



Title	Criterion for Discussion of Confidential Business in Private Session			Paper Ref	PB.121 3.07.3
PURPOSE (X)		Information		Strategic Objective	Business Plan Objective
Approval	X	Decision	X		
Assurance	X	Discussion		Always Learning	All
Purpose of the paper	The purpose of this paper is to provide the Board with sufficient information on which to base a decision as to the criteria to be used in future for, 'Discussion of Confidential Business in Private Session'.				
Recommendation	<p>That the Trust Board approves the proposed criterion for Discussion of Confidential Business in Private Session:</p> <ul style="list-style-type: none"> 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; v. actual or anticipated litigation, including any arbitration or dispute resolution process; or vi. recommendations or advice from sources other than the Board of Directors and any committee or sub-committee referred to in this Constitution. 				
Author	Anne Allen	Accountable Director:		Anne Allen Director of Corporate Affairs and Trust Secretary	
RISK ASSESSMENT				Yes	No
Changes to the Corporate Risk Register and/or Board Assurance Framework					No

Resource Implications		No
Legal implications	Yes	
ASSURANCE/COMPLIANCE		
CQC Registration Outcome(s)	Auditors' Local Evaluation	NHSLA Risk Management Standards for Ambulance Trusts

1. PURPOSE/AIM

The purpose of this paper is to provide the Board with sufficient information on which to base a decision as to the criteria to be used in future for '**Discussion of Confidential Business in Private Session**'.

2. BACKGROUND/CONTEXT

The Health & Social Care Act (2008) 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'.

HSC 1998/207 (27th November 1998), 'Opening Up NHS Board Meetings to the Public' includes:

"Closed sessions

12 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"

The resolution should be taken in public, and minuted. It should state in broad terms (which do not breach the confidentiality of the subject matter) the nature of the business to be discussed.

13 The Secretary of State is concerned that this provision should not be abused. The following points should therefore be

observed: closed sessions should be limited to those areas of board business where real harm to individuals may result. This might include discussion about particular members of staff for disciplinary or other reasons, or relate to independent reviews on complaints. It should not be used however as a means of sparing board members from public criticism or proper public scrutiny”.

The Trust’s proposed Constitution (Annexe 8, Standing Orders re Board of Directors, Section 3 (Meetings of the Trust) Section 3.15), refers to:

“3.15 Admission of Public and the Press

3.15.1 Admission and exclusion on grounds of confidentiality of business to be transacted.

The public and representatives of the press may attend all meetings of the Trust, but shall be required to withdraw upon the Board resolving as follows:

‘that representatives of the press, and other members of the public, be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest’. “

Similarly, the Trust’s proposed Constitution (Annex 7, Standing Orders re Council of Governors, Section 4 (Meetings of the Council of Governors) Section 4.1 states:

“4.1 Admission of the Public

4.1.1 The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves that members of the public and representatives of the Press be excluded from all or part of a meeting on the grounds that:

4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or

4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believes are special reasons for excluding the public from the meeting in accordance with the Constitution”.

3. PROPOSALS/NEXT STEPS

Based on the above guidance and having benchmarked good practice for Foundation Trusts, the following criterion is proposed:

a) Proposed Criterion for Discussion of Confidential Business in Private Session:

- vii. any matter arising from a contract of employment;
- viii. any matter which involves the consideration of confidential information held by the Trust;
- ix. commercial matters;
- x. legal matters;
- xi. actual or anticipated litigation, including any arbitration or dispute resolution process; or
- xii. recommendations or advice from sources other than the Board of Directors and any committee or sub-committee referred to in the Constitution.

b) Next Steps

It would seem sensible and appropriate to apply the same points (3. (a), i-vi) to future Council of Governors meetings.

4. RISK ASSESSMENT

The Trust fails to identify appropriately items for discussion in Private, potentially exposing the organisation to adverse criticism and damage to reputation. At the extreme, the Trust leaves itself exposed to litigation and/or compensation.

5. RECOMMENDATIONS

That the Trust Board approves:

- 1) The criterion for Discussion of Confidential Business in Private Session recommended at 3. (a), i-vi.
- 2) The same points (3. (a), i-vi) are to apply to future Council of Governors meetings.

6. APPENDICES/BACKGROUND INFORMATION

- 1. Health & Social Care Act (2008)
- 2. HSC 1998/207 (27th November 1998), 'Opening Up NHS Board Meetings to the Public'.