

UNIVERSITY HOSPITALS DORSET NHS FOUNDATION TRUST

ENGAGEMENT POLICY:

THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

1. INTRODUCTION

- 1.1 This Engagement Policy has been developed in recognition of the recommendations in the Code of Governance for NHS Provider Trusts (Appendix B.2.6) to address engagement between the Board of Directors and the Council of Governors. The principles in this policy may be applied to engagement between the Council of Governors and committees of the Board of Directors.
- 1.2 The engagement between the Council of Governors and the Board of Directors is enshrined within the Constitution Annex 6, Section 6: Governors and Directors: Communication and Conflict. This describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal and formal communications between the Council of Governors and the Board of Directors.

2 Purpose

- 2.1 This Engagement 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 Regulatory Framework and specifically provide for those circumstances where the Council of Governors has concerns about:
- 2.1.1 the performance of the Board of Directors;
 - 2.1.2 compliance with the Trust's Provider Licence; or
 - 2.1.3 other matters related to the overall wellbeing of the Trust and its collaboration with system partners.

3 Definitions

- 3.1 In this Policy the following definitions shall apply:

2006 Act	means the National Health Service Act 2006 (and includes all amendments, replacements or re-enactments made to or any regulations, statutory guidance or directions made under it).
Board of Directors	means the Board of Directors as constituted in accordance with the Constitution
Chair	means the chair of the Trust appointed in accordance with the Constitution
Chief Executive	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with the Constitution
Company Secretary	means the Company Secretary of the Trust or any other person appointed to perform the duties of the

Constitution	secretary of the Trust
Council of Governors	means the Constitution of the Trust
Director	means the Council of Governors of the Trust as constituted in accordance with the Constitution
Governor	means a member of the Board of Directors
Lead Governor	means a member of the Council of Governors, being either an elected or an appointed Governor
Provider Licence	means one Governor appointed by the Council of Governors to communicate directly with NHS England in certain circumstances
Senior Independent Director	means the Trust's provider licence and which forms part of the oversight arrangements for NHS foundation trusts
Trust	means the Non-Executive Director appointed by the Board of Directors in accordance with the Constitution
	means the University Hospitals Dorset NHS Foundation Trust

4 Informal Communications

- 4.1 Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 4.2 The Chair shall use reasonable endeavours to encourage effective informal methods of communication including:
- i) participation of members of the Board of Directors in the induction, orientation and training of Governors;
 - ii) development of relationships between Non-Executive Directors and Governors such as through Board and Council of Governor Development Sessions;
 - iii) discussions between Governors and the Chair and/or the Chief Executive and/or Directors through the office of the Chief Executive or a nominated officer;
 - iv) involvement in membership recruitment and briefings at public events organised by the Trust.

5 Formal Communications

- 5.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.
- 5.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:
- i) specific requests by the Council of Governors will be made through the Chair to the Board of Directors;
 - ii) any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through

the Chair but if the Chair declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve his request to do so. The Chair shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;

- iii) joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate as determined by the Chair (in his capacity as the Chair of both the Board of Directors and the Council of Governors).

5.3 The Board of Directors may request the Chair to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.

5.4 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:

- i) the Board of Directors' proposals for the strategic direction of the Trust and the annual business plan, including information on ICS plans, decisions and delivery that directly affect the organisation and its patients;
- ii) the Board of Directors' proposals for developments;
- iii) Trust performance;
- iv) involvement in service reviews and evaluation relating to the Trust's services; and
- v) proposed changes, plans and developments for the Trust not covered by paragraph 5.4 above.

5.5 Some or all of the Board of Directors shall also present to the Council of Governors the Annual Accounts, the Annual Report including the Quality Account and any report of the Auditors in accordance with the terms of the Constitution and of the 2006 Act.

5.6 The following formal methods of communication may also be used as appropriate:

- i) attendance by Directors at a meeting of the Council of Governors;
- ii) provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors;
- iii) inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
- iv) reporting the views of the Council of Governors to the Board of Directors through the Chair, the Vice Chair or the Senior Independent Director.

6 Other Communication

- 6.1 The Governors are welcomed to Part 1 meetings of the Board of Directors. There is an item on each Part 1 agenda "Questions from the Governors". These are requested by the Chair, enabling individual governors to put questions to the Board of Directors. Verbal responses will be supplied as far as reasonable at the time of the meeting. The Chair has discretion to manage this item in the light of other Board of Directors' business. It is also a matter for Governors as to whether the question is for a formal Board of Directors' meeting or can be raised through the informal route. Shortly following a Board of Directors' meeting a briefing meeting takes place with the Chair and Governors with the purpose of informing the Governors as far as reasonable about the discussions conducted under the private session of the Board of Directors meetings. Executive and Non-executive Directors may exceptionally attend these briefings to support the Chair and impart further information if required. The Chairs of the committees of the Board of Directors are also to periodically attend meetings or briefings 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.
- 6.2 A newsletter will also be sent to Governors containing relevant information and updates.

7 Senior Independent Director

- 7.1 The Senior Independent Director (SID) can act as an alternative source of advice to Governors from the Chair.
- 7.2 The SID shall be available to Governors if they have concerns that contact through normal channels has failed to resolve any issues which have been raised or for which such contact is inappropriate.

8 Raising Concerns/ Dispute Resolution Procedure

- 8.1 The Council of Governors adopts a policy to proactively engage with the Board of Directors in those circumstances where they have concerns. The Council of Governors is encouraged to ensure its interaction and relationship with the Board of Directors is appropriate and effective. Governors can raise concerns with the Company Secretary who may in the first instance be able to resolve the matter informally.
- 8.2 Where the Company Secretary has been unable to resolve the matter, the Lead Governor shall be the first point of contact when Governors wish to seek advice and/or raise issues and who acts as the Council of Governors lead representative to the Chair on Governor matters.
- 8.3 In the event of a dispute arising between the Council of Governors and the Board of Directors, the Chair (or Vice-Chair if the dispute involves the Chair) will endeavour to resolve the dispute informally, through discussions within the Council of Governors.
- 8.4 Within twenty-eight days of the Council of Governors of the Board of Directors resolving that a dispute exists with the other, the Company Secretary shall call a joint meeting to be held as soon as reasonably practicable within three months of the resolution. The joint meeting shall be held under the Trust's Board of Directors' Standing Orders, but the provisions of the Standing Orders of the Council of

Governors in relation to interests shall apply to Governors attending the joint meeting as they apply to a Council of Governors meeting.

- 8.5 The joint meeting shall be chaired by the Chair and the agenda shall be agreed with the Chief Executive. The joint meeting shall either recommend to each of the constituents the formula for resolving the dispute which each shall receive and consider formally as soon as practicable, or, if possible, shall agree the relevant issues and the possible way forwards.
- 8.6 If either constituent resolves to refer the issue to mediation, the Lead Governor and a second nominated Governor on behalf of the Council of Governors and the Chief Executive and the Vice-Chair of the Board of Directors shall meet within twenty-eight days of such resolution to agree a mediator. In default of agreement, either constituent may resolve to refer the dispute for resolution by NHS England.
- 8.7 On the satisfactory completion of this disputes process the Board of Directors and the Council of Governors, as appropriate, shall implement any agreed actions.
- 8.8 The existence of the dispute shall not prejudice the duty of the Board of Directors in the exercise of the Trust's powers on its behalf.
- 8.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing NHS England that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the conditions of its provider licence. The Lead Governor will act as the conduit between the Council of Governors and NHS England.

9. Supporting Documents or Relevant References

- 9.1 NHS England Code of Governance for NHS provider trusts (October 2022);
Monitor – Director-governor interactions in NHS foundation trusts: a best practice guide for boards of directors
Monitor – Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors (August 2013);
NHS England - Addendum to your statutory duties – reference guide for NHS foundation trust governors (October 2022)

UHDFT Code of Conduct for Board of Directors;
UHDFT Code of Conduct for the Council of Governors.

10. Conclusion

- 10.1 This policy will be made available to the Board of Directors and the Council of Governors.

The procedure for any such mediation shall be as follows:

- 1.3.1 A neutral person, being an *accredited mediator, (the "**Mediator**") shall be chosen by agreement between the two parties. Alternatively, either party may within seven days from the date of the proposal to appoint a mediator, or within seven days of notice to any party that the chosen mediator is unable and unwilling to act, apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a Mediator.
- 1.3.2 The parties shall within seven days of the appointment of the Mediator agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the parties may at any stage seek from CEDR guidance on a suitable procedure.
- 1.3.3 All negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the parties in any future proceedings.
- 1.3.4 All information (whether oral or in the form of documents, tapes, computer disks etc) produced for, during, or as a result of, the mediation will be without prejudice, privileged and not admissible as evidence or discoverable in any litigation or arbitration relating to the dispute. This does not apply to any information which would in any event have been admissible or discoverable in any such litigation or arbitration.
- 1.3.5 The Mediator's reasonable fees and other expenses of the mediation will be borne by the Foundation Trust. The Foundation Trust will bear the reasonable costs and expenses of the participation in the mediation.
- 1.3.6 If the parties reach agreement on the resolution of the dispute that agreement shall be reduced to writing and shall be binding upon the relevant parties.
- 1.3.7 For a period of ninety days from the date of the appointment of the Mediator, or such other period as the parties may agree, neither party may commence any proceedings in relation to the matters referred to the Mediator.
- 1.3.8 If the parties are unable to reach a settlement at the mediation and only if both parties so request and the Mediator agrees, the Mediator will produce for the parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but will set out what the Mediator suggests are appropriate settlement terms in all of the circumstances. Such opinion shall be provided on a without prejudice basis.
- 1.3.9 Subject to Conditions 1.3.6 and 1.3.7, should either party decide to pursue the dispute in a court, the Foundation Trust shall not be liable for any of the costs or expenses in relation to such proceedings.