

The NHS Foundation Trust Code of Governance

Updated July 2014



- [*Board Governance Essentials: A Guide for Chairs and Boards of Public Bodies*](#) developed by CIPFA (the Chartered Institute of Public Finance Accountants), this guide provides chairs and board members advice on the roles that they perform.

The main principles of the Code

Section A: Leadership

Every NHS foundation trust should be headed by an effective board of directors. The board is collectively responsible for the performance of the NHS foundation trust.

The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the organisation so as to maximise the benefits for the members of the trust as a whole and for the public.

There should be a clear division of responsibilities at the head of the NHS foundation trust between the chairing of the boards of directors and the council of governors, and the executive responsibility for the running of the NHS foundation trust's affairs. No one individual should have unfettered powers of decision.

The chairperson is responsible for leadership of the board of directors and the council of governors, ensuring their effectiveness on all aspects of their role and leading on setting the agenda for meetings.

As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should also promote the functioning of the board as a unitary board.

The council of governors has a statutory duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors. This includes ensuring the board of directors acts so that the foundation trust does not breach the conditions of its licence. It remains the responsibility of the board of directors to design and then implement agreed priorities, objectives and the overall strategy of the NHS foundation trust.

The council of governors is responsible for representing the interests of NHS foundation trust members and the public in the governance of the NHS foundation trust. Governors must act in the best interests of the NHS foundation trust and should adhere to its values and code of conduct.

Governors are responsible for regularly feeding back information about the trust, its vision and its performance to members and the public and the stakeholder organisations that either elected or appointed them. The trust should ensure governors have appropriate support to help them discharge this duty.

Section A: Leadership

A.1 The role of the board of directors

Main principles

A.1.a. Every NHS foundation trust should be headed by an effective board of directors. The board is collectively responsible for the performance of the NHS foundation trust.

A.1.b. The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the organisation so as to maximise the benefits for the members of the trust as a whole and for the public.

Supporting principles

A.1.c The role of the board of directors is to provide entrepreneurial leadership of the NHS foundation trust within a framework of prudent and effective controls, which enables risk to be assessed and managed.

A.1.d The board of directors is responsible for ensuring compliance by the NHS foundation trust with its licence, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations.

A.1.e The board of directors should develop and articulate a clear “vision” for the trust. This should be a formally agreed statement of the organisation’s purpose and intended outcomes which can be used as a basis for the organisation’s overall strategy, planning and other decisions.

A.1.f The board of directors should set the NHS foundation trust’s strategic aims at least annually taking into consideration the views of the council of governors, ensuring that the necessary financial and human resources are in place for the NHS foundation trust to meet its priorities and objectives and, then, periodically reviewing progress and management performance.

A.1.g The board of directors as a whole is responsible for ensuring the quality and safety of health care services, education, training and research delivered by the NHS foundation trust and applying the principles and standards of clinical governance set out by the Department of Health (DH), NHS England, the Care Quality Commission (CQC) and other relevant NHS bodies.

A.1.h The board of directors should also ensure that the NHS foundation trust functions effectively, efficiently and economically.

A.1.i The board of directors should set the NHS foundation trust’s vision, values and standards of conduct and ensure that its obligations to its members are understood, clearly communicated and met.

A.1.j All directors must take decisions objectively in the best interests of the NHS foundation trust and avoid conflicts of interest.

A.1.k All members of the board of directors have joint responsibility for every decision of the board regardless of their individual skills or status. This does not impact upon the particular responsibilities of the chief executive as the accounting officer.

A.1.l All directors, executive and non-executive, have a responsibility to constructively challenge during board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy.

A.1.m As part of their role as members of a unitary board, all directors have a duty to ensure appropriate challenge is made. In particular, non-executive directors should scrutinise the performance of the executive management in meeting agreed goals and objectives, receive adequate information and monitor the reporting of performance. They should satisfy themselves as to the integrity of financial, clinical and other information, and make sure that financial and clinical quality controls, and systems of risk management and governance, are robust and implemented. Non-executive directors are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning.

Code provisions

A.1.1. The board of directors should meet sufficiently regularly to discharge its duties effectively. There should be a schedule of matters specifically reserved for its decision. The schedule of matters reserved for the board of directors should include a clear statement detailing the roles and responsibilities of the council of governors (as described in A.5). This statement should also describe how any disagreements between the council of governors and the board of directors will be resolved. The annual report should include this schedule of matters or a summary statement of how the board of directors and the council of governors operate, including a summary of the types of decisions to be taken by each of the boards and which are delegated to the executive management of the board of directors. These arrangements should be kept under review at least annually.

A.1.2. The annual report should identify the chairperson, the deputy chairperson (where there is one), the chief executive, the senior independent director (see A.4.1) and the chairperson and members of the nominations, audit and remuneration committees. It should also set out the number of meetings of the board and those committees and individual attendance by directors.

A.1.3. The board of directors should make available a statement of the objectives of the NHS foundation trust showing how it intends to balance the interests of patients,

the local community and other stakeholders, and use this as the basis for its decision-making and forward planning.

A.1.4. The board of directors should ensure that adequate systems and processes are maintained to measure and monitor the NHS foundation trust's effectiveness, efficiency and economy as well as the quality of its health care delivery. The board should regularly review the performance of the NHS foundation trust in these areas against regulatory and contractual obligations, and approved plans and objectives.

A.1.5 The board of directors should ensure that relevant metrics, measures, milestones and accountabilities are developed and agreed so as to understand and assess progress and delivery of performance. Where appropriate and, in particular, in high risk or complex areas, independent advice, for example, from the internal audit function, should be commissioned by the board of directors to provide an adequate and reliable level of assurance.

A.1.6. The board of directors should report on its approach to clinical governance and its plan for the improvement of clinical quality in accordance with guidance set out by the DH, NHS England, the CQC and Monitor. The board should record where, within the structure of the organisation, consideration of clinical governance matters occurs.

A.1.7. The chief executive as the accounting officer should follow the procedure set out by Monitor for advising the board of directors and the council of governors and for recording and submitting objections to decisions considered or taken by the board of directors in matters of propriety or regularity, and on issues relating to the wider responsibilities of the accounting officer for economy, efficiency and effectiveness.

A.1.8. The board of directors should establish the constitution and standards of conduct for the NHS foundation trust and its staff in accordance with NHS values and accepted standards of behaviour in public life, which includes the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership (*The Nolan Principles*).

A.1.9. The board of directors should operate a code of conduct that builds on the values of the NHS foundation trust and reflect high standards of probity and responsibility. The board of directors should follow a policy of openness and transparency in its proceedings and decision-making unless this is in conflict with a need to protect the wider interests of the public or the NHS foundation trust (including commercial-in-confidence matters) and make clear how potential conflicts of interest are dealt with.

A.1.10. The NHS foundation trust should arrange appropriate insurance to cover the risk of legal action against its directors. Assuming the governors have acted in good faith and in accordance with their duties, and proper process has been followed, the

potential for liability for the council should be negligible. Governors may have the benefit of an indemnity and/or insurance from the trust. While there is no legal requirement for trusts to provide an indemnity or insurance for governors to cover their service on the council of governors, where an indemnity or insurance policy is given, this can be detailed in the trust's constitution.

A.2 Division of responsibilities

Main principle

A.2.a There should be a clear division of responsibilities at the head of the NHS foundation trust between the chairing of the boards of directors and the council of governors, and the executive responsibility for the running of the NHS foundation trust's affairs. No one individual should have unfettered powers of decision.

Code provisions

A.2.1. The division of responsibilities between the chairperson and chief executive should be clearly established, set out in writing and agreed by the board of directors.

Relevant statutory requirements

A.2.2. The roles of chairperson and chief executive must not be undertaken by the same individual.

A.3 The chairperson

Main principle

A.3.a The chairperson is responsible for leadership of the board of directors and the council of governors, ensuring their effectiveness on all aspects of their role and leading on setting the agenda for meetings.

Supporting principles

A.3.b The chairperson is responsible for leading on setting the agenda for the board of directors and the council of governors and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues.

A.3.c The chairperson is responsible for ensuring that the board and council work together effectively.

A.3.d The chairperson is also responsible for ensuring that directors and governors receive accurate, timely and clear information which enables them to perform their duties effectively. The chairperson should take steps to ensure that governors have the skills and knowledge they require to undertake their role.

A.3.e The chairperson should promote effective and open communication with patients, service users, members, staff, the public and other stakeholders.

A.3.f The chairperson should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors, in particular and ensuring constructive relations between executive and non-executive directors.

Code provision

A.3.1. The chairperson should, on appointment by the council of governors, meet the independence criteria set out in B.1.1. A chief executive should not go on to be the chairperson of the same NHS foundation trust.

A.4 Non-executive directors

Main principle

A.4.a As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should also promote the functioning of the board as a unitary board.

Supporting principles

A.4.b Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives, and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary, removing executive directors, and in succession planning.

Code provisions

A.4.1. In consultation with the council of governors, the board should appoint one of the independent non-executive directors to be the senior independent director to provide a sounding board for the chairperson and to serve as an intermediary for the other directors when necessary. The senior independent director should be available to governors if they have concerns that contact through the normal channels of chairperson, chief executive, finance director or trust secretary has failed to resolve, or for which such contact is inappropriate. The senior independent director could be the deputy chairperson.

A.4.2. The chairperson should hold meetings with the non-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet without the chairperson present, at least annually, to appraise the chairperson's performance, and on other such occasions as are deemed appropriate.

A.4.3. Where directors have concerns that cannot be resolved about the running of the NHS foundation trust or a proposed action, they should ensure that their

concerns are recorded in the board minutes. On resignation, a director should provide a written statement to the chairperson for circulation to the board, if they have any such concerns.

A.5 Governors

The 2012 Act made significant changes to the powers of, and obligations upon, governors of NHS foundation trusts. Monitor has described in this section of the Code those areas of the governors' role that are relevant and which NHS foundation trusts may find helpful.

In addition, in August 2013, Monitor published a separate document which examines how governors can deliver their duties: [*Your statutory duties: A reference guide for NHS foundation trust governors.*](#)

Main principles

A.5.a The council of governors has a duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors. This includes ensuring the board of directors acts so that the foundation trust does not breach the conditions of its licence. It remains the responsibility of the board of directors to design and then implement agreed priorities, objectives and the overall strategy of the NHS foundation trust.

A.5.b The council of governors is responsible for representing the interests of NHS foundation trust members and the public and staff in the governance of the NHS foundation trust. Governors must act in the best interests of the NHS foundation trust and should adhere to its values and code of conduct.

A.5.c Governors are responsible for regularly feeding back information about the trust, its vision and its performance to members and the public and the stakeholder organisations that either elected or appointed them. The trust should ensure governors have appropriate support to help them discharge this duty.

Supporting principles

A.5.d Governors should discuss and agree with the board of directors how they will undertake these and any other additional roles, giving due consideration to the circumstances of the NHS foundation trust and the needs of the local community and emerging best practice.

A.5.e Governors should work closely with the board of directors and must be presented with, for consideration, the annual report and accounts and the annual plan at a general meeting. The governors must be consulted on the development of forward plans for the trust and any significant changes to the delivery of the trust's business plan.

developing and updating its directors' and governors' skills, knowledge and capabilities.

B.4.c To function effectively, all directors need appropriate knowledge of the NHS foundation trust and access to its operations and staff.

Code provisions

B.4.1. The chairperson should ensure that new directors and governors receive a full and tailored induction on joining the board or the council of governors. As part of this, directors should seek out opportunities to engage with stakeholders, including patients, clinicians and other staff. Directors should also have access, at the NHS foundation trust's expense, to training courses and/or materials that are consistent with their individual and collective development programme.

B.4.2. The chairperson should regularly review and agree with each director their training and development needs as they relate to their role on the board.

Relevant statutory requirements

B.4.3 The board has a duty to take steps to ensure that governors are equipped with the skills and knowledge they need to discharge their duties appropriately.

B.5 Information and support

Main principle

B.5.a The board of directors and the council of governors should be supplied in a timely manner with relevant information in a form and of a quality appropriate to enable them to discharge their respective duties. Statutory requirements on the provision of information from the board of directors to the council of governors are provided in [Your statutory duties: A reference guide for NHS foundation trust governors](#).

Supporting principles

B.5.b The chairperson is responsible for ensuring that directors and governors receive accurate, timely and clear information. Management has an obligation to provide such information but directors and governors should seek clarification or detail where necessary.

B.5.c The responsibilities of the chairperson include ensuring good information flows across the board, the council of governors and their committees, between directors and governors, and between senior management and non-executive directors, as well as facilitating appropriate induction and assisting with professional development as required.