Code of Conduct for Governors

Approved by Nominations & Conduct Committee on 12 Aug 2019 and Council of Governors on 20 Sept 2019
Preface

Norfolk and Suffolk NHS Foundation Trust was formed from the merger of Norfolk and Waveney Mental Health NHS Foundation Trust and Suffolk Mental Health Partnership NHS Trust on 1st January 2012. Norfolk and Waveney Mental Health NHS Foundation Trust became a Foundation Trust on 1st February 2008. As a Foundation Trust, we have freedoms to act independently and improve mental health care for the communities we serve, whilst remaining an NHS Trust.

Foundation Trusts are given a licence to operate by NHS Improvement, an independent body which regulates Foundation Trusts. The licence issued by NHS Improvement is dependent upon having a Council of Governors in place as well as robust planning and financial systems.

Elections to the Council of Governors take place annually with Governors usually being offered a term of three years.

This document should be considered in conjunction with the following documents and other relevant Trust policies and procedures.

- Standards in Business Conduct Policy
- Public Interest Disclosure Act 1998 Policy
- Anti-Fraud and Anti-Bribery Policy
- Promoting equality, diversity and inclusion
- Freedom to Speak Up / Speak Out Safely (whistleblowing)
- Disclosure Barring Scheme
- Confidentiality
- Media
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1. Introduction

1.1 The purpose of this Code is to make clear the requirements of the office for all individuals occupying the position of Governor on the Trust's Council of Governors. As an Elected Governor or appointed representative, it is important that Governors are in no doubt about the standards of conduct and personal behaviour expected of anyone who holds public office. Whilst it is fully anticipated that these standards will be complied with, the Trust considers an explicit Code of Conduct to be an essential guide for all Governors, particularly those who are newly elected or appointed to the role.

1.2 In particular, Governors must recognise that the Trust is an apolitical public benefit organisation that seeks to promote social inclusion. Governors’ actions must be in keeping with the public sector equality duty; all public bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010;

- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and

- foster good relations between people who share a protected characteristic and people who do not share it. The promotion of any personal or political view that is at odds with this principle will be grounds for dismissal from the Council of Governors.

1.3 Given the confidential, and often sensitive nature, of the issues considered by the Council of Governors, Governors both individually and collectively must always act with total discretion and integrity, and in the interests of the greater good of the Trust and the people who use its services.

1.4 Any Governors who are members or affiliates of any trade union body, campaign group, political party, or other organisation that seeks to influence public opinion, must recognise that they will not be representing the views of such organisations. In the case of Elected Governors, they are elected to represent the views of their constituency’s members and the wider public.

1.5 The Code of Conduct for Governors should also be read in conjunction with:

- The NHS and NSFT Constitution

- NHS Foundation Trusts – Code of Governance

- Your Statutory Duties – a reference guide for NHS foundation trust governors
2. Guiding principles

A. Trust Values

2.1 Governors must actively demonstrate Trust’s values in all their interactions with one another, NSFT service users, carers, volunteers and staff, and with the public.

Our values... Our behaviours... Our future
Working together for better mental health...

Positively...

- Be proactive...
  Look for solutions, think creatively and focus on what we can do
- Take pride...
  Always do our best
- Take responsibility...
  Plan ahead, be realistic and do what we say we will
- Support people to set and achieve goals...
  And be the best they can
- Recognise people...
  Their efforts and achievements, and say thank you

Respectfully...

- Value everyone...
  Acknowledge people’s unique experiences, skills and contribution
- Step into other people’s shoes...
  Notice what’s actually happening
- Take time to care...
  Be welcoming, friendly and support others
- Be professional...
  Respect people’s time and be aware of our impact
- Be effective...
  Focus on the purpose and keep it as simple as possible

Together...

- Involve people...
  Make connections and learn from each other
- Share...
  Knowledge, information and learning
- Keep people updated...
  With timely, open and honest communication
- Have two-way conversations...
  Listen and respond
- Speak up...
  Seek, welcome and give feedback

B. Nolan Principles

The principles underpinning this Code of Conduct are drawn from the ‘Seven Principles of Public Life’, as defined by The Nolan Committee report (1996) and must be demonstrated by Governors. These are as follows:

 Selflessness

Holders of public office should act solely in terms of the public interest: they should not do so in order to gain financial or other benefits for themselves, their family or their friends.
Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit alone.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions they take: they should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Declarations of Interest

In addition to the above Governors are expected to pay particular attention to declaring interests. Governors must declare all interests to the Trust Secretary. In addition Governors may be required to absent themselves from any meeting or part of a meeting where an interest occurs depending on the nature of the interest and the matter under consideration by the Council of Governors. This absence will be recorded in the minutes of that meeting.
3. The role of the Council of Governors

3.1 The NHS Act (2006) and the Health and Social Care Act (2012) sets out the general duties of the Council of Governors;

a) “to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

(b) to represent the interests of the members of the corporation as a whole and the interests of the public.”

3.2 Advisory: to represent the interests of members and the wider public and to provide advice to the Board of Directors. In order to do this the NHS Foundation Trust and the Council of Governors will need to consider:

- How each Governor will maintain a dialogue with the membership community that they represent. This will need to include how the public interests of the local community will be represented, including the interface between Governors and the constituency they represent taking account of forums already in place (for example, forums for people who use the services, voluntary sector networks, the Overview and Scrutiny Committees, staff groups);
- Governors will provide the opportunity for members to meet them within accessible venues
- Engagement with the wider community, including seldom heard groups and assisting with membership recruitment
- The day-to-day role of the Governors
- How the members can contact the Governors

3.3 Strategic: Governors advise on the longer-term direction for the NHS Foundation Trust so that the Board of Directors can effectively determine its strategy and policies;

3.4 Governance: Governors hold Non-Executive Directors to account for the performance of the Board of Directors. They question, clarify and, if necessary and based on clear evidence, challenge the decisions and ways of working of the Board of Directors. They promote the highest standards of probity in governance and financial matters. Governors appoint the Chair and NEDs, observe them in action, ensure their effective appraisals and set their remuneration. They appoint the external auditors, work with the Board of Directors to ensure the external evaluation of the Board is carried out appropriately and they also approve the CEO appointment.

3.5 Governors carry out these functions solely in the interests of promoting the good governance of the Trust and representing the interests of local people.
4. Accountability and the NHS Constitution

4.1 The NHS Constitution Principles also inform this Code, and should guide the activities of the Council of Governors. These principles are that:

a) The NHS provides a comprehensive service, available to all.

b) Access to NHS services is based on clinical need, not on an individual’s ability to pay.

c) The NHS aspires to the highest standards of excellence and professionalism.

d) NHS services must reflect the needs and preferences of patients**, their families and their carers.

e) The NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population.

f) The NHS is committed to providing best value for taxpayers’ money and the most effective, fair and sustainable use of finite resources.

g) The NHS is accountable to the public, communities and patients that it serves.” NHS Constitution (2014) http://www.england.nhs.uk/2013/03/26/nhs-constitution/.

**In this context patients includes service users.
5. Confidentiality

5.1 Governors will receive a mixture of confidential papers and public documents. Governors may also hear confidential information at meetings that they attend, or when speaking with patients, carers, staff and members of the public. All Governors are required to respect the confidentiality of the information they are made privy to as a result of their role.

5.2 All Governors are legally required to respect the confidentiality of information they are made privy to as a result of their role: written and verbal.

5.3 Governors must fully comply with the Data Protection Act (2003) and, from 2018, the General Data Protection Regulations, principally in respect to the safe storage, transit, and destruction of records. In particular, Governors should ensure that confidential documents sent to them are carefully stored. Governors must provide safe and secure storage of records within their homes and ensure other people do not have access to them.

5.4 Private Council of Governors’ papers are particularly confidential and must not be shared with any third party. Once records are no longer needed they should be destroyed by shredding or returned to the Trust.

5.5 Governors may receive copies of private and confidential papers to inform their contributions to decision-making in accordance with the Constitution and may be asked to sign a specific confidentiality agreement*. Governors normally receive these electronically. It is particularly important that Governors take care not to forward electronic private Board of Directors’ papers and to ensure that files are stored securely and deleted properly (including when disposing of the hard drive).

5.6 When discussing sensitive information Governors must be mindful of who is within earshot, including external visitors to meetings who are not Governors.

5.7 Any queries about confidentiality should be addressed to the Trust Secretary or Caldicott Guardian – see Appendix I.
6. Personal Conduct

6.1 Governors are required to act at all times in accordance with the Nolan Principles, and to live NSFT’s values of Positively, Respectfully, Together. In respect of their interaction with others, they are also required to:

a) Be mindful of their conduct and act at all times in a way that is fair, inclusive and non-discriminatory and that reflects positively on the Trust

b) Treat other Governors, the employees and others involved with NSFT with respect in accordance with the Trust’s policies: that they are respected and the diversity of their experiences and contributions are valued

c) Seek to ensure that as a Governor, there is a two-way dialogue between the members of the constituency or partner organisation, and to ensure that their constituents’ views are fed back into the Trust, rather than the Governors’ personal views

d) To attend mandatory training, and other training as required

e) Work in the best interests of the Trust improvement plans, recognising that Governors and the Trust Board of Directors and staff have a common purpose in the success of the Trust.

f) Read and become familiar with the documents in the Governor Induction Pack, to include the completion and submission of the DBS form, declaration of interest and photo ID forms

g) Demonstrate active commitment and participation by engaging with constituents and by attending relevant meetings and seeking to ensure a two-way dialogue between themselves, the wider public and the Trust

h) Provide an email address that can be used for Governor communications, (where this is not possible to provide another form of direct communication) which is only accessible by the Governor to ensure confidentiality, and to respond to such communications in a timely way and manner

i) Ensure that they deal with communication in a timely manner: a daily check where possible

j) Attend, and be an active participant in, the Council of Governors’ meetings. Where a Governor fails to attend two consecutive Council of Governors’ meetings without an agreed leave of absence from the Chair, this will trigger the process for considering breaches of the Code of Conduct.
7. Standards for meetings

7.1 All Governors are asked to:

a) Arrive in time for meetings to start promptly, having read the papers and prepared for the meeting

b) Provide apologies in advance and in a timely manner (attendance records are required as part of the Annual Report and Accounts)

c) Switch off all mobile devices, or to go to silent, during the meeting

d) Inform the Chair and Trust Secretary if reasonable adjustments are required in line with the Equality Act (2010): eg: induction loop, separate room

e) Support the Chair to enable business to be conducted effectively, so that the Governors can act as an efficient and effective team

f) Respect the Chair if asked to move on from a topic or to allow others the chance to contribute

g) Listen attentively to others’ views, disagree courteously / constructively, and acknowledge that different views are worth hearing

h) Remain respectful to other Governors in a way that is fair and inclusive

i) Understand and accept that some Governors will have disabilities that may affect how they present, and to remain mindful of such disabilities in line with the Equality Act (2010)

j) Address the problem and not the person, remaining polite and civil at all times

k) Recognise the value of an open debate

l) Make contributions solely on the agenda topic being considered at the time

m) Indicate to the Chair that they wish to contribute and wait until invited to speak

n) Speak clearly and as concisely as possible

o) Share the time available so that all Governors have the opportunity to contribute, ensuring that quieter Governors have the chance to present their views if they so wish

p) Act in the best interests of the Trust as a whole, and not as a representative of any outside body or pressure group.
7.2 Governors should not:
   a) Dominate the meeting, speak over someone else or repeat the same points
   b) Raise their voice
   c) Use discriminatory or bad language
   d) Make personal criticisms of individuals
   e) Make invalid generalisations
   f) Use jargon or acronyms without first clearly explaining their meaning
   g) Take phone calls or deal with external communications on mobile devices unrelated to the business of the meeting (unless urgent) without first notifying the Chair
   h) Introduce any business which is not on the agenda without prior agreement under Any Other Business (AOB)
8. Non-compliance with the Code of Conduct

First Stage

8.1 If it is suspected by the Chair of the Nominations & Conduct Committee or alleged via a complaint that a Governor may have contravened this Code of Conduct, then the first step will always be to see to resolve the matter informally. This is unless the matter is of a severity that the Chair and the Lead Governor decide that immediate action is necessary.

8.2 Whatever the stage of the process, it is recognised that this can be a stressful time for the Governor(s) concerned and support will be offered.

8.3 Informal resolution can take many forms but shall always begin with a conversation between the Chair and the Lead Governor to agree a course of action. The Chair will then contact the Governor(s) identifying that there are some concerns and asking for a meeting to resolve them informally. At the meeting, the Chair and Governor will discuss the concern, the impact and relevant expected behaviour and agree a course of action.

8.4 If this proves unsuccessful, the Chair may then, after discussion with the Lead Governor, raise with the issue Nominations & Conduct Committee. The Committee may decide that one or two of their number should join the Chair at a further attempt at informal resolution with the Governor concerned.

8.5 If the matter concerns disagreements between two or more Governors, then informal resolution will be attempted followed by independent mediation.

8.6 The outcomes of such a meeting could be that no further action is required, other than a letter confirming agreed changes in behaviour and additional support. The Chair will report to the Nominations & Conduct Committee on any informal resolutions, but will not necessarily need to provide details or the name of the Governor(s) if the matter is resolved swiftly and amicably. If other outcomes are necessary, such as a leave of absence or other jointly-agreed conclusions, these will be shared with the Governor(s) involved, the complainant and the Nominations & Conduct Committee, but not with the Council of Governors.

Second Stage

8.7 Should the alleged breach of the Code of Conduct continue or be serious enough for an investigation or suspension to be required, or when it may lead to the termination of the Governor’s office to be considered, then the Chair should immediately advise the Lead Governor and thereafter the Nominations & Conduct Committee as soon as possible after received the allegation of a breach. This notification will be in the strictest confidence.

8.8 The Chair may appoint the Senior Independent Director or an independent person to investigate more serious allegations of non-compliance, with a report prepared for
consideration by the Nominations & Conduct Committee. The decision may be taken to immediately suspend the Governor(s) pending the outcome of an investigation.

8.9 The Chair will meet with the Governor(s) involved and may do so with the Lead Governor, members of the Nominations & Conduct Committee or the Trust Secretary present. The Governor may wish to bring support with them, but this should not be a legal representative.

8.10 If the Governor(s) involved fail to reply or attend a meeting, the Chair, Lead Governor and members of the Nominations & Conduct Committee may decide to suspend the Governor(s) and move to the Third Stage of this process.

8.11 The outcome(s) and recommendations of the meeting will be shared with the Governor(s) involved, the complainant(s), the Lead Governor and the Nominations & Conduct Committee.

Third Stage

8.12 If the outcomes from the report or meetings, or continued non-compliance with the Code of Conduct, are deemed serious enough to warrant expulsion from the Council of Governors, the Chair and the Nominations & Conduct Committee will prepare a report to the Council for their consideration in private session. This meeting must be quorate (one third of the total number of Governors in role must be present) and it may be a special Council meeting is convened with sufficient time for all arguments to be heard fairly.

8.13 At the meeting, the Nominations & Conduct Committee will put forward its recommendation for expulsion and the reasons why, and the Governor(s) involved will be provided with a right of response. The Governor(s) involved may be supported by a friend in a non-legal capacity, and this should be advised to the Trust Secretary in advance.

8.14 If the Council of Governors decide that the Code of Conduct has not been infringed, then the matter is closed.

8.15 If the Council of Governors decide that the Code of Conduct has been infringed, then the following sanctions are available:

I. A written warning

II. Suspension from the role of Governor for a time-limited period with immediate effect

III. Dismissal from the role of Governor with immediate effect.

8.16 The decisions shall be made by majority vote of those present and the decision of the Council shall be final. The Governor(s) who have alleged to have breached the Code of Conduct may not vote on this matter.
Failure to attend Council of Governors’ meetings

8.17 As set out in Section 6(j), Governors undertake to regularly attend Council of Governors’ meetings and where a Governor fails to attend two consecutive meetings without leave of absence from the Chair then this section of the Code of Conduct will be triggered.

8.18 From 2018, Governors will be expected to attend public Council of Governors’ meetings, any private or informal sessions held in the morning and the members event and conferences held every year. If a Governor attends in the morning only, their attendance will be recorded as ‘part’.

8.19 The Chair (or the Trust Secretary on behalf of the Chair) will contact the Governor to review the reasons for non-attendance and to agree a plan to enable attendance in the future. If appropriate, Trust support will be offered to help with the plan.

8.20 If there is an ongoing reason which makes it unlikely that an Elected Governor can attend future Council of Governors’ meetings then the Governor should consider whether they are able to fulfill the role that they were elected to serve. By standing down it may be possible to offer the seat to next candidate on the ballot sheet as set out in the NSFT Constitution.

8.21 If the Elected Governor does not agree to a plan to ensure attendance, or does not follow the plan, the Chair may trigger a formal process under Sections 8.1-8.16.

8.22 If there is an ongoing reason which prevents a Partner Governor from attending Council of Governors’ meetings, then the Chair (or the Trust Secretary on behalf of the Chair) will ask the host organisation to nominate a new Governor who is able to attend.

9. Actions available to Chairs of subgroups

9.1 A sub-group Chair may insist that a Governor leave a subgroup meeting if they believe that the Governor is in breach of this Code of Conduct. The sub-group Chair will then make a written report to the Council of Governors’ Chair with a view to the matter being considered under the process set out above.

10. Relationship with NHS Improvement


10.2 In particular Governors are reminded of Section A.5 of the Code in considering their conduct.
11. The Council of Governors should inform NHS Improvement if the Trust is at risk of breaching its license, if these concerns cannot be resolved at a local level. Use of Governor Powers

11.1 Governors 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 of Governors to veto the decisions of the Board of Directors. In exercising their powers as set out below, Governors must seek advice from NHS Improvement and a majority of the Governors (two-thirds present and voting) must agree the course of action.

11.2 The Council of Governors should only exercise its power to remove the Chair or any Non-Executive Directors after exhausting all other means of engagement with the Board of Directors, and they have reasons which are legitimate, factual and legally sound.

11.3 The Council of Governors should only exercise its power to refuse to authorise the appointment of the Chief Executive or external auditors if they have reasons that are legitimate, factual and legally sound.
12. Personal declaration

I, ............................................................... (please print full name), have read, understood, and agree to abide by the Code of Conduct for the Council of Governors of the Norfolk and Suffolk NHS Foundation Trust. I understand that the Code of Conduct is reviewed annually and agree to be bound by changes approved by the Council of Governors. I understand that in order to continue to as a member of the Council of Governors I must comply with the conditions set out in the Trust’s Constitution below*

Signature: ...............................................................  

Date: ...............................................................  

_________________________________________________________________

Please return this form, once signed, to the Trust Secretary

* Extract from the Trust’s Constitution,

The following may not become or continue as a member of the Council of Governors:

a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

b) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

c) a person who has made a composition or arrangement with, or granted a trust deed for, his / her creditors and has not been discharged in respect of it;

d) a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him / her.

Also in Annex 6

1. Persons also may not become or continue as a Governor of the Trust if:

1.1 they are a Director of the Trust, or a Governor or Director of another NHS Body, or of an independent / private sector healthcare provider. These restrictions do not apply to Appointed Partner Governors;

1.2 being a member of the Public Constituency or the Service Users’ and Carers’ Constituency, they are or were entitled to be a member of one of the classes of the Staff Constituency at any point during the preceding two years;

1.3 being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;

1.4 they are the subject of a sex offender order;

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1.5 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, expiry of a fixed-term contract, disability, ill health or age from any paid employment with a health service body. In other cases of dismissal, such as capability, an individual may be permitted to become a Governor, at the discretion of the Trust, and subject to full disclosure of the relevant circumstances and facts concerning their dismissal;

1.6 they are a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

1.7 they have had their name removed, by a direction under the National Health Service Act 2006, or have otherwise been disqualified or suspended from any health care profession, and have not subsequently had their name included in such a list or had their qualification reinstated or suspension lifted (as applicable);

1.8 they are an Elected Governor and they cease to be a member of the constituency or class by which they were elected. This may include, but is not restricted to, the reasons for ceasing to be a member identified in Annex 9;

1.9 they are a Governor appointed by a partnership organisation and they cease to be sponsored by their partnership organisation;

1.10 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;

1.11 they are a member of the local authority’s Overview and Scrutiny Committee covering health matters;

1.12 they fail to or indicate that they are unwilling to act in the best interests of the Trust and in accordance with The Seven Principles of Public Life laid out by the Committee on Standards in Public Life in its first report as amended from time-to-time;

1.13 they fail to agree (or, having agreed, fail) to abide by the values of the Trust’s principles.

1.14 Criticism of a Governor’s actions, accepted as a prima facie case to be heard, is to be reviewed by a sub-committee of the Council of Governors in accordance with the Trust’s Code of Conduct for Governors, which is based on the NHS Improvement Code of Governance paragraph D.2.3.

1.15 Governors are required to inform the Chair if they become disqualified for appointment within 14 days of them becoming disqualified.
## 13. Contact details

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