Governor Conduct

Aims of this guidance

* To support trusts and councils in developing and adopting a jointly-owned (ideally co-created) process for fairly and transparently addressing any governor conduct issues or other failure to meet the required standards – and to do so before issues arise.
* To support trusts and councils currently experiencing governor conduct issues by sharing good practice from other trusts.
* To support trusts in reviewing any existing processes they have for managing governor conduct in light of learning we have collated from other trusts.

Key principles when developing or revising a conduct process

We know that trusts and councils will need to develop processes that suit them and that fit the values and culture of their organisations. There is no one-size-fits-all approach. However, **based on feedback from our members**, there are some principles that, if borne in mind, should lead to an effective, jointly owned process.

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| Adopt the principles of co-design whenever possible. |
| Value the governor role and recognise that it is not easy, but also recognise the need for governors to meet certain standards of behaviour and fulfil the statutory requirements of their role. |
| Be clear that relationships between board and council and between governors and trust staff/other governors should be collegiate and based on mutual respect. |
| Recognise that poor behaviours from governors have an impact on other governors as well as on trust employees and others that governors meet. |
| Recognise that as volunteers, decisions about governors’ conduct will always be based on a ‘reasonableness’ test – not employment law – and therefore will always involve a degree of judgement. |
| Be clear about the standards that are expected of governors – if the trust’s Code of Conduct and Constitution are not fit for purpose in this respect then governors may not understand what is expected of them and the trust and council will struggle to hold governors to account. |
| Early, informal resolution is always preferable to formal and should be attempted prior to commencing any formal action. |
| Include provision for psychological/emotional support to be provided to affected parties if required. |
| Be clear about who should receive initial complaints, who should lead any investigation and appeal process if required, and who would issue any informal sanction. |
| Include provision for anonymity (of complainant and respondent) while going through the process, insofar as investigations are not hampered and the respondent is given enough information to respond to the complaint. |
| Include provision for the complainant and respondent to have a companion attend any meetings regarding the complaint to support them, if they wish. |
| The person who is the subject of the complaint should have a right to respond to the complaint and be heard. |
| Adopt a process that is proportionate – make reasonable use of taxpayers’ money and everyone’s time. |
| Ensure the right to appeal is clearly articulated, and identify an independent person or group (not previously involved in the investigation) that will undertake the appeal |
| Be clear about the end point of the process – there needs to be ‘closure’ to enable the trust and council to move on. |

Informal resolution and formal sanctions

Everyone makes mistakes and many people have busy and complex personal and/or professional lives outside their voluntary work on a council of governors. Sanctions applied to breaches of the code of conduct should be proportionate to the breach.

In the [examples of conduct issues](#Examples) section (below) we set out an **inexhaustive** list of potential conduct issues. They are divided into breaches of non-statutory requirements, statutory requirements and criminal conduct. The statutory issues are those set out in trusts’ constitutions (and derived from legislation) that make someone ineligible to remain a governor. Criminal activity, if suspected, should be reported to the police and the governor suspended from council duties until the issue is resolved.

The type of resolution or sanction for other infringements of the code will depend on the severity of the breach and the potential for the governor to continue effectively in the role. ‘Severity’ is not an objective measure so will involve judgement, including about the harm caused, and taking into account any mitigating factors.

In the case of less serious breaches, a governor may require additional training, support, or simply a conversation raising the issue and asking them to acknowledge it may be sufficient. It would make sense for the chair or company secretary to follow up such conversations in writing so that, should there be further similar issues, there is a record of the prior conversation and commitments given.

Removing a governor from the council should be the final sanction but the power for the council to remove a governor should be clearly articulated in your procedure as well as your constitution.

There will be certain conduct issues where the risk to the trust, council, staff or patients is so great that a governor may need to be removed from the council and trust premises without undertaking the full procedure of investigation and potential appeal. This might be so in cases of physical or verbal abuse, for example.

In cases where an investigation has occurred and the recommendation is exclusion from the council, the council should be presented with the facts at a formal session, held in private. Legislation does not establish a threshold for decision-making around sanctions against governors nor the removal of a governor, but does say[[1]](#footnote-1) that the constitution should make provision for the removal of governors. The constitution should include a voting threshold that is high enough that a reasonable majority is required (for example two thirds of council members).

To fulfil the requirements of public transparency and accountability, the removal of any governor from the council might be reported to the full council at its next formal meeting held in public.

Key steps in the process – outline model procedure

When researching this guidance, some trusts told us they would find a model procedure useful while others preferred to create their own procedure. This section sets out the key steps in most of the governor conduct procedures provided to us and is based on the principles above.

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| Reporting | * Agreed point of contact for anyone wishing to make a complaint (such as the company secretary or chair)
* Agreed timescales for responding to complainant and seeking to address complaint (you may wish to use timings in line with your trust’s complaints procedure)
* Include signposting to sources of support for complainant and those who are the subject of the complaint
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| Informal resolution | * Where applicable, initial conversation (probably by the company secretary or chair) with the governor(s) where they may explain reasonable mitigating factors or accept liability, and which could lead to, for example, informal warning, mediation between parties if mutually agreed, training, or other minor sanction.
* If appropriate, be clear that any further breach may result in a full investigation and formal sanction. Governors may also choose to step down voluntarily at this stage
* Not appropriate where allegations are potentially criminal, in breach of statutory requirements or otherwise deemed serious
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| Formal stage | * Include provision for chair to take unilateral action where breach is extremely serious (such as in criminal cases). You may wish to give examples of this type of serious breach, but it should be clear they are not exhaustive. The chair should subsequently report to the full council in private regarding the evidence, decision and action taken. In all other cases…
* Agreed person(s) to undertake investigation (probably the company secretary)
* Keep parties informed - consider anonymity, data protection and emotional/psychological support needs
* Include provision for the governor(s) to be suspended from council duties while investigation is ongoing, if proportionate
* Agreed person(s) to make determination and propose proportionate sanction if required. This may be a committee of governors and trust colleagues, for example the Nominations Committee, or a specially convened committee
* If there is no case to answer, inform complainant and subject of complaint, offering complainant the right to appeal
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| Decision | * Outcome of investigation and proposed sanction reported to full council at meeting in private
* Council decision and where removal of a governor is recommended, majority vote required (set voting threshold in constitution and procedure)
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| Appeal | * Agreed point of contact for appealing the decision by either complainant or subject of complaint, and agreed appeal panel (likely a group including governors and NEDs, not whole council)
* Appoint person(s) not so far involved to review issue (for example, the Senior Independent Director)
* Present outcomes of review to full council and revert to ‘decision’ above if sanctions are now recommended
* Be clear that this decision is final
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Conduct issues / failure to meet criteria to be a member of the Council (not exhaustive)

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| Non-Statutory (will depend on your code of conduct) |
| Conflict of interest making membership of the Council untenable, or failure to declare a significant conflict of interest, or failure to remove oneself from voting where one has a conflict of interest. | Treating Trust staff, volunteers or Governor colleagues without respect or without recognition of common purpose. | Failure to involve or notify the Trust when arranging Trust visits or attendance at Trust events. | Governor’s personal conduct which could reasonably be regarded as prejudicial or as bringing the Council of Governors or the Trust into disrepute. |
| Knowingly making untrue or misleading statements relating to the Council or the Trust. | Breach of confidentiality (may also be criminal depending on the circumstances). | Failure to attend required training within a reasonable timescale and without good reason. |  |
| Statutory (should be in your constitution) |
| A person who within the preceding five years has been convicted in the British Islands 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 them. | Named on registers of Schedule 1 offenders pursuant to the Sex Offenders Act 1977 and/or the Children and Young Persons Act 1933. | Governor who fails to comply with the Trust's values, the Trust's code of conduct, the Nolan Principles, the requirements of the Statutory Framework and any relevant guidance issued by NHS Improvement. | A person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it. |
| Failure to attend three consecutive meetings without a reason acceptable to the Council. | A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged. | Governor who ceases to meet the eligibility criteria. |  |
| Criminal |
| Stealing from the Trust, members of staff or the public or other offences of dishonesty, including fraud and/or corruption.  | To make a declaration which a Governor knows to be false in some material respect. | Discrimination, harassment or bullying on the grounds of gender, pregnancy, sexual orientation, race, disability, age or religion or belief. | Failure to comply with some elements of the fit and proper persons requirements. |
| Slander / libel.  | Potentially, breach of confidentiality or data protection. | Sexual misconduct and violent or abusive behaviour. |  |

1. Schedule 7, Para 14(1) (d) [↑](#footnote-ref-1)