

Standard Operating Procedure for the Process for Alleged Breach of the Governors Code of Conduct	
Post holder responsible for Procedural Document	Melanie Holley, Director of Governance
Author of Standard Operating Procedure	Melanie Holley, Director of Governance
Division/ Department responsible for Procedural Document	Corporate Affairs
Contact details	<i>Ext. 3993</i>
Date of original standard operating procedure	23 June 2017
Impact Assessment performed	Yes
Approving body and date approved	Council of Governors 7 June 2021
Review date (and frequency of further reviews)	January 2024 (every three years)
Expiry date	June 2024
Date document becomes live	8 June 2021

Please *specify* standard/criterion numbers and tick ✓ other boxes as appropriate

Monitoring Information		Strategic Directions – Key Milestones	
Patient Experience		Maintain Operational Service Delivery	
Assurance Framework		Integrated Community Pathways	
Monitor/Finance/Performance		Develop Acute Services	
CQC Fundamental Standards Regulations No:		Delivery of Care Closer to Home	
		Infection Control	
Other (please specify):			
Note: This document has been assessed for any equality, diversity or human rights implications			
Controlled document			
This document has been created following the Royal Devon and Exeter NHS Foundation Trust Development, Ratification & Management of Procedural Documents Policy. It should not be altered in any way without the express permission of the author or their representative.			

Full History		Status: Draft	
Version	Date	Author (Title not name)	Reason
1.0	06/01/2017	Head of Governance	<i>New Standard Operating Procedure</i>
2.0	07/06/2021	Director of Governance	<i>Routine Revision</i>

Associated Trust Policies/ Procedural documents:	<u>Royal Devon & Exeter NHSFT Constitution</u>
Key Words:	<i>Breach, Code of Conduct</i>
In consultation with and date: Document Review Group (various), CoG Coordinating Committee (various) and Council of Governors (7 June 2021)	
Review Date	June 2024
Contact for Review:	Director of Governance
Executive Lead Signature:	Suzanne Tracey, Chief Executive

CONTENTS

1.	INTRODUCTION.....	4
2.	PURPOSE.....	4
3.	DEFINITIONS.....	4
4.	DUTIES AND RESPONSIBILITIES OF GOVERNORS AND STAFF	5
5.	MISCELLANEOUS.....	5
6.	PROCESS ON INITIAL RECEIPT OF COMPLAINT/ALLEGATION	7
7.	INITIAL CONSIDERATION BY THE COG COORDINATING COMMITTEE	8
8.	INVESTIGATION	9
9.	CONSIDERATION OF INVESTIGATION REPORT	9
10.	FORMAL COUNCIL OF GOVERNORS ROUTE.....	10
11.	APPEAL.....	12
12.	COMMUNICATIONS.....	13
13.	ARCHIVING ARRANGEMENTS	13
14.	PROCESS FOR MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE STANDARD OPERATING PROCEDURE/ GUIDELINE	13
15.	REFERENCES.....	13
	APPENDIX 1: GOVERNOR CODE OF CONDUCT	15
	APPENDIX 2: GUIDANCE FOR INVESTIGATORS	18
	APPENDIX 3: COMMUNICATION PLAN	19
	APPENDIX 4: EQUALITY IMPACT ASSESSMENT TOOL	20

1. INTRODUCTION

- 1.1 Governors have a range of roles to fulfil incorporating legal, oversight and governance responsibilities. They have strategic stewardship responsibilities and are expected to act in the best interest of the NHS foundation trust. They represent the interests of NHS foundation trust members and hold the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors, including ensuring the Licence is complied with. It is therefore essential that Governors are fully aware of the values, vision and behaviours the Trust seeks to promote to staff, members, patients and the wider public.

2. PURPOSE

- 2.1 The purpose of this Standard Operating Procedure (SOP) is to provide a robust procedure to follow in the event that a Governor is alleged to have breached the Governors' Code of Conduct in Appendix 1.

3. DEFINITIONS

The following definitions apply for terms used in this procedure:

- 3.1 Chair: the chair of the Trust.
- 3.2 Council of Governors: the Council of Governors as constituted in the Royal Devon & Exeter NHS Foundation Trust's Constitution.
- 3.3 Director of Governance: undertakes the role of Trust Secretary.
- 3.4 Governor: a member of the Council of Governors.
- 3.5 Member: a member of the Royal Devon & Exeter NHS Foundation Trust.
- 3.6 Complainant(s): the person(s) who is raising the complaint or concern.
- 3.7 A Complaint is any expression of dissatisfaction that requires a response.
- 3.8 Conflict of interest: a situation in which an individual has more than one interest which prevents the proper exercise of their duties and finds themselves unable to be impartial under this procedure. If Governors have any doubt as to the relevance or materiality of an interest, this should be discussed with the Chair.
- 3.9 Investigator: the person requested to conduct a fair, prompt and proportionate investigation under this SOP.
- 3.10 CoG Coordinating Committee: a Committee which coordinates the work of the Council of Governors.
- 3.11 Lead Governor: A Public Governor elected by the Council of Governors to the role of Lead Governor.
- 3.12 Terms of Reference: the framework used by the Investigator, setting out the issues to be investigated and matters to be considered as part of the investigation.

- 3.13 Supporter: to support a Governor/Complainant during the process.
- 3.14 Suspension: the process of placing on a Governor a requirement that they do not participate in the work of the Council of Governors, while an investigation is undertaken into the allegations reported. Suspension is a neutral act; it is neither a disciplinary action nor an assumption of guilt. A suspended Governor shall continue to be required to adhere to the Governor's Code of Conduct.
- 3.15 Present at a meeting: this can be virtually as well as face-to-face.

If any post holder is conflicted or otherwise unavailable to act, references in this SOP to that post holder shall be construed as references to a suitable deputy agreed by the Chair. If the Chair is conflicted then the Vice Chair or another Non-Executive Director shall deputise.

4. DUTIES AND RESPONSIBILITIES OF GOVERNORS AND STAFF

- 4.1 The Chair is responsible for undertaking their role as per this procedure and for being able to take immediate action where necessary under 5.3 of this Procedure.
- 4.2 The Council of Governors is responsible for ensuring that in the event of the need to sanction or remove a Governor that the process is fair, rigorous, lawful and transparent.
- 4.3 The Director of Governance is responsible for ensuring that the Standard Operating Procedure is enacted and followed.
- 4.4 Governors are responsible for their own conduct and for demonstrating an appropriate standard of behaviour at all times in line with the Governors Code of Conduct.

Governors should be aware that complaints of inappropriate conduct or behaviour and/or breaches of the Code of Conduct may still be dealt with under this procedure, and could still therefore lead to their removal as a Governor and Member of the Trust, where the complaint in question relates to events occurring outside of their specific duties as Governor. This is because such behaviour and/or breaches of the Code of Conduct still have the potential to adversely impact on the Trust's reputation and/or may still be considered relevant to the question of whether the Governor is fit to carry out their duties. Governors are responsible for engaging with any action taken in line with this procedure and for arranging their own support for formal meetings.

- 4.5 The CoG Coordinating Committee is responsible for undertaking its role as per this procedure.
- 4.6 Supporters are responsible for recognising this is confidential business of the Trust. Consideration should be given to any supporter (whether for the Governor or a Complainant) being asked to sign a Non-Disclosure Agreement for the purposes of these proceedings.

5. MISCELLANEOUS

- 5.1 Any written correspondence may be by electronic means (email).
- 5.2 It is anticipated that all timescales set out within this procedure will be met; however, the Chair in consultation with the Director of Governance and the Lead Governor may extend any timescale given, if they have a clear reason to do so. Where a time limit imposed on a Governor is not met, or the Governor indicates that they do not intend to

engage with the procedure, the Chair may continue to progress the procedure without further process or delay.

- 5.3 At any time, the Chair is authorised to take such interim measures as may be immediately required, including the exclusion of the Governor concerned from a meeting or suspension from duties, on the basis that such measures are necessary to:
- 5.3.1 enable an effective investigation to be undertaken into any concern or complaint about a Governor;
 - 5.3.2 address or prevent any significant disruption to the effective operation of any part of the Trust;
 - 5.3.3 manage risk to the health or well-being of any Governor, employee, volunteer or patient of the Trust;
 - 5.3.4 protect the reputation of the Trust; or
 - 5.3.5 give effect to a proposal by the Council to impose a sanction on a Governor, until such times as the sanction is agreed by the Governor or the determination of an assessor has been received and notified to the Governor.
- 5.4 During any period of suspension from duties, the Governor is not permitted to:
- 5.4.1 attend or enter the Trust's premises unless he or she is doing so as a patient of the Trust, as a carer or family member of a patient of the Trust or with the consent of the Chair;
 - 5.4.2 contact any of the Trust's Governors, employees, suppliers, volunteers or patients without the express prior permission of the Chair, other than in circumstances where any such contact is purely of a personal nature and unrelated to their position or duties as a Governor or in relation to this process; or
 - 5.4.3 access any of the Trust's email or IT systems.
- 5.5 Any decision by the Chair under paragraph 5.3 shall be communicated to the CoG Coordinating Committee as soon as reasonably practicable and is effective when the Governor is notified either verbally or in writing. Any verbal notification shall be confirmed in writing. The Governor will be required to maintain confidentiality in regards to their suspension and the process being undertaken, save that they may disclose information about the process being followed to their Supporter required for the purposes of paragraphs 9 and 11 below.
- 5.6 The Chair shall notify the Council of Governors that an interim measure has been imposed as soon as reasonably practicable. The Chair shall not be required to explain the basis for imposing an interim measure. The Governor shall be removed from the Council of Governors' distribution lists for the period of the suspension.
- 5.7 In order to protect the legitimate interests of a Governor and any Complainant, the Council of Governors shall not be entitled to receive any further information regarding the use of this procedure in relation to any Governor until it is notified of any charge on which it is being asked to make a decision.
- 5.8 Notwithstanding the use of this procedure, a Governor is entitled to resign at any time. Where a Governor who is subject to this procedure resigns, the Chair will

Standard Operating Procedure for Process for the Alleged Breach of the Governors' Code of Conduct

Ratified by: *Council of Governors: Date 7 June 2021*

Review date: 2024

provide an overview of the complaint to the Council where this would not unduly prejudice the interests of the Governor, and the complaint may still be investigated under this procedure if it is considered necessary or appropriate to do so in the circumstances.

- 5.9 The CoG Coordinating Committee or Council of Governors are authorised to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary. The costs of such advice must be agreed with the Trust.
- 5.10 Any meeting or hearing under this Procedure may be conducted remotely, by telephone or video conference technology, if the Chair, following consultation with the Director of Governance, considers it possible and appropriate in the circumstances. If any meeting or hearing is conducted remotely in this way, instructions for how to attend the meeting or hearing will be sent (usually by email) to all parties who are invited to attend, prior to the start of the meeting or hearing itself. Specific rules for remote participation in the meeting or hearing may also be circulated to all attendees in advance, and any failure to adhere to these rules by any Governor attending the meeting or hearing may be treated as a breach of the Governor's Code of Conduct and dealt with accordingly.
- 5.11 Normally this Procedure will apply as set out; however, in some circumstances it may not meet the circumstances of a complaint and investigation, for example where multiple complaints and counter complaints arise. The aim should be to incorporate the essential elements of the Procedure and the final decision of the most appropriate process will remain with the Chair, following consultation with the Director of Governance and the Lead Governor.

6. PROCESS ON INITIAL RECEIPT OF COMPLAINT/ALLEGATION

- 6.1 This procedure shall apply where the Chair identifies, or becomes aware of, a complaint about a Governor from any source (it may be necessary to consider section 5.3 at this stage).
- 6.2 The Chair shall ensure that all complaints are documented before proceeding.
- 6.3 The Chair, in consultation with the Director of Governance and Lead Governor, will determine whether and how to proceed with a complaint: either informally or formally. Consideration should be given to undertaking a wellbeing check of the Governor against whom the complaint has been received and the Complainant(s).
- 6.4 If the Chair decides a complaint shall be dealt with informally, the Chair will discuss it with the Governor and if appropriate, offer advice or support to the Governor in an effort to avoid any further breaches of the Governors' Code of Conduct or the Trust Constitution. This will be documented in writing to the Governor and kept on file for a period of 12 months. The complaint shall not be taken further under this procedure, unless the Chair subsequently determines that the complaint is more serious than first thought and should be dealt with as in paragraph 7 below.
- 6.5 If the Chair decides a complaint shall be dealt with formally, the provisions of paragraph 7 below will apply.
- 6.6 The Chair shall document:
- 6.6.1 their reasons for their decision under paragraph 6.3;
 - 6.6.2 any advice or support offered to a Governor under

Standard Operating Procedure for Process for the Alleged Breach of the Governors' Code of Conduct

Ratified by: *Council of Governors: Date 7 June 2021*

Review date: 2024

paragraph 6.3; and provide a copy to the Head of Governance (Trust Secretary).

- 6.7 The Chair shall report all complaints and any actions taken to the CoG Coordinating Committee.
- 6.8 In the event that the Governor complained against raises a counter-complaint, the Chair, Director of Governance and the Lead Governor shall decide how to proceed with that counter-complaint.

7. INITIAL CONSIDERATION BY THE COG COORDINATING COMMITTEE

- 7.1 The Chair shall provide details of the complaint to the Governor and advise them that the matter will be referred to the CoG Coordinating Committee. The Chair will invite the Governor to provide a response to the complaint within 10 working days so that this can be considered by the Committee. If the Governor requests any further information in relation to the complaint than that which has already been provided, the Chair will determine whether it is appropriate or necessary to provide this information.
- 7.2 If the Governor fails to provide a response to the complaint, or fails to provide a response within 10 working days (without providing a good reason for the delay), this may be deemed a breach of paragraph 12 of the Governors' Code of Conduct, which requires a Governor to cooperate fully and in a timely manner with any authorised due process or investigation. This alleged breach may be added to the existing allegations made against the Governor in the complaint, which will then be considered by the CoG Coordinating Committee as detailed at paragraph 7.5 below.
- 7.3 If the Complainant or Governor complained about is a member of the CoG Coordinating Committee, they shall be excluded from CoG Coordinating Committee meetings for the duration of this process and instead represented by their deputy/ Working Group Vice Chair.
- 7.4 The complaint and any response received from the Governor shall be tabled by the Chair for discussion at the next meeting of the CoG Coordinating Committee. A meeting should be convened at the earliest opportunity.
- 7.5 At the next meeting of the CoG Coordinating Committee, the Committee shall be asked to determine by a majority of those present and voting whether the complaint requires further investigation. In the event the Governor has not provided a response to the complaint as envisaged in paragraph 7.1 (or has not provided a response within the required timeframe set out in paragraph 7.1), the CoG Coordinating Committee will be entitled to consider and vote on whether the complaint requires further investigation solely on the basis of the information available to it at that meeting.
- 7.6 If the majority required for the decision under paragraph 7.5 is not achieved, no further action shall be taken against the Governor under this procedure in relation to that complaint unless the Chair receives new information or evidence and subsequently determines that the complaint is more serious than first thought and asks the CoG Coordinating Committee to reconsider the matter or the Governor refuses to engage with the help and support offered as set out in paragraph 7.7 below. The Governor will be informed of the decision by the Chair in writing within ten (10) working days, and will be offered advice or support.
- 7.7 For the purposes of this procedure, advice and support may include:

Standard Operating Procedure for Process for the Alleged Breach of the Governors' Code of Conduct

Ratified by: *Council of Governors: Date 7 June 2021*

Review date: 2024

- 7.7.1 Helping a Governor to understand their obligations under the Governors' Code of Conduct and the Trust's Constitution;
- 7.7.2 Offering an opportunity for a Governor to discuss their behaviour with the Chair and Lead Governor to help them to comply with their obligations under the Governors' Code of Conduct and the Trust's Constitution;
- 7.7.3 Offering mediation between a Governor and a Complainant.

8. Investigation

- 8.1 If the majority required for the decision under paragraph 7.5 is achieved, the Committee shall agree Terms of Reference (ToR) for an investigation into the complaint and instruct the Director of Governance to initiate an investigation. The Director of Governance may delegate responsibility for undertaking the investigation to a third party.
- 8.2 The ToR will be documented.
- 8.3 The Governor shall cooperate with the investigation, and any failure to do so may be considered to be a breach of paragraph 12 of the Governors' Code of Conduct. Any such breach may be added to the existing allegations made against the Governor in the complaint, and investigated accordingly in accordance with this paragraph 8.
- 8.4 The Committee shall also require the Complainant to cooperate with the investigation, in so far as it is possible for the Committee to do so.
- 8.5 An investigation should be completed as soon as practicable, and ideally within thirty (30) working days, subject always to paragraph 5.2 above. If a significantly longer period than 30 working days is required for the investigation to be completed, then this should be agreed by the CoG Coordinating Committee.
- 8.6 Where further complaints about the Governor are identified in the course of an investigation, the Investigator may ask the CoG Coordinating Committee to widen the ToR or decide whether a new investigation is required.
- 8.7 The Investigator shall produce a draft investigation report setting out:
 - 8.7.1 The ToR and the evidence obtained for each element of the ToR;
 - 8.7.2 Any information obtained from the Governor;
 - 8.7.3 Any other information that the Investigator deems appropriate.
- 8.8 The draft investigation report will be reviewed by the Director of Governance before it is shared with the Chairman and the Lead Governor for comment. The draft investigation report shall then be sent to the Governor for them to provide their comments on the conclusions in the report, which must be provided within 10 working days of receipt of the report. If the Governor does not provide any comments within 10 working days, the Governor will be deemed not to have any comments to make in relation to the conclusions in the report, and this procedure will continue to be followed as set out below.
- 8.9 The investigation report, along with any comments from the Governor, shall be sent to the members of the CoG Coordinating Committee by the Trust Secretary in good time to be read before the meeting at which it is to be discussed.

9. CONSIDERATION OF INVESTIGATION REPORT

- 9.1 The CoG Coordinating Committee can decide to hold preliminary meetings in

private to consider the Investigation Report to consider whether any further information is required before the Investigation is complete.

- 9.2 The CoG Coordinating Committee shall hold an extraordinary meeting in private to consider the investigation report.
- 9.3 The Governor shall be entitled to (but can choose not to) attend a CoG Coordinating Committee meeting convened for the purposes of paragraph 9.2. They shall be entitled to make representations relevant to the contents of the investigation report. They may attend the CoG Coordinating Committee meeting with a Supporter, but that Supporter shall not be entitled to address the meeting. Where the Governor seeks to rely on information that they have not previously provided to the Investigator, they will only be allowed to do so where this is agreed by the Chair. The Governor and Supporter shall be required to withdraw from the meeting after making representations, and shall not be allowed to be present when the CoG Coordinating Committee discusses the investigation report and votes on any matter.
- 9.4 A Complainant shall not be entitled to attend a CoG Coordinating Committee meeting convened for the purposes of paragraph 9.2 without the permission of the Chair and the Lead Governor. Where a Complainant is asked to attend a CoG Coordinating Committee meeting, they may attend with a Supporter, but that Supporter shall not be entitled to address the meeting. The Complainant and Supporter shall not be allowed to be present when the CoG Coordinating Committee discusses the investigation report and votes on any matter.
- 9.5 Having considered the investigation report and any submissions, the CoG Coordinating Committee shall be asked to determine by a majority of those present and voting whether the complaint should be taken forward by means of the formal route set out at paragraph 10.
- 9.6 If the majority required for the decision under paragraph 9.5 is not achieved, the CoG Coordinating Committee shall adopt the informal route set out at paragraph 6 above.

10. FORMAL COUNCIL OF GOVERNORS ROUTE

- 10.1 If the majority required in paragraph 9.5 is achieved, the CoG Coordinating Committee shall instruct the Director of Governance to prepare a draft charge statement stating that the Governor has breached the Governors' Code of Conduct or the Trust's Constitution or both.
- 10.2 The CoG Coordinating Committee shall consider the draft charge statement and the evidence of the breaches and make any amendments. A majority of those present and voting at a meeting of the CoG Coordinating Committee shall be required to approve the terms of the charge statement and propose a sanction.
- 10.3 A confidential Extraordinary Council of Governors meeting shall be called in accordance with Annex 3 of the Trust's Constitution. A copy of the charge statement, the evidence, the proposed sanction and the evidence relied upon by the Committee in support of the charge statement, along with any information or representations that have been received from the Governor in the course of this procedure, shall be sent at least 10 working days prior to the meeting to:
 - 10.3.1 The Governor who is subject to this process, with an invitation to attend the Extraordinary Council of Governors meeting. The Governor shall be asked to respond in writing to the invitation at least five (5) working days before the meeting;
 - 10.3.2 All members of the Council of Governors, with a request that they each

Standard Operating Procedure for Process for the Alleged Breach of the Governors' Code of Conduct

Ratified by: *Council of Governors: Date 7 June 2021*

Review date: 2024

confirm safe receipt of the information (although this acknowledgement of receipt will not be required in order to proceed with the Extraordinary Council of Governors meeting).

- 10.4 For the avoidance of doubt, the Extraordinary Council of Governors meeting will take place and the Council will consider the issues as set out in paragraph 10.7 below regardless of whether the Governor who is subject to this process responds to the invitation as set out in paragraph 10.3.1 or attends the meeting itself.
- 10.5 If the Governor attends the meeting convened for the purposes of paragraph 10.3, they shall be entitled to make representations relevant to the contents of the charge statement. They may attend the Council meeting with a Supporter but that Supporter shall not be entitled to address the meeting. Where the Governor seeks to rely on information that they have not previously provided to the Investigator or the CoG Coordinating Committee, they will only be allowed to do so where this is agreed by the Chair. The Governor (with their Supporter) shall be required to withdraw from the meeting after making their representations, and shall not be allowed to be present or to vote when the Council discusses the charge statement and votes.
- 10.6 In recognising this is confidential business of the Trust, where the Complainant is not a member of the CoG, a Complainant shall not be entitled to attend a Council meeting convened for the purposes of paragraph 10.3 without the permission of the Council. Where a Complainant is asked to attend a Council meeting, they may attend with a Supporter, but that Supporter shall not be entitled to address the Council. The Complainant (and Supporter) shall not be allowed to be present or to vote when the Council discusses the charge and votes.
- 10.7 If a quorum as laid down in the Constitution is not achieved for any reason, the meeting will be rescheduled for another date which will be as soon as practicably possible taking into account the notice requirements set out in Annex 3 of the Trust's Constitution. Any Governor who has any conflict of interest in the matter which is the subject of the charge, shall disclose their conflict as soon as is practicable after the commencement of the meeting and will not take part in the consideration or discussion of the charge. The Chair should consider whether to exclude that Governor from the meeting entirely. Even in the event the Governor with the conflict of interest is not excluded from the meeting, they will not count towards quoracy or be entitled to vote on the proposed sanction under paragraph.
- 10.8 At the meeting called under paragraph 10.3, the Council will review the available evidence, determine whether the allegations set out in the charge statement are proven and decide by way of a vote whether to impose a sanction.
- 10.9 Sanctions may include (but are not limited to):
 - 10.9.1 A written warning. A time limit of up to 12 months will be applied to this sanction. The imposition of the sanction will be added to a Governor's nomination statement should it still be in place at the time a Governor is standing for re-election to the Council of Governors.
 - 10.9.2 Non-payment of expenses, where the complaint relates to the Governor wrongfully claiming expenses; and/or
 - 10.9.3 Removal from office as a Governor and removal as a Member of the Trust.
- 10.10 The threshold of votes required in order to impose a sanction on a Governor is as follows:
 - 10.10.1 in the case of the sanction of removal from their office as Governor and their expulsion as a Member of the Trust, this shall

Standard Operating Procedure for Process for the Alleged Breach of the Governors' Code of Conduct

Ratified by: *Council of Governors: Date 7 June 2021*

Review date: 2024

- only be imposed with the support of not less than two-thirds of those Governors present and voting at the Council meeting where the charge statement is considered; or
- 10.10.2 in the case of any other sanction, this shall only be imposed with the support of a majority of those present and voting at the Council meeting where the charge statement is considered.
- 10.11 If the relevant threshold as set out in paragraph 10.10 is not reached for the purposes of imposing a sanction, no further action shall be taken against the Governor under this procedure in relation to that complaint.
- 10.12 The Council may alternatively, on the basis of a decision of a majority of those Governors present and entitled to vote, instruct the Chair to offer advice or support to the Governor.
- 10.13 The Governor shall be notified of the Council's decision by the Chair in writing usually within ten (10) working days of the decision. Where a sanction is proposed, the Governor shall be asked to acknowledge in writing receipt of the sanction within ten (10) working days, although any failure to do so on the Governor's part will not affect the imposition of the sanction, which will take effect regardless from the date of the letter confirming the Council's decision.
- 10.14 If the imposed sanction is removal from office as a Governor and/or removal as a Member of the Trust, the Governor will be required to return all Trust property (ID badge, parking permit, papers etc.) to the Director of Governance immediately.
- 10.15 If the Governor was suspended at any time during the process under paragraph 5.3, then the suspension is concluded when the outcome and any sanction is communicated to the Governor under paragraph 10.13.

11. APPEAL

- 11.1 The Governor has the right to appeal any sanction issued. An appeal must be raised in writing under one or more of the following grounds:
- Identified flaws in the investigation or hearing process
 - Additional information that they believe would affect the outcome which was not available at the time of the hearing
 - Failure of the Council of Governors to consider all the information raised
 - Overly harsh sanction imposed
- 11.2 An appeal must be lodged within ten (10) working days of receipt of the outcome letter. The Governor should state in full their grounds of appeal.
- 11.3 Appeals should be sent to the Vice Chair of the Board of Directors.
- 11.4 Appeal hearings will normally be set up within 15 working days of receipt of the appeal letter.
- 11.5 A Non-Executive Director, normally the Vice Chair, will be appointed to chair the appeal hearing alongside a panel comprising another of the Trust's Non-Executive Directors and a Governor from another Foundation Trust. The panel will not rehear the initial case, reviewing the process and the appropriateness of the original decision. If the sanction imposed by the Council of Governors was

the appellant's removal as a Governor, the NED on the panel shall be from another Foundation Trust.

- 11.6 It is the responsibility of the Governor to state their case for appeal. The Vice Chair will have available to them the original hearing information and any further information submitted by the Governor in advance of the appeal hearing.
- 11.7 The decision may be given on the day or may be deferred for further consideration in which case the Governor will usually be written to within 7 working days of the hearing with the details of the decision reached. The outcome will also be presented to the Council of Governors, usually within 7 working days of the hearing.
- 11.8 The Complainant will be notified in writing of the completion of the process.
- 11.9 The outcome is final and there is no further right of appeal.

12. COMMUNICATIONS

- 12.1 If a Governor is removed from the Council of Governors, the Members of the Trust from their Constituency shall be informed.

13. ARCHIVING ARRANGEMENTS

The original of this Standard Operating Procedure will remain with the author the Director of Governance, Corporate Affairs. An electronic copy will be maintained on the Trust intranet, P – Policies – R – *Removal of a Governor*. Archived electronic copies will be stored on the Trust's "archived policies" shared drive, and will be held indefinitely. A paper copy (where one exists) will be retained for 10 years.

14. PROCESS FOR MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE STANDARD OPERATING PROCEDURE/ GUIDELINE

14.1 Frequency

Each time the Standard Operating Procedure is used, the Director of Governance will audit compliance to ensure that this Standard Operating Procedure has been adhered to and a formal report will be written and presented to the Council of Governors. A significant review was undertaken following the use of this procedure in 2020.

14.2 Undertaken by

Director of Governance

14.3 Dissemination of Results

At the next Council of Governors meeting.

14.4 Recommendations/ Action Plans

Implementation of the recommendations and action plan will be monitored by the Council of Governors.

- 14.5 Any barriers to implementation will be risk-assessed and added to the risk register.

15. REFERENCES

[Royal Devon & Exeter NHSFT Constitution](#)

Standard Operating Procedure for Process for the Alleged Breach of the Governors' Code of Conduct

Ratified by: Council of Governors: Date 7 June 2021

Review date: 2024

APPENDIX 1: GOVERNORS' CODE OF CONDUCT

The Royal Devon & Exeter NHS Foundation Trust is an apolitical organisation.

In undertaking the role of Governor of the Royal Devon & Exeter NHS Foundation Trust, all Governors shall read and comply with the following declaration.

I will:

General

1. Abide by the Seven Principles of Public Life (Nolan), which are listed below.

i) Selflessness

Holders of public office should take decisions solely in terms of public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or friends.

ii) Integrity

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

iii) 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.

iv) Accountability

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

v) 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.

vi) 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.

vii) Leadership

Holders of the public office should promote and support these principles by leadership and example.

2) Act in the best interests of the Trust at all times;

3) Adhere to the Trust's values and ensure compliance with the Trust's Constitution and the Equality and Diversity Policy;

4) Not discriminate against anyone for any reason;

5) Recognise that the Council of Governors exercises collective, not individual, decision-making;

- 6) Contribute to the work of the Council of Governors in order for it to fulfil its role as defined in the Trust's constitution;
- 7) Attend meetings of the Council of Governors, members' meetings and development days and such other groups or committees as is necessary in order to carry out the role;
- 8) Recognise that the Council of Governors has no staff managerial/supervisory role within the RD&E NHSFT;
- 9) Recognise and respect that only collective decisions are promoted and supported in the public domain;
- 10) Support the vision and aims of the RD&E in developing as a successful NHSFT;
- 11) Where applicable, support and assist the Accountable Officer of the RD&E NHSFT in their role and responsibilities;
- 12) Cooperate fully and in a timely manner with any authorised due process or investigation, whether the investigation concerns alleged breaches of this Code or any other matter;
- 13) Support the Lead Governor and Chair in their role of ensuring appropriate conduct at all times;
- 14) Seek to ensure that the membership of the constituency I represent is properly informed and given the opportunity to influence services;
- 15) Act as an ambassador for the Trust at all times;
- 16) By my actions not bring the Trust into disrepute;
- 17) Declare if my circumstances change and I can no longer continue my role as a Governor;
- 18) Challenge unacceptable behaviours at the time as far as reasonable and/or informally raise concerns directly with the Lead Governor/Deputy or Trust Chair;

Personal Behaviours

- 19) Accept responsibility for my own actions;
- 20) Show my commitment to working as a team member by working constructively and collaboratively with other Governors and my colleagues in the NHS and the wider community;
- 21) Value fellow Governors as colleagues and consider their views;
- 22) Not expect any privilege arising from being a Governor and will not use my role as a Governor to pursue my own personal agenda or beliefs or that of any organisation that I belong to;
- 23) Uphold and respect the confidentiality of information received as a Governor and not disclose confidential information to the public;
- 24) Not knowingly make or permit any untrue or misleading statement relating to my own duties or the integrity and functions of the RD&E NHSFT;
- 25) Be punctual, have prepared for all meetings in advance, and have read the relevant papers as far as practicable;
- 26) Not start a second conversation during a meeting/presentation, inappropriately interrupt, or talk over people;

27) Respect the Chair of any meeting;

Communications

28) Contact the Stakeholder Engagement & Inclusion Director (Trust head of communications) before liaising with the media;

29) Use professional, respectful and courteous tone and language in all communication including e-mails;

30) Take into account how any communication, including an email, might be perceived by the recipient;

31) When using email, identify all other recipients (i.e. do not use blind copy (BCC)), avoid use of "Reply All" wherever possible and to consider whether email is the most appropriate way to address the matter;

I accept that I am required to abide by this Code of Conduct at all times, whether in the course of carrying out my duties as a Governor or otherwise.

Any breach of this Code or failure to uphold this declaration will be addressed in line with the Trust's Constitution and the Trust's Standard Operating Procedure for the Process for Alleged Breach of the Governors Code of Conduct.

APPENDIX 2: Guidance for Investigators

1. The role of the Investigator is to establish the essential facts of the matter fairly and objectively and reach a conclusion on what did or did not happen. This should be done by looking for evidence that supports the allegation and evidence that contradicts it.
2. It is not the Investigator's role to prove the guilt of any party but to establish if there is a case to answer.
3. To act as an Investigator you must be considered independent. Therefore you will not have been involved in the incident and may be from a different department. Furthermore you should not present any conflict of interest or be likely to be influenced by people involved in the matter.
4. Main duties of an Investigator include drafting the Terms of Reference, handling investigation meetings, gathering evidence, writing an investigation report and ensuring any recommendations unrelated to the matter are considered.
5. As an Investigator you should keep details and evidence in relation to the investigation confidential at all times.
6. When writing an Investigation Report the Investigator should ensure:
 - It is written in an objective style
 - It avoids jargon and explains acronyms
 - They use appropriate language
 - It is concise
 - They stick to the facts
 - All collated evidence is included.
7. Evidence should be arranged into uncontested facts, contested facts and unsubstantiated claims. The Investigator should endeavour to reach a conclusion about what did or did not happen even when evidence is contested or contradictory. This involves the **Balance of Probabilities**. This means that as an Investigator you do not have to find proof beyond all reasonable doubt that the matter took place, but you will need to decide on the balance of probabilities as to whether an incident is more likely to have occurred or not and whether the case should be tested at a formal hearing.
8. Following an investigation, the Investigator should state whether or not there is any evidence to support or refute the allegation. They should not suggest a possible sanction or prejudge what the outcome to a hearing may be.
9. During an investigation the Investigator may identify other issues that while outside the scope of the terms of reference, may still require addressing and action. , e.g. 'There appear to be some significant issues within which is creating poor morale and is detrimental to effective teamwork. I would recommend that xxxx.'

APPENDIX 3: COMMUNICATION PLAN

The following action plan will be enacted once the document has gone live.

Groups that need to have knowledge of the guideline/SOP	Council of Governors
The key changes if a revised document	N/A
The key objectives	The purpose of this Standard Operating Procedure is to provide a robust procedure to follow in the event that a Governor breaches or is alleged to have breached the Governors' Code of Conduct in Appendix 1.
How new Governors will be made aware of the procedure/guideline and manager action	Via new Governor induction process
Specific Issues to be raised with governors	Governors are advised to ensure they read and sign the Governors' Code of Conduct on completion of election nomination form (elected Governors)
Training available to Governors	N/A
Any other requirements	None
Issues following Equality Impact Assessment (if any)	No negative impacts
Location of hard / electronic copy of the document etc.	On the Trust's public website www.rdehospital.nhs.uk

APPENDIX 4: EQUALITY IMPACT ASSESSMENT TOOL

Name of document	Standard Operating Procedure for the Process for Alleged Breach of the Governors Code of Conduct
Division/Directorate and service area	Corporate Affairs
Name, job title and contact details of person completing the assessment	Melanie Holley, Director of Governance Melanie.holley@nhs.net
Date completed:	06/01/2017

The purpose of this tool is to:

- **identify** the equality issues related to a policy, procedure or strategy
- **summarise the work done** during the development of the document to reduce negative impacts or to maximise benefit
- **highlight unresolved issues** with the policy/procedure/strategy which cannot be removed but which will be monitored, and set out how this will be done.

1. What is the main purpose of this document?

The purpose of this Standard Operating Procedure is to provide a robust procedure to follow in the event that a governor breaches or is alleged to have breached the Code of Conduct in Appendix 1.

2. Who does it mainly affect? (Please insert an “x” as appropriate:)

Carers Staff Patients Other (please specify) Governors

3. Who might the policy have a ‘differential’ effect on, considering the “protected characteristics” below? (By *differential* we mean, for example that a policy may have a noticeably more positive or negative impact on a particular group e.g. it may be more beneficial for women than for men)

Please insert an “x” in the appropriate box (x)

Protected characteristic	Relevant	Not relevant
Age	<input type="checkbox"/>	X
Disability	<input type="checkbox"/>	X
Sex - including: Transgender, and Pregnancy / Maternity	<input type="checkbox"/>	X
Race	<input type="checkbox"/>	X
Religion / belief	<input type="checkbox"/>	X
Sexual orientation – including: Marriage / Civil Partnership	<input type="checkbox"/>	X

4. **Apart from those with protected characteristics, which other groups in society might this document be particularly relevant to...** (e.g. those affected by homelessness, bariatric patients, end of life patients, those with carers etc.)?

n/a

5. **Do you think the document meets our human rights obligations?**

Feel free to expand on any human rights considerations in question 6 below.

A quick guide to human rights:

- **Fairness** – *how have you made sure it treats everyone justly?*
- **Respect** – *how have you made sure it respects everyone as a person?*
- **Equality** – *how does it give everyone an equal chance to get whatever it is offering?*
- **Dignity** – *have you made sure it treats everyone with dignity?*
- **Autonomy** – *Does it enable people to make decisions for themselves?*

6. **Looking back at questions 3, 4 and 5, can you summarise what has been done during the production of this document and your consultation process to support our equality / human rights / inclusion commitments?**

All Governors consulted on the process via working groups and CoG. The process has also been checked against the Trust's processes for staff which have been assessed against the equality impact assessment tool.

7. **If you have noted any 'missed opportunities', or perhaps noted that there remains some concern about a potentially negative impact please note this below and how this will be monitored/addressed.**

"Protected characteristic":	
Issue:	
How is this going to be monitored/ addressed in the future:	
Group that will be responsible for ensuring this carried out:	