



**Council of Governors  
8<sup>th</sup> July 2014  
Summary Sheet**

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8<sup>th</sup> July 2014  
Item 13(a)

<b>TITLE OF PAPER</b>	Sharing Confidential Board Minutes with the Council of Governors
<b>TO BE PRESENTED BY</b>	Professor Alan Walker Trust Chair
<b>ACTION REQUIRED</b>	To receive the Board's decision in relation to furnishing governors with minutes of the confidential section of Board.

<b>OUTCOME</b>	The Trust will fulfil all its statutory responsibilities and the Board will have confidence that it is compliant with this element of the Code or can robustly explain non-compliance
<b>TIMETABLE FOR DECISION</b>	July Council
<b>LINKS TO OTHER KEY REPORTS / DECISIONS</b>	SHSC NHS FT Constitution Provider Licence Audit Code for Foundation Trusts
<b>LINKS TO OTHER RELEVANT FRAMEWORKS BAF, RISK, OUTCOMES ETC</b>	Risk Assessment Framework  NHS Constitution: Patients <input type="checkbox"/> Public <input type="checkbox"/> Staff <input type="checkbox"/> HSE <input type="checkbox"/> MH Act <input type="checkbox"/> Equality Act 2010 <input type="checkbox"/>
<b>IMPLICATIONS FOR SERVICE DELIVERY AND FINANCIAL IMPACT</b>	Failure to comply with the Code could result in removal of the provider licence and/or removal of board members by the Regulator
<b>CONSIDERATION OF LEGAL ISSUES</b>	

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<b>Date of Report</b>	June 2014

## SUMMARY REPORT

**Report to:** Council of Governors

**Subject:** Sharing Confidential Board Minutes with the Council of Governors

**From:** Professor Alan Walker, Trust Chair

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### 1. Purpose

The Code of Governance provides guidance to NHS Foundation Trusts to help them deliver effective corporate governance, contribute to better organisational performance and ultimately discharge their duties in the best interests of patients.

The Code of Governance was update in 2010 and then again following the 2012 Health and Social Care Act in December 2013 to reflect a range of new duties for governors and boards.

Requirement A.5.12 stipulates that:

“The directors must provide governors with an agenda prior to any meeting of the board, and a copy of the approved minutes as soon as is practicable afterwards. There is no legal basis on which the minutes of private sessions of board meetings should be exempted from being shared with the governors. In practice, it may be necessary to redact some information, for example, for data protection or commercial reasons. Governors should respect the confidentiality of these documents.”

The purpose of this paper is to identify the Trust’s current position, provide a comparison with other Foundation Trusts and to provide the Council with the Board’s decision taken at the 2<sup>nd</sup> July meeting.

### 2. Summary

The Council of Governors is currently provided with an agenda and the minutes of the open board meeting one week prior to each board. In addition, the Chair provides a summary of all business that has taken place, including some confidential matters, in the form of a monthly letter. All governors currently subscribe to rules of confidentiality through the Governors Charter, which all are required to sign.

In order to ascertain the practice in other Foundation Trusts, contact was made with organisations in the Yorkshire and Humber region. Nine responses were received and below is a summary of practice.

<p>Sheffield Teaching Hospitals NHS Foundation Trust</p>	<p>A small group of self-appointed governors meet with the Chair and Trust secretary a week after each Board to discuss the minutes and receive copies of the private agenda and papers. The group then verbally feeds back to the rest of the governors at the quarterly governor’s forum. All confidential minutes and papers are shared with the group.</p>
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Humber NHS Foundation Trust	Governors receive the Part II agenda and can access Part II minutes, but to do this they must go to the office and read them there. They cannot be taken away or copied. They have to sign a confidentiality declaration specific to the minutes and they cannot make a special trip to the Trust to read the minutes – it has to be part of a planned trip so that the Trust doesn't have to pay additional expenses.
Calderdale & Huddersfield NHS Foundation Trust	Informal meeting with Chair before each CoG where business is discussed that takes place in part II of the Board. However, minutes are not given out.
Barnsley Hospital NHS Foundation Trust	Share the confidential minutes via a private webpage for which each governor has their own login. The papers are encrypted and settings are such that they are difficult to print off.
Doncaster & Bassetlaw Hospitals NHS Foundation Trust	Two nominated governors receive the confidential agenda and minutes. The minutes aren't redacted and governors can keep them, but they are briefed by the Trust on the importance of confidentiality.
RDASH NHS Foundation Trust	Not shared
North Lincolnshire and Goole NHS Foundation Trust	Not shared
The Rotherham NHS Foundation Trust	Not shared (but reviewing current practice)
Harrogate & District NHS Foundation Trust	Not shared (but reviewing current practice)

### 3. Next Steps

The Code is best practice advice that takes a 'comply or explain' approach. Non-compliance is not a breach of the NHS Foundation Trust Condition 4 of the Provider Licence. Some Trusts may decide that the provisions are disproportionate or less relevant. However, they may still consider it appropriate to adopt the approach in the Code, although a departure from specific provisions may be justified in particular circumstances. Reasons for non-compliance should be explained and Trusts should set out the background, provide a clear rationale and describe any mitigating actions it is taking to address any risks and maintain conformity with the relevant principle. Given this, there are a number of options which were given to the Board to consider:

**Option 1:** Continue with current practice and provide an explanation of why the Trust does not fully comply in its annual governance statement

**Option 2:** Take a similar approach to Sheffield Teaching Hospitals and Doncaster and Bassetlaw by instigating a small group of governors with whom a meeting takes place detailing the business of both the open and confidential parts of Board and to whom confidential minutes are provided.

**Option 3:** Allow governors to read confidential minutes which are kept at Fulwood House.

**Option 4:** Provide all governors with a full set of open and confidential minutes.

It was pointed out to the Board that in options 3 and 4 the Trust may choose to redact certain confidential information that relates to individuals.

In addition, the Board may consider strengthening the current statement relating to confidentiality in the Governor's Charter which says:

“Governors must be mindful of the need for confidentiality and of the rules relating to data protection regarding the affairs of the Trust and its service users, carers and employees.”

Following a discussion between the Chair and the Lead Governor, it was recommended to and accepted by Board that a mixture of options should be approved, namely that the Lead Governor receives a full set of open and confidential minutes and that all governors are offered the opportunity read confidential minutes which are to be kept at Fulwood House.

#### **4. Required Actions**

For information

#### **5. Monitoring Arrangements**

Monitoring will be undertaken through the Board Secretary function.

#### **6. Contact Details**

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