Ashford and St. Peter's Hospitals NHS
NHS Trust

TRUST BOARD
29th July 2010

TITLE	**Confidential and Public Board Papers**
EXECUTIVE SUMMARY	Trust Board has previously agreed it will hold Open (public) and Closed Trust Board meetings and release papers to the public in accordance with legal advice.
BOARD ASSURANCE (Risk) / IMPLICATIONS	Risk of litigation if documents are not published according to legal requirements.
STAKEHOLDER / PATIENT IMPACT AND VIEWS	Information will be provided in accordance with current legislation. Openness and transparency of decision making are core principles of the way the NHS operates.
EQUALITY AND DIVERSITY ISSUES	None known
LEGAL ISSUES	Legal advice was previously used to draft the Trust standards. Compliance with Freedom of Information legislation.
The Trust Board is asked to:	Agree to continue with open and close sessions and with the categorisation of subject matter for the closed meetings.
Submitted by:	Jane Gear
Date:	19th July 2010
Decision:	For Agreeing

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Board Papers

1 Introduction

In July 2009 the Trust Board formally agreed the nature of business to be conducted in Open session and agreed the principle to continue with the majority of business conducted in Open sessions once it became a Foundation Trust. A limited number of items have always been taken in Closed session due to their nature; typically commercial matters and those relating to individuals.

Legal advice was taken in 2009 to help define the broad categories of subject matter to be taken in the Closed Session, and the nature of these is published on the Trust's internet.

2 Current position

The Board currently takes the following matters in its closed meetings:

- anything that could have the potential to damage the reputation of the Trust;
- any documents pertaining to litigation or potential litigation;
- anything that is potentially commercially sensitive (as well as commercially confidential) for either the Trust or a third party;
- any matter concerning an individual patient or member of staff;
- anything relating to data that may be adjudged "protected" under the Data Protection Act 1998 (DPA);
- Documents that may be exempt from disclosure under the Freedom of Information Act 2000.

Specific confidential items for example would include Serious Untoward Incidents (SUIs) and contracting/tendering reports.

Additionally, as a statutory committee it is good practice to publish Audit Committee Minutes but a review prior to public release (supported by the FOI office) will be required as the Audit Committee papers are generally confidential e.g. internal audit reports and matters between auditors and the PCT. Local Counter Fraud reports often contain identifiable information and therefore should not be published. However, the Annual Audit Letter from the External Audit and Head of Internal Audit opinion will always be published. Other confidential non statutory committee papers can be released under a FOI request with confidential items redacted.

3 Foundation Trust status

The Trust is in the final stage of the assessment to be authorised as a Foundation Trust.

The Foundation Trust Network has explored the issue of open and closed meetings. There is a spectrum of practice ranging from holding all corporate Board of Director meetings is public to all in private. Many Foundation Trusts hold joint director/governor meetings irrespective of the arrangements for corporate Board meetings. While there is this wide diversity there is however a strong consensus on the need to demonstrate accountability and transparency to governors. There is

also consensus that governors are the public face of the Foundation Trusts.

4 External Drivers- Francis Report

As a result of the failures at Mid Staffordshire NHS Foundation Trust, the Francis Report was published in 2010 with a number of recommendations. All were accepted by the Secretary of State. A number of the failings identified related to governance and one of the conclusions of the Francis Report was:-

'The Inquiry has seen evidence of a lack of transparency. Internally, feedback in relation to complaints and incident reports was often absent. Clinical audit was not fostered, likewise mortality and morbidity reviews, **Externally, the public was unnecessarily excluded from Board meetings,** the degree of engagement with local bodies has been questioned , and in one serious case a report which should have been made available to the coroner was not sent.[1,]

Recommendation 18: All NHS trusts and foundation trusts responsible for the provision of hospital services should review their standards, governance and performance in the light of this report.

5 External Drivers- The Healthy NHS Board

Subsequent to the Francis report, *The Healthy NHS Board* has been published and states

'Transparency and openness[2]

There is an important obligation in public services to ensure they operate in an open and transparent manner. For many NHS organisations this is partially achieved by holding meetings in public and the publication of papers. The default position ought to be that business is conducted in the public board meeting. However, when a compelling case can be made for an item to be conducted in private (for example a matter that involves an individual confidentiality or commercial sensitivity) there is provision for attending to it in private. Some Boards consider the Freedom of Information Act for which items are considered in private.'

The paper goes on to point out that public board meetings alone are not a guarantee of transparency.

6 Conclusion

A review of the matters discussed in closed session by the Ashford and St Peter's Hospitals NHS Trust Board has been conducted by the Head of Corporate Affairs/Trust Board Secretary. The Board decided in January 2010 to move to monthly Board meetings rather than alternate with seminars and since that point discussions have been in line with the agreement. The appointment of a Trust Board Secretary to help oversee compliance in the formation of the Board work plan and agendas will help ensure the standards are applied.

7 Recommendation

The Board agrees the framework on matters to be discussed in Closed session as laid out in papra. 2 above.

[1] Francis Report Conclusions and Recommendations para. 25
[2] The Health NHS Board 2010 NHS Leadership Council