- The Board of Directors' Annual Timetable and Forward Plan
- The Governors' Council Annual Timetable and Forward Plan
- Chair, and Senior Independent Director (SID) role descriptions
- Induction Programme – Governors' Council and Board of Directors
- Process for the Removal of the Chair or Non-Executive Directors (WORKING TOGETHER STRATEGY supplement)
- Process for the removal of the Auditor (WORKING TOGETHER STRATEGY supplement)

External

- Schedule 7 to the NHS Act 2006
- The provisions of the NHS and Social Care Act 2012
- The Regulator's (Monitor's) Code of Governance – [July 2014 update](#)
- The Regulator's (Monitor's) - Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors – August 2013
- The Nolan Principles

The WORKING TOGETHER STRATEGY Supplement

The Working Together Strategy sets out how the Board of Directors and Governors' Council will work together to enable their key respective statutory duties to be delivered effectively.

Some Statutory Functions of the Governors' Council will only be exercised in extreme circumstances. These are set out here in the WORKING TOGETHER STRATEGY supplement, and comprise.

- A. Removing the Chair or other Non-Executive Directors**
- B. Removing the Auditor**

A. Removing the Chair and other non-executive directors

1. Regulatory Guidance

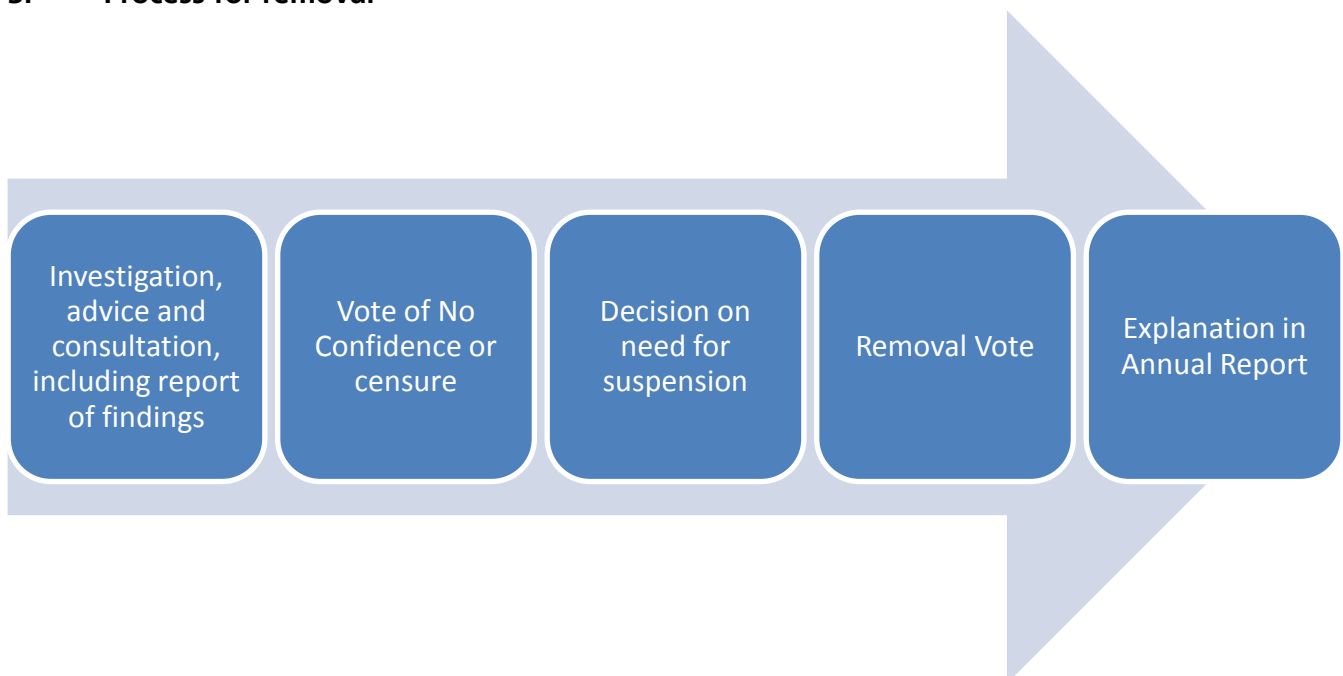
“Your Statutory Duties – A Reference Guide for NHS Foundation Trust Governors” states that:

- Removing the Chair or other non-executive directors is a very serious step and the Governors’ Council must ensure that a fair, rigorous, lawful and transparent process is in place.
- Removal of the Chair or other non-executive directors is only likely to be appropriate in very limited and particular circumstances.
- The removal should not take place unless the governors, other non-executive directors and the Chief Executive Officer (CEO) have had the opportunity to put forward their views on the basis of the available evidence.
- The Governors’ Council should only exercise its power to remove the Chair or other non-executive directors as a last resort.
- Throughout the process, the Chair or other non-executive director must be given an adequate opportunity to respond to the allegations made against them.

2. Possible reasons for removal include:

- Gross misconduct on the part of the Chair or other non-executive directors
- The Chair or other non-executive director losing the confidence of the Board of Directors or the Governors’ Council
- Severe failure by the Chair or other non-executive director to fulfil his/her role

3. Process for removal



(i) Investigation, advice and consultation

The Nominations and Remuneration Committee will investigate the matter, including any allegations made against the Chair or other non-executive directors. The NHS Foundation Trust may decide that an independent investigation is warranted under certain circumstances and this will be determined by the Trust.

This investigation will include consideration of the views of key personnel within the NHS Foundation Trust, including the non-executive directors. Before the subsequent confidence vote, the Governors' Council should discuss the matter with:

- The CEO – where the Chair is concerned
- The other non-executive directors, in particular the SID

Governors may under the provisions of the 2012 Act require one or more directors to attend a meeting to discuss the performance of the Trust or the directors' performance of their duties. However the decision on whether to hold a confidence vote is for the Governors' Council.

Legal advice on the legality of any removal and the process for it will be sought throughout.

(ii) Report

The Nominations and Remuneration Committee will prepare a report outlining the findings of the investigation and consultation, which will be shared with the Chair or other non-executive director to enable him / her to prepare his / her response to the allegations.

The Chair of the Nominations and Remuneration Committee will present the report outlining the findings of the investigation and consultation to the Governors' Council.

The Chair or other non-executive director will be invited to present his/her response to the allegations and report to the Governors' Council.

(iii) Vote of No Confidence

Only once the investigation has been properly undertaken would a vote of no confidence by a majority of the Governors' Council be required. This will not result in the removal of the Chair or other non-executive director but may, if carried, start the process.

When a vote of no confidence is proposed, the lead governor will inform the Regulator, via the NHS Foundation Trust's relationship manager.

(iv) Suspension

The Governors' Council may wish to consider whether it can and should suspend the Chair or other non-executive director while the process is followed. This may be considered appropriate in circumstances such as:

- Where a potential risk to patients or staff exists;
- If it is deemed that an individual may disrupt an investigation; or
- If there is an allegation of fraud.

Legal advice may need to be sought on whether there is a power to suspend, whether suspension is appropriate and the terms (including the length) of any suspension prior to any such decisions being taken.

(v) How will the final decision be made?

If the Governors' Council is content that a full and proper process has been followed, it should vote on the matter. If it is in any doubt about the process, it will seek clarification and remedy any deficiencies before voting.

Removal of the Chair or other non-executive director requires the approval of three-quarters of the members of the whole Governors' Council and not just those who attend the meeting.

4. What happens when the Regulator removes a chair or other non-executive directors?

There may be circumstances when, following a breach of an NHS Foundation Trust's licence conditions, the Regulator exercises its statutory powers to suspend or remove a Chair or other non-executive directors. Under such circumstances, the Regulator's statutory powers take precedence over the powers that may be exercised by the Governors' Council.

5. What are the next steps following removal?

In the event that removal takes place, a new appointment will need to be made (see The Board of Directors and Governors' Council – WORKING TOGETHER Strategy).

A description of the reasons for, and process of, removal will be set out in the NHS Foundation Trust's next annual report.

B. Removing the Auditor

Removing the auditor will be a very serious step and the Governor's Council must follow a rigorous and transparent process in order to take it. This process does not apply to situations where the audit contract has expired.

1. What are the possible reasons for removal?

The Governors' Council will recognise that removal of the auditor is rarely likely to be appropriate, particularly as the auditor has a significant independent role within the NHS Foundation Trust.

If the auditor demonstrably does not meet the criteria set out in the Audit Code, the governors may have grounds for removal, although governors must clearly understand those grounds before they embark on the removal process.

2. What is the process?

The Governors' Council will only exercise its power to remove the auditor after exhausting all other means of resolving any dispute. If it is not possible to resolve the issue, then the process is set out below.



(i) Proposal

The first step should be a proposal to consider removal by the Governors' Council. This will not in itself result in the removal of the auditor, but may, if supported, start the formal process of removal.

(ii) Investigation, advice and consultation

The Audit Committee should investigate the matter, including, where appropriate, any allegations made against the auditor.

The investigation should include consideration of the views of key personnel within the NHS Foundation Trust, including the NHS Foundation Trust's Director of Finance and his/her staff.

Legal advice on the legality of any removal and the process for it should be sought throughout.

(iii) Report

The Audit Committee will present the findings of the investigation and consultation to the Governors' Council. The Governors' Council must ensure that auditors are given adequate opportunities to respond to any allegations made.

(iv) How will the final decision be made?

If the Governors' Council is content that a full and proper process has been followed, it should vote on whether to remove the auditor. If there is any doubt whatsoever in relation to the process, the Governors' Council must seek clarification and remedy any deficiencies before voting.

A majority of the Governors' Council must vote to remove the auditor at a general meeting before a removal can go ahead.

3. What are the next steps following removal?

When the Governors' Council ends an auditor's appointment in disputed circumstances, the Chair of the NHS Foundation Trust should write to the Regulator, giving the reasons for the decision. In all cases of removal, the NHS Foundation Trust will need to appoint a new auditor (see Board of Directors and Governors' Council WORKING TOGETHER Strategy).

The removal process and the reasons for it will be set out in the NHS Foundation Trust's annual report.

Date approved by the Board of Directors	March 2016 <u>November 2017</u>
Date approved by the Governors' Council	April 2016 <u>November 2017</u>
Date for Review	April 2019 <u>November 2020</u>

EQUALITY IMPACT ASSESSMENT

This policy has been subject to an Equality Impact Assessment (see below) and is not considered to have a discriminatory impact on any individual or groups. A translated version of this policy will be provided upon receipt of request.

EQUALITY IMPACT ASSESSMENT TOOL

STAGE 1 - SCREENING

Name & Job Title of Assessor: Gill Rejzl, Trust Secretary
Policy or Function to be assessed: Working Together Strategy - Supplement
Date of Initial Screening: 10 th October 2010

		Yes/No	Comments
1.	Does the policy, function, service or project affect one group more or less favourably than another on the basis of:		
	• Race & Ethnic background	No	
	• Gender including transgender	No	
	• Disability	No	
	• Religion or belief	No	
	• Sexual orientation	No	
	• Age	No	
2.	Does the public have a perception/concern regarding the potential for discrimination?	No	

If the answer to any of the questions above is yes, please complete a full Stage 2 Equality Impact Assessment.

Signature of Assessor:	Gill Rejzl	<u>November 2017</u>
Signature of Line Manager:	<u>Jon Green</u>	<u>November 2017</u>