Agenda item 9

The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust

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POLICY FOR ENGAGEMENT BETWEEN THE GOVERNORS' COUNCIL AND THE BOARD OF DIRECTORS

Unique Reference / Version				
Primary Intranet Location	**Policy Name**	**Version Number**	**Next Review month**	**Next review year**
Corporate Governance	Policy for engagement between the Governors' Council and the Board of Directors	~~4~~3	April	2022~~19~~

Current Author	Gill Rejzl
Author's Job Title	Trust Secretary
Department	Corporate
Ratifying Committee	Board of Directors and Governors' Council
Ratified Date	April ~~2016~~2019
Review Date	April ~~2019~~2022
Owner's Job Title	Trust Chairman

It is the responsibility of the staff member accessing this document to ensure that they are always reading the most up to date version. This will always be the version on the intranet.

Related Policies	1. The Constitution (including the Standing Orders for the Board of Directors and the Governors' Council) 2. The Working Together Strategy

Stakeholders	Board of Directors Governors' Council

Version	Date	Author	Author's Job Title	Changes
V1	May 2011	G Rejzl	Trust Secretary	First iteration
V2	July 2012	G Rejzl	Trust Secretary	No Material Changes – Trust policy format applied
V3	April 2016	G Rejzl	Trust Secretary	No Material Changes – Trust policy format applied
V4	April 2019	G Rejzl	Trust Secretary	No Material Changes – Trust policy format applied

Short Description

This policy describes how Governors may engage with the Board of Directors (BoD) when they have concerns about the performance of the Board of Directors, compliance with the Terms of Authorisation or the welfare of the NHS Foundation Trust. (NHS Foundation Trust Code of Governance, Monitor March 2010).

Key words

Governor
Governance
Engagement

Policy for engagement between
The Governors' Council and the Board of Directors

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1. Legislation
2. Guidance

Policy for engagement between
The Governors' Council and the Board of Directors

1. PURPOSE

This policy describes how Governors may engage with the Board of Directors (BoD) when they have concerns about the performance of the Board of Directors, compliance with the Terms of Authorisation or the welfare of the NHS Foundation Trust. (NHS Foundation Trust Code of Governance, Monitor March 2010).

2. APPLICATION

This policy is not to be applied in relation to minor issues raised by an individual Governor, which may be dealt with informally by the Chair, Chief Executive or Finance Director. A concern, in the meaning of this policy, must be directly related to:

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

Similarly, the resolution of disputes in respect of the provisions of the Constitution is covered in the Dispute Resolution procedure.

Governors should acknowledge the overall responsibility of the Board of Directors for running the NHS Foundation Trust and should not try to use the powers of the Council, or the provisions of this policy, to veto the decisions of the Board.

3. CONFIDENTIALITY

Governors and Directors must ensure that full confidentiality is maintained in relation to all issues covered by this policy throughout the states of its application.

4. DUTIES

Chair

The Trust Chair acts as the link between the Governors' Council and the Board of Directors. He/she will, therefore, have the principal role in dealing with any issues raised by Governors, with involvement from the Chief Executive and/or other Executive or Non-Executive Directors as necessary.

Senior Independent Director

The Senior Independent Director (SID) acts as an alternative source of advice to Governors. His/her function is to deal with concerns which would be inappropriate to take to the Chair, or where engagement with the Chair has not resolved the matter.

Governors

Individual Governors have a responsibility to raise concerns (as defined in this policy) and to assure themselves that issues have been resolved. In addition, the Governors' Council as a body has a duty to inform the Regulator in writing, through the Lead Governor, if the Trust is at risk of breaching the terms of its Provider Licence.

5. EVIDENCE REQUIREMENTS

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 recognised organisation and the source must be clearly identifiable. Newspaper or other media articles will not be accepted as prima facie evidence, but may be accepted as supporting evidence.

6. RAISING CONCERNS

Whilst recognising the key role of the Chair in providing the link between the Governors' Council and the Board of Directors, it is recommended that any Governor or group of Governors who have concerns covered by this policy should, in the first instance, consult the Trust Secretary. The Secretary will be able to advise the Governor on the issues raised and whether it is appropriate to take their concerns to the Chair. The advice of the Trust is not, however, binding upon the Governor(s) concerned and they retain at all times the right to raise the matter with the Chair.

For concerns which it 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 Chair shall investigate all concerns brought to him/her by Governors, involving the Chief Executive and/or the other Board members. The investigation shall include a review of the evidence offered and discussions with Trust officers as appropriate, in accordance with Trust Policy.

As soon as practicable after the conclusion of the investigation, the Chair shall meet with the Governors to discuss the findings. This meeting has three possible outcomes:

1. The Governor(s) are satisfied that their concerns were unjustified and withdraw them unreservedly. In this case no further action is required.

2. The Governor(s) 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 session of the next scheduled meeting of the Governors' Council. If the majority of those Governors present agree that the matter is resolved then no further action is required.

   However, should a majority of the Council in attendance disagree, then a process for escalation described in Paragraph 7 shall be initiated.

3. The matter is not resolved to the satisfaction of the Governor(s).

   The Chair shall call a closed extraordinary meeting of the Governors' Council as soon as possible in accordance with the provisions of the Trust Constitution to consider the matter further. That meeting may choose either to take no further

action or, if two thirds of the Governors present agree, to initiate the escalation process described in Section 7.

7. ESCALATING CONCERNS

At this stage of the process the SID takes over the lead role from the Chair. Should the SID be unavailable, or be prevented from participating because of a conflict of interests, then the Governors' Council may choose any other Non-Executive Director to fulfil the role.

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 Governor(s), the process of the investigation and any documentation produced and also by meetings/interviews with the Governor(s) and any Trust officers involved.

In carrying out this process, the SID shall seek the agreement of all interested parties and shall have the authority to commission whatever legal or other advice is required.

Once the facts are established to his or her satisfaction, the SID shall make a decision on the course of action to be followed in the best interests of the Trust and shall describe the reasons for that decision in a written report. The decision of the SID shall be binding upon the Trust.

In the first instance, the SID shall present the decision and the report to the Governor(s) and to the interested parties within the organisation.

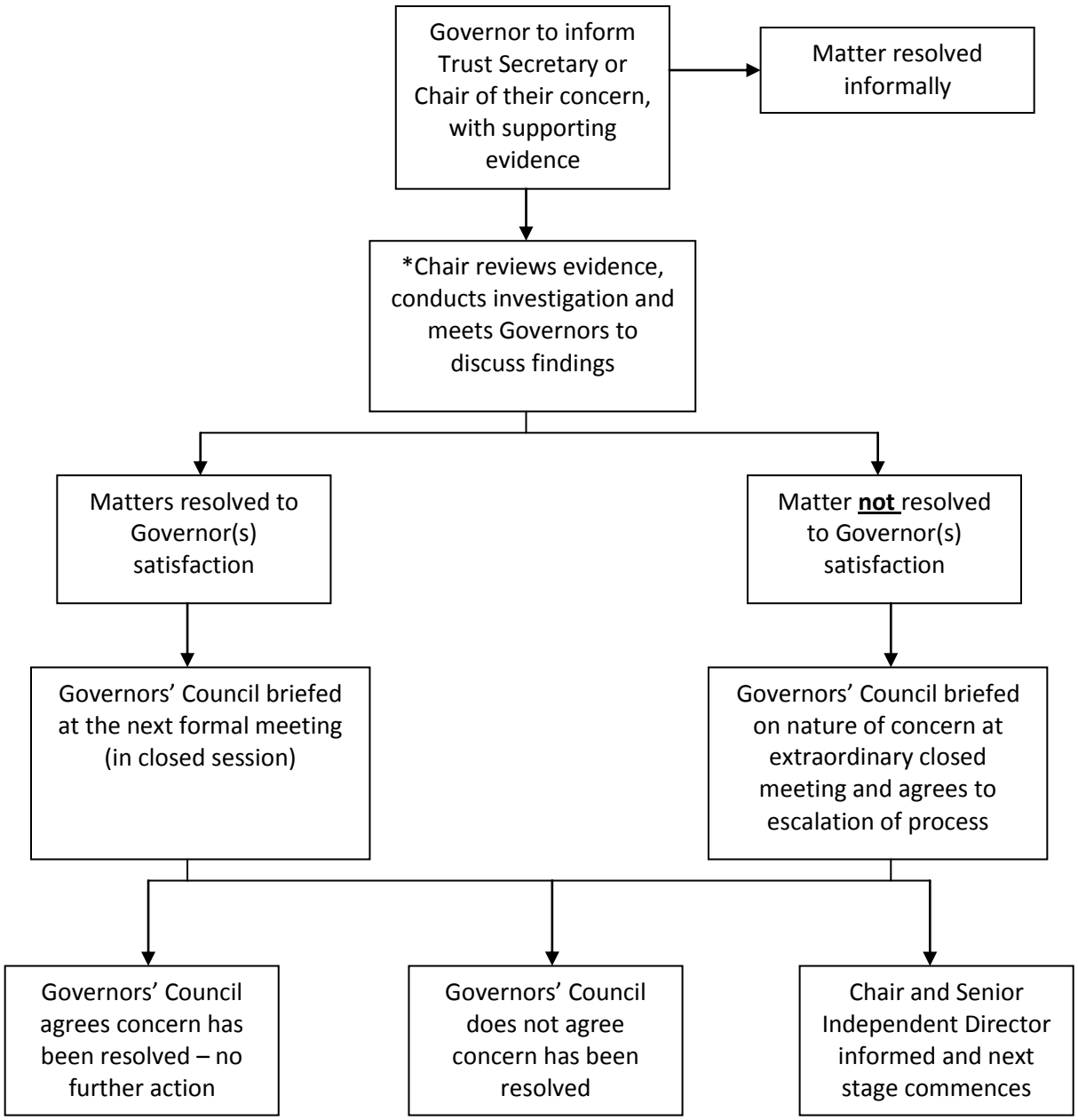
The SID shall then require the Chair to call a closed extraordinary meeting of the Governors' Council as soon as possible in accordance with the terms of the Trust Constitution. The purpose of the meeting and the sole item on the agenda will be for the SID to present his or her report and decision and for the Council to give its response. Three outcomes are possible:

1. The Council accepts the decision of the SID. In this case, no further action is necessary.

2. The Council does not accept the decision of the SID, but chooses not to escalate the matter further. No further action is prescribed by this policy but the Governors' Council may choose to keep the matter under review at future meetings.

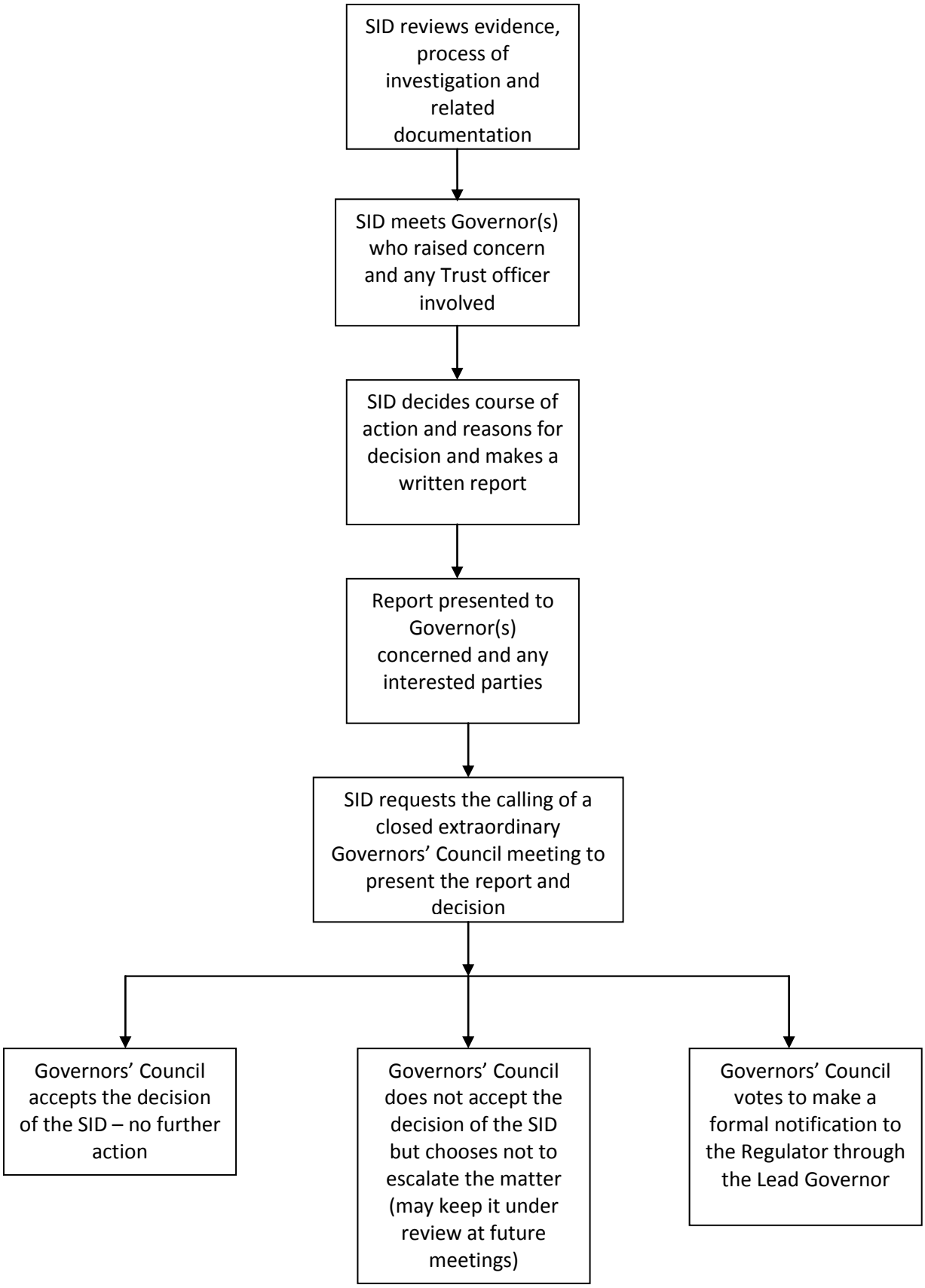
3. The Council votes to make a formal notification to the Regulator through the Lead Governor under the terms of The Code of Governance. The seriousness of such an action cannot be overemphasised and so such a decision can only be made if two-thirds of the Governors in attendance at the meeting vote in favour of it. The names of those voting and the way they cast their votes shall be recorded in the minutes.

RAISING CONCERNS



* for concerns which it would not be appropriate to raise with the Chair as indicated in Section 5 of the Policy, the role will be undertaken by the Senior Independent Director (SID).

ESCALATING CONCERNS



8. 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: Engagement Policy
Date of Initial Screening: 27th June 2012

		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 April 201~~6~~9

Signature of Line Manager: ~~Dorothy Hosein~~Caroline Shaw April 201~~6~~9

9. PLAN FOR DISSEMINATION OF PROCEDURAL DOCUMENTS

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

Acknowledgement: University Hospitals of Leicester NHS Trust

Title of document:	Policy for engagement between the Governors' Council and the Board of Directors		
Date finalised:	~~April 2016~~April 2019	**Dissemination lead: Print name and contact details**	Gill Rejzl Extension 3614
Previous document already being used?	Yes - available but to date – not invoked		
If yes, in what format and where?	Intranet – Corporate Governance area		
Proposed action to retrieve out of date copies of the document:	Replace old document with revised one		
To be disseminated to:	**How will it be disseminated, who will do it and when?**	**Format (i.e. paper or electronic)**	**Comments:**
Governors	At ratification meeting	paper	
Board of Directors	At ratification meeting	paper	

Dissemination Record - to be used once document is approved

Date put on register / library of procedural documents:		**Date due to be reviewed:**	

Disseminated to: (either directly or via meetings, etc.)	**Format (i.e. paper or electronic)**	**Date Disseminated:**	**No. of Copies Sent:**	**Contact Details / Comments:**

10. MONITORING COMPLIANCE

The Trust hopes and believes that this policy will rarely, if ever, be applied in full, so it will be difficult to monitor compliance and effectiveness.

However, the policy will be kept under review, compared with the provisions developed by other Foundation Trusts and revised in accordance with emerging best practice.

Key elements (Minimum Requirements)	Process for Monitoring (e.g. audit)	By Whom (Individual / group /committee)	Frequency of monitoring	Responsible individual / group / committee (plus timescales(for		
				Review of Results	Development of Action Plan	Monitoring of action plan and implementation
Application	Audit of process following use of policy	Board Governors – independent audit if necessary	NA	BoD and Governors' Council	BoD and Governors' Council	BoD and Governors' Council
Duties	Audit of process following use of policy	Board	NA	BoD and Governors' Council	BoD and Governors' Council	BoD and Governors' Council
Evidence	Audit of process following use of policy	Governors – independent audit if necessary	NA	BoD and Governors' Council	BoD and Governors' Council	BoD and Governors' Council
Raising Concerns	Audit of process following use of policy	Board	NA	BoD and Governors' Council	BoD and Governors' Council	BoD and Governors' Council
Escalating Concerns	Audit of process following use of policy	Governors – independent audit if necessary	NA	BoD and Governors' Council	BoD and Governors' Council	BoD and Governors' Council

References:

1. **Legislation:** NHS Act 2006 (Schedule 7)

2. **Guidance:** NHS Foundation Trust Code of Governance, Monitor March 2010

   Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors, Monitor 2010