

REPORT TO THE TRUST BOARD - PUBLIC
23 FEBRUARY 2017

Title	Criteria for Discussion of Confidential Business in Private
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Purpose of the Report:

To ask the Board to formally endorse the principles for business to be discussed in private.

The Trust and the Board are committed to working in an open and transparent way and to limit business discussed in private to only strictly confidential business. The proposed criteria, which are based on relevant legislation and best practice, are the ones we have been using in practice to date, and so we are asking the Board to formally adopt them.

Summary of Key Issues:

The following criteria are proposed for business to be discussed in private:

- i. Any matter arising from a contract of employment;
- ii. Any matter which involves the consideration of confidential information held by the Trust;
- iii. Commercial matters;
- iv. Legal matters and legal advice;
- v. Actual or anticipated litigation, including any arbitration or dispute resolution process;
- vi. Drafts of documents not in final form – which will be published in future (e.g. Annual Report can only be made public once it has been laid before Parliament)
- vii. Issues, the discussion of which in public would be likely to inhibit the free and frank provision of advice. For example matters in the initial stages of enquiry; early stages of strategic thinking; sensitive ‘live’ issues or ‘blue sky thinking’ addressed or discussed in recommendations from external organisations such as the Royal Colleges, advice from external sources or provided to external sources, etc.
- viii. Issues, the discussion of which in public would be likely to inhibit the free and frank exchange of views for the purpose of deliberation. For example, matters in the initial stages of enquiry or sensitive live issues discussed in emails or minutes of Committees, e.g. Audit Committee minutes – discussion on Fraud issues.
- ix. Issues the discussion of which in public would be likely to prejudice the effective conduct of public affairs. For example, issues the Trust is working through where discussion in public could cause unnecessary concern or discussions about future public consultations where the Trust wants to manage the timing and manner in which disclosures are made.

Strategic priorities this paper supports (Please check box including brief statement)

Improving service user satisfaction	<input checked="" type="checkbox"/>	The Trust operates in an open and transparent way
Improving staff satisfaction	<input checked="" type="checkbox"/>	As above

Maintaining financial viability	<input type="checkbox"/>	
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Committees/Meetings where this item has been considered:

Date	Committee/Meeting
Various	None

Implications:

Equality Analysis	No equality implications.
Risk and Assurance	The Trust fails to identify appropriately items for discussion in private, potentially exposing the organisation to adverse criticism and damage its reputation.
Service User/Carer/Staff	Individual service user and staffing matters are discussed in accordance with the law.
Financial	No financial implications.
Quality	No quality implications.

Supporting Documents and Research material

a. Health and Social Care Act (2008)
b. The Public Bodies (Admission to Meetings) 1960 Act
c. Freedom of Information Act (2000)
d. Data Protection Act (1998)

Glossary

Abbreviation	In full

1.0 Background and Introduction

- 1.1 The Trust and the Board are committed to working in an open and transparent way and to limit business discussed in private to only strictly confidential business.
- 1.2 The Health and Social Care Act includes a requirement for all meetings to be open to the public with the proviso “but the Constitution may provide for members of the public to be excluded from a meeting for special reasons”. The Act however does not define ‘special reasons’.
- 1.3 The Public Bodies (Admission to Meetings) 1960 Act includes provision for the discussion of confidential business in private sessions. Under the terms of the Act, a Board may by resolution, exclude the public from a meeting (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution”
- 1.4 The Trust’s Constitution makes provision for admission and exclusion of the public and the press from Board meetings (Annex 8 – Standing Orders for the Practice and Procedure of the Board of Directors, section 3.18, page 131) but does not define the criteria.
- 1.5 Based on our review of other Trusts’ Board papers, we publish more information under our Part 1 meetings in public than most. For example, many Trusts do not discuss any strategic items in public.

2.0 Proposal and Next Steps

- 2.1 Based on the above guidance and taking into consideration the Freedom of Information Act, the Data Protection Act, and having benchmarked good practice for Foundation Trusts, the following criteria are proposed. These are already the criteria we have been following in practice in setting the Board agendas:
 - i. any matter arising from a contract of employment;
 - ii. any matter which involves the consideration of confidential information held by the Trust;
 - iii. commercial matters;
 - iv. legal matters and legal advice;
 - v. actual or anticipated litigation, including any arbitration or dispute resolution process;
 - vi. drafts of documents not in final form – which will be published in future (e.g. Annual Report can only be made public once it has been laid before Parliament)
 - vii. Issues, the discussion of which in public would be likely to inhibit the free and frank provision of advice. For example matters in the initial stages of enquiry; early stages of strategic thinking; sensitive ‘live’ issues or ‘blue sky thinking’ addressed or discussed in recommendations from external organisations such as the Royal Colleges, advice from external sources or provided to external sources, etc.

- viii. Issues, the discussion of which in public would be likely to inhibit the free and frank exchange of views for the purpose of deliberation. For example, matters in the initial stages of enquiry or sensitive live issues discussed in emails or minutes of Committees, e.g. Audit Committee minutes – discussion on Fraud issues.
- ix. Issues the discussion of which in public would be likely to prejudice the effective conduct of public affairs. For example, issues the Trust is working through where discussion in public could cause unnecessary concern or discussions about future public consultations where the Trust wants to manage the timing and manner in which disclosures are made.

3.0 Action being requested

3.1 The Board is asked to:

- **DISCUSS** and **APPROVE** formally the criteria for discussion of confidential business in private.