DAC beachcroft

the association of foundation trusts and trusts NHS providers

THE FOUNDATIONS OF GOOD GOVERNANCE A COMPENDIUM OF GOOD PRACTICE

Third edition

THE FOUNDATIONS OF GOOD GOVERNANCE: A COMPENDIUM OF BEST PRACTICE

INTRODUCTION BY CHRIS HOPSON AND NIGEL MONTGOMERY

'Unprecedented' is a word often used figuratively, but we use it literally here when we say that the NHS has entered a period of unprecedented change. What the shape and extent of the NHS provider sector will be in five years time is largely unknown as new care models evolve and as devolution begins in earnest.

At the same time, the NHS continues to face tightening resources alongside a requirement to improve or at least maintain, quality of care for patients and service users. The choice facing NHS provider organisations is to be part of the changes taking place, to lead, contribute or influence developments - or to be swept up by the change taking place around them.

In these circumstances, strong and effective leadership will be indispensable. While being no guarantor, the disciplines of corporate governance provide a methodology for dynamic leadership that is capable of delivering change and long term sustainability.

We know that good governance does not happen spontaneously and that it takes hard work, vigilance and frequent attention to maintain it. So once again, NHS Providers and DAC Beachcroft have worked in partnership to produce an updated and much revised version of this compendium. The essence of good governance lies in its practical implementation. So, once again, we have also created a compendium containing practical advice to enhance understanding of what good governance looks like and to support its implementation.

Our aims remain the same as in the first two editions:

- to increase the level of understanding of what good governance looks like;
- to raise awareness of the need for continual maintenance of governance infrastructures; and
- to provide immediate and practical assistance to NHS provider boards and those who support them as they tackle the governance challenges that lie before them.

In this edition we have however deliberately produced material which is relevant to both NHS foundation trusts and to NHS trusts. We indicate clearly where there is a difference in the requirements facing foundation trusts and trusts.

NHS Providers and DAC Beachcroft realise that the future of autonomous NHS provider organisations, accountable to the communities they serve, is uncertain. What is certain is that sustainable organisations led by capable boards delivering effective high quality services will be central to autonomy and to the concept of board leadership. We therefore hope that the third edition of this compendium in both printed and electronic form will make a real contribution to continuing and indeed strengthened, good governance in the NHS.

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COMPENDIUM CONTENTS

GOOD GOVERNANCE

In the previous editions of this compendium we predicted correctly that NHS provider organisations would be operating in an environment of persistent uncertainty. While we continue to deal with the consequences of that uncertainty, there are also fundamental changes taking place across the NHS provider sector as organisations change to deliver new care models and to secure medium term financial sustainability. It would be tempting under these circumstances to concentrate on the managerial imperatives of delivery and to sideline issues of corporate governance until later, or to leave matters of governance to company secretaries and other governance professionals. We think this would be a serious error. Governance is sometimes regarded as an obscure subject, not necessarily visible in its own right, but it becomes a high-profile reputation issue when it is found lacking. At its core, delivering good governance is about strong, dynamic leadership and it should not be the preserve of 'governance specialists' or experts, nor should it be driven by compliance with processes alone.

Corporate governance is about leadership and is the system by which all board-led organisations across the public and private sectors are directed and controlled including NHS foundation trusts and NHS trusts. It should provide ambitious, effective but prudent direction that can help to deliver success over time. It is the business of the board and is separate from day-to-day operational management carried out by executives and the management structure they head. Because corporate governance is 'what the board does', it is the business and the responsibility of every director, executive and non-executive alike.

Successful boards, for the most part, lead successful organisations and organisational failure whether in the public or private sector, can invariably be traced back to ineffective board leadership. The key to a successful board is good governance: delivering effective strategies, ethical leadership, meaningful challenge and real accountability. In the NHS, high quality services cannot be delivered without earning and retaining the trust of the public, and it is good governance that establishes the principles on which trust is built. So, in short, good governance is indispensable.

NEW CARE MODELS AND GOVERNANCE

The current discourse around providing new care models is around inter- and intra-organisational co-operation and collaboration, breaking down traditional barriers between primary and secondary care, treating patients as individuals and providing services nearer to home. In this scenario, the 'institution' could be seen as a thing of the past or a barrier to real, positive change.

However the reality is likely to be rather more prosaic. Organisational structure is how we shape what we do to achieve a particular aim – in the case of the NHS, to deliver high quality and sustainable care. Clearly no individual business or organisation has a right to continue to exist without justification, and this is as true of the NHS as anywhere else. So organisations will restructure and change to meet changing demand. Some will be acquired, others will merge, collaborate in new partnerships or become part of a franchise, but in essence the business of the NHS will be delivered by single organisations or groups of organisations. If these organisations wish to protect themselves and the business of serving patients, in the event of disagreement or something going wrong, and they should wish to do that, then they will formalise arrangements between them either through transactions, setting up joint ventures or through contracts. So while much will change, much will also stay the same.

Board leadership will continue to be the effective means by which executive directors can consistently and continually be held to account for the delivery of sound strategies and the effective management of risk to quality service delivery. The need for strong board leadership and oversight will be as great as ever, perhaps more so, therefore so is the need for sound corporate governance.

STATUTE AND GOOD GOVERNANCE

Company law in England and Wales is derived from common law: case law accumulated and built on over time. The Companies Act 2006 codified the common law duties of company directors. The Act requires each director to act in good faith in a way that would be most likely to promote the success of the company for the benefit of its members as a whole. In doing so they should have regard (among other matters) to the likely long term consequences of any decision, to the interests of the company's employees, to the need to foster good business relationships, to take account of the impact of the company's operations on community and the environment, all with a view to maintaining a reputation for high standards of business conduct. The Companies Act 2006 also requires directors to exercise independent judgement, to use reasonable skill, care and diligence in carrying out their role, to avoid and declare conflicts of interest and not to accept benefits from third parties in respect of their work as a director. Unless they are directors of incorporated companies (which a growing number are) NHS directors are not directly obliged to follow the letter of the Companies Act, but they are obliged to follow the common law director's duties. Courts will look at those statutory duties if they have to determine whether NHS directors are falling short of their common law responsibilities. Those directors would therefore be well advised to have regard to them.

The National Health Service Act 2006 as amended by the Health and Social Care Act 2012 (the amended Act) requires NHS foundation trusts to have a constitution in accordance with Schedule 7 of the amended Act. It sets out that foundation trusts will be led and directed by a board of directors consisting of executive directors responsible for the day-to-day management of the trust and non-executive directors: a unitary board. Schedule 7 states that the constitution must provide for all the powers of the corporation (the foundation trust) to be exercisable by the board of directors on its behalf.

But the constitution may provide for any of those powers to be delegated to a committee of directors or to an executive director. Two points are worth noting here. The first is that committees that have formal memberships other than directors cannot be delegated powers by the board. The second is that individual non-executive directors cannot be delegated powers by the board.

Schedule 7 places a duty on foundation trust boards of directors and on each director individually, 'to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public.' This is analogous to the Companies Act duty to promote the success of the company set out above. Similarly the duties to avoid conflicts of interest and not to accept third party benefits are mirrored in health legislation. Given the common law derivation of company law, it is likely that the other director's duties set out in the Companies Act also apply to foundation trust boards and boards would be wise to take account of them and ensure that their corporate governance arrangements are aligned with them.

There is no equivalent legislation in respect of the duties of NHS (non foundation trust) trust boards. Schedule 5 of the National Health Service Act 2006, stipulates that NHS trusts must have a board of directors consisting of executive and non-executive directors in common with foundation trusts, but the schedule does not set out the duties of the board. The secretary of state has broad powers to make regulations in respect of NHS trusts and to direct the body responsible for the oversight of the NHS trust sector. But in effect the boards of directors of NHS trusts have, for the most part, the same powers as their colleagues in foundation trusts, with the proviso that in some circumstances NHS trusts are not free to act without the express permission of the secretary of state.

So this means an effective single unitary board being collectively responsible for controlling the trust, with no individual having unfettered powers of decision. An NHS board has the same role as any other unitary board: setting strategic direction; supervising the work of the executive; setting the culture of the organisation; and being accountable to stakeholders for outcomes delivered.

THE CODE OF GOVERNANCE: COMPLY OR EXPLAIN

Corporate governance in the UK is based on a clear understanding that one size does not fit all: governance arrangements need to be tailored and proportionate to the size and scope of the organisation. For more than 20 years good governance in the UK has been supported by a code of governance. The latest iteration, the *UK corporate governance code* (the UK code) produced by the Financial Reporting Council (FRC, the UK's independent regulator responsible for promoting high quality corporate governance in the private sector) is the authoritative reference document on corporate governance in the UK. Listing Rules require listed companies to apply the main principles of the current *UK corporate governance code* and report to shareholders on how they have done so. However it is accepted by the FRC that there may be circumstances that warrant divergence from the code, but only where companies can explain clearly and convincingly their reasons for not complying. This is the principle behind comply or explain. Either the board can certify in its annual report that it has complied with the code or it must provide a reasoned explanation to its shareholders and the stock market why it has not complied.

The UK code takes account of the lessons learned following the financial crisis of 2008/09 and stresses the need for positive behaviours in the boardroom. It emphasises the need to follow the spirit of the code as well to comply with the letter of the code and also stresses the need for a well functioning interaction between boards and stakeholders.

Monitor's own code of governance for NHS foundation trusts is based on the UK code, but adapted to the governance infrastructure of NHS foundation trusts. While strictly speaking the code applies only to foundation trusts, in practice there is much in its content that will be of use to NHS trusts as well. The code shares with the UK code the principle that boards must comply with the provisions of the code or explain why they have not done so. Foundation trust boards will therefore need to seek the views of their councils of governors on compliance with the code and it is not unreasonable for boards to consult governors if they are considering departure from the provisions of the code. NHS trust boards will need to make similar arrangements with the regulator. In common with the private sector it is important that NHS boards embrace the spirit of the code and do not regard compliance as an end in itself.

OTHER GUIDANCE

The *Healthy NHS board: principles for good governance* builds on the UK and Monitor codes and looks at leadership, control, effectiveness and accountability in an NHS setting. It is a comprehensive and authoritative point of reference. The FRC has also produced *Guidance on board effectiveness* to complement the UK Code, once again a good source of reference material.

The well led framework agreed by Monitor, the Trust Development Authority and the Care Quality Commission, published since the last edition of this compendium was produced, is now the single, current and agreed expression of good governance. It applies to all NHS provider organisations and is the standard which should be used to test compliance.

THE CONSTITUTION

Section 30 (2) of the amended Act requires foundation trusts to have a constitution that is consistent with Schedule 7 of the amended Act. As long as their constitution conforms to Schedule 7, foundation trust boards and councils of governors are free to modify their constitutions as they will. NHS trusts seeking to become foundation trusts or to operate as if they were foundation trusts will need to use Monitor's model core constitution as their starting point. In practice most constitutions do not depart far from the model core constitution.

THE BOARD

Since boards of directors exercise all of the powers of the trust it is not necessary for boards to have defined terms of reference. But while the generality of the powers and liabilities of boards of directors are widely known, the specifics of what the board does tends not to be set out in one place but is implied from board committee terms of reference, schemes of delegation, policies and procedures. The document at appendix 1 sets out the role of a board of directors. The document sets out to describe the totality of the board's role from strategy development through supervising the management of the organisation, to giving account to stakeholders. The purpose of the document is to ensure that nothing falls 'through the gaps' by providing a point of reference for those responsible for drafting committee terms of reference, schemes of delegation etc. and to provide a reference for boards themselves.

BOARD COMMITTEES

The amended Act requires that NHS foundation trusts establish an audit committee, a nominations and remuneration committee. Nominations and [remuneration] committees often share a common membership and operate as if they were a single committee. For NHS trusts, the secretary of state has broad powers to make regulations on what committees they may have, but the principles guiding the need for committees are the same.

The starting point when considering committees needs to be that no committee of the board has the right to exist. Committees should exist only because (and for as long as) the board has identified a need for them and has therefore delegated certain tasks or duties to them. In some cases committees will be task and finish groups, but others will be standing committees with a continuing remit. There is a wide variety of practice regarding board committees in the private sector and this diversity is mirrored in foundation trusts. Whatever committee structure the board decides on, it is vital that as well as supervising the work of its committees, the board also reviews the need for each committee to continue. Each committee's terms of reference and membership will also need to be reviewed annually.

MEMBERSHIP OF BOARD COMMITTEES

It is sometimes still questioned whether individuals who are not board members can or should sit on board committees. Schedule 7 of the amended Act, provides for foundation trust constitutions to allow delegation to a committee of directors or to an executive director, so only directors may be members of a board committee. However this does not preclude other individuals attending meetings as necessary. The same principles hold true for the committees of NHS trusts.

TERMS OF REFERENCE

The amended Act stipulates that foundation trusts should have an audit committee and a nominations and remuneration committee. The code of governance allows for the establishment of two nominations and remunerations committees, one for non-executive director appointments and one for executive director appointments. At present NHS trusts do not set the remuneration of their directors and do not have remuneration committees. Sample terms of reference for an audit committee can be found at appendix 2, while sample terms of reference for board and council of governor's nominations and remuneration committees can be found at appendices 3 and 4.

The other committee that is becoming commonplace is a quality committee. Quality committees together with audit committees are concerned with assurance. However it is important to note that while they deal with assurance, it is not the job of committees to substitute themselves for the board, but rather to obtain evidence to help the board to gain assurance. Sample terms of reference for a quality committee can be found at appendix 5.

Clearly it is vital that audit and other committees with a performance remit work together to ensure a comprehensive approach to assurance and compliance. This is dealt with in some detail later in this publication.

THE BOARD AGENDA

However skilled the chair may be or however good the reports submitted for consideration, the nature and balance of the agenda itself contributes greatly to the tone and ultimately the effectiveness of board meetings. In an external environment where conflicting messages are commonplace it is crucial that boards decide what is important: what needs to be reported on and discussed at board meetings and what can sensibly be delegated to make workloads manageable. It is advisable therefore for the board to evaluate the effectiveness of board meetings and the value of the board agenda, at least once a year, probably more often. Evaluation of board meetings is dealt with in more detail in the section on board evaluation below.

Whether justified or not, strategy development is perceived to be a weakness in both NHS foundation trusts and NHS trusts and in this instance, perception is equivalent to reality. This perception is exacerbated by requests for medium term strategies, when medium term information on budgets, national priorities, commissioning intentions and the regulatory environment is either unavailable or unreliable. Nevertheless there is much that boards can do to improve their strategic capability and this begins with allocating sufficient time on the board agenda to deal with strategic issues and not allowing the imperatives

of the day to drive strategy from the agenda. Advice on board agenda planning can be found at appendix 6.

THE BOARD AGENDA AND GOVERNORS

The amended Act specifies that before holding a meeting, the board of directors of foundation trusts must send a copy of the agenda of the meeting (and afterwards the minutes – see below) to the council of governors. There has been some speculation on what is meant by 'agenda' (and 'minutes'). This is not defined in the Act and we have not sought to give a definition here. However the clear intention is that governors are supplied with sufficient information to do their work including the ability to comment on important proposals before the board of directors make a decision and to hold the non-executive directors to account for the performance of the board. It is worthwhile to note that there is no distinction in law between the agenda, reports and minutes for the public part of a board meeting and those for a private session. Where relationships are harmonious it should be possible to achieve this objective through discussion with a view to consensus. NHS trusts with shadow councils of governors are free to act as if they are foundation trusts in this regard, but are under no obligation to do so.

BOARD REPORTS

Board agenda and reports are typically received by board members somewhere between four and six days before the meeting. It should be reasonably obvious that reports need to be concise and informative if an executive director with a challenging management role or a busy NED is going to be able to read and assimilate the information they receive, form a preliminary view and be able to challenge at the board meeting where necessary. More really can be less, but too little information or information of the wrong sort can be even more damaging. This is as true of NHS trusts as it is of NHS foundation trusts.

It is the duty and the right of every board collectively, and every director individually to ask for information in the form and at a level of detail that is of most use to them. We would not presume to infringe on this, but it is surely better that boards receive the right sort of information in the right form as a matter of course. Having said that, identifying what a good report looks like represents a significant challenge: it is far easier to describe what 'bad' looks like, albeit without being comprehensive. We have not sought to describe 'good', but have instead chosen to give an example of a report that we think represents good practice. This can be found at appendix 7.

BOARD MINUTES

The content of a good set of minutes may seem to be quite obvious and not contentious. However it is clear from the wide variations in content and style across organisations that opinions as to content vary greatly. Whatever the style of minutes, it is important that they are fit for purpose: to serve as an official record of proceedings and to serve as a record of events for the board and for relevant stakeholders outside the board. It should also be borne in mind that minutes are liable to publication under the Freedom of Information Act 2000. The template at appendix 8 covers the standard items that are likely to feature in all minutes, but more importantly, describes the issues that it is important to address in minutes. It is not our intention to promote uniformity of style, but rather to promote comprehensive content.

BOARD MINUTES AND COUNCILS OF GOVERNORS

The amended Act specifies that as soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors. There is only one document that constitutes the minutes of a meeting, so the meaning of 'minutes' should be clear. The intention is that governors are informed of the board's decisions and the reasons for them quite quickly after the board meeting. As with the agenda mentioned above, an agreement with the council of governors about what it might be reasonable to exclude or edit may be required. This should be a relatively straightforward and uncontroversial process. Once again those NHS trusts with shadow councils are likely to wish to share minutes with governors and are free to do so.

BOARD ROLES AND RESPONSIBILITIES

A mutual understanding of roles and responsibilities is important in all working relationships and nowhere more so than at board level. The role descriptions for the chair, senior independent director and NED set out at Appendices 9-11 are intended to provide a framework that can be amended to local needs rather than act as hard and fast guidance.

The document Respective roles: chair and chief executive at appendix 12 contains a number of suggestions as to what duties fall to each. It is not intended to be prescriptive or to be used as a checklist. Rather it is intended to form the basis of a discussion to facilitate mutual understanding and then, with agreement, the basis of a document to record that understanding as recommended by the foundation trust code of governance.

We have not sought to set out the roles of executive directors here since description of these roles is outside the remit of governance. However in their capacity as board members, executive directors have exactly the same duties, rights and liabilities as non-executive directors. We have therefore sought to describe the role of executive directors as board members at appendix 13. We have produced a role description for the company or trust secretary. The rationale for doing so is that while there may be a wide variety of other duties that foundation trusts expect of their company secretary, there will be a core set of governance responsibilities that each company secretary will have to meet. The role description at appendix 14 covers both the core elements of the role and a number of optional elements [set out in square brackets in the appendix] that complement and enhance the core element of the role. These role descriptions apply equally to NHS foundation trusts and NHS trusts.

BOARD APPOINTMENTS

Making appointments to the board is about more than simply filling vacancies as they arise. It is about ensuring that the organisation has the continuing ability to deliver high levels of operational and financial performance and good governance through effective succession planning. Trusts also need to be able to compete effectively in the marketplace as and when necessary. It is open to foundation trusts to have either a single nominations committee with the membership changing depending on whether the appointment being made is for an executive or non-executive role, or separate nominations committees for executive and non-executive appointments. We take the view that having separate nominations committees for executive and non-executive director appointments provides a neater solution, but this is very much a matter for local determination.

The code of governance stipulates that there should be a formal, rigorous and transparent procedure for the appointment of directors to the board. The nominations committee(s) will therefore need to be aware of the current leadership needs of the foundation trust and will need periodically to review whether the foundation trust's leadership needs have changed or are likely to change in the near future. In consequence it is vital that the members of the nominations committee keep up to date with the strategic challenges facing the foundation trust. So the nominations committee(s) will need to evaluate the balance of skills, knowledge and experience on the board and compare this to the likely skills needed to meet current and future challenges.

External help can add value in assisting the nominations committee in evaluating the balance of skills that the board requires as well in preparing a description of the role and capabilities required for a particular appointment. When considering using a recruitment consultancy it is prudent to look for experience of supporting nominations committees in skills evaluation as well as in executive search and in managing the appointment process.

NHS trusts do not yet enjoy the same freedoms to make appointments as their foundation trust colleagues, but they do have significant influence in appointments and the same principles of succession planning and transparency apply.

BOARD EVALUATION

The code of governance states that the board of directors should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors. The board should state in the annual report how performance evaluation of the board, its committees and its individual directors including the chair, has been conducted, bearing in mind the desirability for independent assessment, and

the reason why the board has adopted a particular method of performance evaluation. The code also recommends that there should be an externally facilitated review of board leadership under the well led framework at least every three years. This is in line with the UK code stipulation for FTSE 350 companies. External facilitation can offer objectivity and rigour and external advice can be particularly useful during periods of change, but also when boards are well established and an outsider's perspective might be of assistance.

As well as looking at the board's effectiveness and the dynamics of the group, an annual collective evaluation of the board can also provide an opportunity to review procedures and processes to ensure that they continue to deliver value. In addition to evaluating its own performance the board should oversee an annual reappraisal of the work of its committees. This advice applies equally to NHS foundation trusts and NHS trusts. The evaluation process at appendix 15 draws on the well led framework. No board evaluation is complete without a review of committee effectiveness. A flow chart to assist such reviews can be found at appendix 16.

DIRECTOR INDUCTION

The objective of induction is to provide new directors with sufficient information so that they can become effective in their new role at the earliest opportunity. Clearly a balance needs to be struck between providing too little information to be effective and too much information for the individual to assimilate. The induction checklist at Appendix 17 looks to strike the right balance by breaking down induction information into immediate and second order categories.

VALUES AND ORGANISATIONAL CULTURE

The importance of shared values and a positive organisational culture is well understood within the provider sector, but less so outside the provider sector where a more mechanistic approach to leadership is favoured. But we know that it is vital that 'how we do things around here' needs to be a positive influence, not the first step to poor performance. We know that organisational culture is a far greater determinant of organisational success than good strategy. We also know that the extent of staff engagement, engaging staff in the design and structure of their work, is a better indicator of service quality than any other. It makes sense therefore to engage staff not just in the development of values and the sort of culture the organisation wants to promote, but also in evaluating progress and assessing barriers to further progress.

Virtually no organisation starts from a Year 0 with a blank sheet; each organisation contends with whatever state of affairs that prevails at any given time. In a system where a premium is placed on fast turnaround of poor performance or lapses in quality it is easy to put culture change into the too slow or too difficult box. But sustainable change is virtually impossible to achieve without a positive organisational culture. There is no template for culture change because there is no 'right way' to deliver it, only your way. However where organisations such as NHS Providers and DAC Beachcroft can help is in raising awareness of the importance of culture and in promoting an understanding that in a system like the NHS, consisting of hundreds of very different organisations there cannot be a single NHS culture. Appendix 18 provides some useful references and pointers.

WHISTLE-BLOWING

Freedom to speak out about poor service is part and parcel of being an open and transparent organisation and is essential to ensuring that there are no pockets of poor practice in extremely complex organisations. It is relatively simple for organisations to devise comprehensive policies and whistle-blowing policies and procedures are virtually universal. What is much more difficult is to create an environment where whistle-blowing is possible and where policies and procedures can really be put into practice.

There is broad consensus that there must be a mechanism where complaints or concerns can be raised without fear of reprisal or adverse treatment when local policies including day-to-day line management and escalation procedures have failed to resolve an issue of genuine concern. Whistle blowers may be good employees raising problems where systems and processes did not result in the issue being escalated and dealt with appropriately. However there are of course instances where a whistleblowing procedure can be misused by the complainant, deliberately or unintentionally. Genuine issues of concern will be difficult to distinguish from vexatious complainants. But none of that makes them

wrong, nor does it negate the need to investigate or to protect the whistle-blower in all instances. Issues and complaints need to be investigated thoroughly, openly and decided on the merits of the evidence, not on the character of the complainant. Whistle-blowers need to be protected not only because they merit it, but to create a culture in which it is a right to complain and where poor practice is not tolerated.

Virtually by definition whistle-blowing is something that happens where there is a conviction on the part of the whistle-blower that procedure hasn't delivered, or important issues are being ignored or at least not given proper attention. Inevitably the whistle-blower is in a space where they are dissenting from the accepted account or at least going over the heads of those in management positions. If they are a staff member they may not have the support of their colleagues and in fact may face hostility from colleagues. This is likely to be an uncomfortable position for the whistle-blower and for the organisation involved, however once again it doesn't make the whistle-blower wrong or negate the need for proper protection and support.

The *Freedom to speak up* review will result in trusts appointing guardians whose role it will be to foster a climate where bullying and intimidation are not accepted and to provide support to individuals. However, as with all other aspects of organisational culture, board leadership is essential. Although getting the cultural issues right is clearly of central importance, it is likely that some consideration will need to be given to organisational structures given that rigid hierarchies are ideal settings for bullying and intimidation, and these need to be broken down to create the conditions where dialogue and disagreement and resolution are part and parcel of working practice.

COMPLAINTS

In an ideal world complaints would be regarded as invaluable sources of information to help the organisation learn and change as well as an opportunity to provide redress where things have gone wrong. But it is an unhappy truth that in some parts of the NHS complaints are still given a relatively low priority, with more routine complaints never considered by more senior staff. Boards may receive complaints data or be notified of serious cases, but sometimes, now less often than in the past; the opportunity to understand more general lessons about what they tell the organisation about itself is lost. Receiving and dealing with complaints is now part of the fundamental standards regulations dealt with in the section below.

The way in which an organisation goes about investigating alleged shortcomings; putting things right when they go wrong and compensating people where something can't be rectified says a great deal about it. A positive culture around complaints can contribute to candour and trust. Furthermore complaints are an important source of feedback about performance provided freely to the organisation. So complaints are not just about conflict resolution and learning from a particular set of circumstances, they are also a source of management information both in general terms and in the specific.

There is no legal detriment for NHS organisations in being open about circumstances when things go wrong. The Compensation Act 2006 states that 'an apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty,' a view endorsed by the NHS Litigation Authority which considers the provision of factual information in respect of complaints to be good practice.

It is also important to bear in mind that only a minority of those who are dissatisfied with the service they receive will bother to complain unless the matter at stake is serious. So complaints about less serious issues such as perceived staff attitudes or access to the right information are likely to represent the tip of a much larger iceberg. Boards will need to understand the generality of complaints, where they come from and why, but they will also need to go deeper into a sample number of complaints so that they can assess whether there are any issues that have not previously come to light or any underlying trends that have not previously been identified.

FUNDAMENTAL STANDARDS

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 introduced a raft of conditions on boards and directors legally enforceable by the CQC through registration. In addition to the fit and proper person test for directors, the regulations also reinforced the duty of candour as a statutory as well as a contractual duty. The regulations also dealt with patient-centred care, treating patients and

service users with dignity and respect, the need for consent, safe care and treatment, safeguarding from abuse and improper treatment, meeting nutrition and hydration needs, suitable premises and equipment, acting on complaints, good governance, staffing and employment of fit and proper persons.

It could be argued that the standards represent a legislative approach to dealing with cultural issues and that in some instances they seek to address areas where there is no significant problem. However they are part of statute and are likely to remain so indefinitely. It is therefore essential that each NHS organisation takes the necessary steps to comply. But as with other cultural issues, in many cases boards will regard compliance as being insufficient and will want to assure themselves that the right culture is in place throughout their organisations so that positive ways of working that reflect the standards are embedded. Appendix 19 gives advice on how to comply with the fit and proper person standard. Further advice can be found at www.nhsproviders.org/home/

FALSE OR MISLEADING INFORMATION

The False or Misleading Information (Specified Care Providers and Specified Information) Regulations 2015 make it an offence for NHS provider organisations to publish or supply inaccurate information if that information falls into certain categories. The offence is investigated by the police and is prosecutable by the Crown Prosecution Service. Both organisations and individuals can be prosecuted. The majority of information covered by the regulations involves certain commissioning data sets. Perhaps the most significant information covered by the regulations is that published in quality accounts.

Once again this could be regarded as a legislative attempt deal with something that is not a widespread problem in the NHS. While it is unlikely that prosecutions will be frequent the consequences of non-compliance are very serious for both organisations and individuals so rigorous steps to ensure compliance are advisable. Further advice can be found at www.nhsproviders.org/home/

ASSURANCE AND RISK

Since we wrote the second edition of this compendium we have noted an increased emphasis on implementing robust management systems and in embedding a positive approach to risk within the culture of the organisation. That is not to say that positive risk management cultures are universal or that systems cannot be improved.

Clearly boards will need to manage strategic risks: those that threaten the delivery of strategic objectives. But they also need to keep sight of the top high impact; high likelihood operational risks in order to help them to understand the organisations they lead and to assure themselves that risk management systems are effective.

As public sector organisations, foundation trusts are responsible for the stewardship of public funds and need to strike a balance between ensuring prudent controls are in place and innovation to transform and improve services. It is for the board to define where this balance should be struck. So, for NHS boards there is a need to define the organisations' approach to risk: the risk appetite, to manage strategic risks, to deal with those organisational risks that could pose a major threat to reputation and to ensure that the right controls and assurance mechanisms are in place to manage risks effectively. In a febrile atmosphere where the centre is immensely risk averse it would be difficult to overstate the difficulty in striking the right balance for the organisation while keeping regulators and others on board.

If one of the key roles of the board is to set strategic direction, then board assurance framework (BAF) is a significant tool in helping boards to understand the implementation of strategy in the context of risk management. The BAF sets out:

- the foundation trust's strategic objectives;
- the risks to achieving them;
- the controls and assurance mechanisms that have been put in place to manage risk and deliver the objectives.

An extract example of a board assurance framework is set out at appendix 20.

Internal control is the process that provides assurance that an organisation is achieving its objectives and

meeting its legal and other obligations. It includes the structure that supports good governance, risk identification, assessment and mitigation, communication, monitoring processes and assurance activities. The annual governance statement is a description of the internal control process which is certified each year by the accountable officer as being effective together with a series of governance disclosures including compliance with the quality governance framework and the code of governance. Clearly the elements of the annual governance statement will change as the business changes and new or extended control processes are brought into operation.

An effective system of internal control should be part of the culture of the organisation; an intrinsic part of what the organisation does. It should be responsive so that risks to the organisation can be dealt with as they emerge and it should include provision for reporting any failures in control and procedures so that immediate action is taken to deal with them.

The UK code stipulates that the board must conduct a review of the effectiveness of the company's system of governance and internal controls at least annually and should report to shareholders that they have done so. The review should cover all material controls including financial, operational and compliance controls. This is good practice and foundation trusts may wish to carry out a similar review each year. A checklist for boards can be found at appendix 21.

FOUNDATION TRUST COUNCILS OF GOVERNORS

We are all operating in an environment where the difference in the status of NHS foundation trusts and NHS trusts is uncertain and where the centre and regulators are asserting control, the role of local accountability is inevitably the subject of debate. Our contention is that local accountability relationships are of central importance in embedding provider organisations into the communities they serve and in promoting responsiveness to the wishes and needs of local people. For this reason NHS providers will be working with the national bodies and our members to promote and protect the dual pillars of board autonomy and local accountability as new care models develop. Local accountability is the means by which boards can demonstrate the exercise of their duties of care to those that use services and to their staff and they help to protect the autonomy of provider organisations from regressive and ultimately undeliverable demands for central control. The council of governors is the embodiment of the local dimension in accountability relationships in foundation trusts and in NHS trusts with shadow councils. The interaction between the council of governors and the board of directors is one of the most important relationships within foundation trusts. The amended Act defines the general duties of the council of governors:

(a) to hold the non-executive directors individually and collectively to account for the performance of the board of directors; and

(b) to represent the interests of the members of the corporation as a whole and the interests of the public.

The requirement of governors to hold the non-executive directors to account for the performance of the board arises from the fact that governors appoint and can remove non-executive directors, but not executive directors. In practice the performance of the board of directors is most likely to be exemplified in the performance of the trust. So it is likely that in most instances governors will exercise this responsibility by discussing trust performance with the board of directors. While the legislation is couched in terms of 'governors holding to account' there is a clear governance responsibility for the board to make itself accountable to the council. This requires an interaction with governors based on openness, transparency, candour and trust; so that governors have a full understanding of quality and performance issues in the foundation trust as a basis for questioning, forming a view and feeding back to the board.

To exercise their own accountability to members and to the public, governors will need support and information from the trust as well as advice and guidance. NHS Providers and DAC Beachcroft will continue to promote the value of local accountability relationships.

COUNCIL OF GOVERNORS TERMS OF REFERENCE

The role of governors is defined in the amended Act, however because the role has also evolved over time, there is a diverse range of styles in carrying out governor duties and in activities in which governors participate. This is in part due to governors becoming more experienced and more able, in part due to local circumstances and in part in response to changing circumstances within the NHS.

The terms of reference at appendix 22 take account of the evolving role of governors of changing circumstances, new challenges and of legislative change.

THE LEAD GOVERNOR

The lead governor role started as a means by which Monitor could make contact with councils of governors in circumstances where it would not be appropriate to communicate via the chair or the company secretary. In some foundation trusts the role has remained the same. In others it has evolved into a broader role acting as liaison with the chair and the first point of contact for the chair when governors need to be engaged quite quickly.
The role description at Appendix 23 covers the original role while acknowledging the possibility of the extended role.

GOVERNOR INDUCTION

In common with directors, governors need a well planned and comprehensive induction. The checklist at appendix 24 aims to achieve a balance, supplying sufficient information to enable governors to take up their role without swamping them with information.

GOVERNOR ELECTIONS

The model election rules provide guidance for NHS foundation trusts on fair and ethical processes for elections. The rules have been revised to allow electronic voting alongside paper ballots. The current rules can be found at www.nhsproviders.org

DEALING WITH CHAIR AND NON-EXECUTIVE DIRECTOR REMUNERATION

The pay of executive directors has come under the spotlight with the stipulation that approval must be sought in order to pay an executive director more than the salary payable to the prime minister. NHS trusts and those NHS foundation trusts subject to regulatory action are obliged to comply with the stipulation while those foundation trusts not subject to regulatory action are being asked to comply. We do not comment here on the policy.

Clearly it is important that provider organisations are able to attract suitable candidates. Each year NHS Providers surveys its members on their levels of chair and non-executive director remuneration to provide a comparator for foundation trusts when setting remuneration for their own boards. The results of the survey are available to NHS Providers members only and are made available online at www.nhsproviders.org NHS Providers also provides training for governors who are members of their foundation trust's remuneration committee.

COUNCIL OF GOVERNORS EVALUATION

Given the crucial role that governors play it is essential that they are able to evaluate their collective performance and that mechanisms are in place to allow the chair, senior independent director, chief executive, company secretary, membership manager and others to feed in to the evaluation process. The report at appendix 25 sets out the key features of an appraisal process and also includes a template evaluation questionnaire.

INDEPENDENCE AND INTERESTS

Good governance needs to be principled and ethical and intrinsic to these are codes of conduct that are well known and well used. It also requires non-executive directors to be sufficiently distanced from the organisation so that they are able to form an unbiased and independent view of financial and quality performance.

CODES OF CONDUCT

The amended Act provides that the duties that a director of a public benefit corporation has by virtue of being a director include in particular:

(a) a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation; and

(b) a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

The codes of conduct for directors and governors set out at appendices 26 and 27 take account of legislation and current best practice. They are intended to be a practical guide to conduct and should not be seen as obstacles to effective performance. They do not deal with board room etiquette, which is properly a matter for the chair to address.

NON-EXECUTIVE DIRECTOR TRIANGULATION

Do we know that we can trust the figures? Is what is on paper descriptive of what is really happening in the outside world? The paper at appendix 28 seeks to answer these questions by signposting ways in which directors can triangulate information to gain assurance that it is accurate and useful.

NON-EXECUTIVE (AND EXECUTIVE) DIRECTOR 'CHALLENGE'

Each year Monitor publishes an account of issues and problems that have arisen at foundation trusts in the past year and lessons to be learned from them. A persistent theme where foundation trusts are running into problems is lack of evidence of challenge at board meetings. This raises several key issues: whether challenge actually takes place in the boardroom and if it does whether challenge is properly recorded. Clearly recording is more easily rectified. Improving challenge itself a separate and harder issue. appendix 29 provides some practical tips on making challenge overt, pertinent and appropriate.

PUBLIC VERSUS PRIVATE MEETINGS (TRANSPARENCY, OPENNESS, VERIFICATION)

No private sector organisation opens its routine board meetings to stakeholders. Boards meet in private not because of a wish for secrecy, but because they have specific duties to carry out that are likely to involve confidential information. In the private sector board meetings are not forums for accountability. Boards meet their shareholders and stakeholders separately for that purpose as well as producing publicly available reports.

It is now established practice for NHS foundation trusts to hold their meetings in two parts, the first in public and then private sessions to deal with confidential matters, in common with their NHS trust colleagues. However there remain potential issues around privacy and confidentiality and these and other key issues on board meeting format are addressed in the document at appendix 30.

LOOKING TO THE FUTURE

GOVERNANCE BETWEEN ORGANISATIONS

Delivering care through new models as envisaged in the *Five year forward view* will involve both vertical and horizontal integration of care provision and new arrangements between primary care, secondary care and social care. The devolution agenda also adds potential for new arrangements locally to better integrate health, social care and wider public services. This will mean organisations working together differently and on an unprecedented scale but robust governance and clear lines of accountability will need to remain at the heart of their operation. The mechanisms by which those organisations work together, the rules of engagement, may seem like bureaucratic details to be considered later in the drive to deliver, but issues of accountability and a 'safety net' should disagreements arise will remain essential in the best functioning of collaborations, as they are now. We contend that it is essential therefore, for organisations to address the terms of their engagement and how they will control the new bodies that they form from the outset. The document at appendix 31 sets out the key issues for boards and managers to consider and address.

FREEDOM OF INFORMATION

Proper compliance with large volumes of freedom of information requests is a routine, yet important task for all NHS organisations. appendices 32a, 32b and 32c provide advice on handling freedom of information requests.

CONCLUSION

Providing the systems and processes that comprise the infrastructure to support good governance is a small, but significant part of the governance process. Governance is something that is to be done, not admired. It must go beyond compliance and deliver outcomes. The process of governance itself needs to be refreshed periodically so that it is not something that is done by rote, but is thought and taken into account before during and after meetings of the board. We hope that this third edition makes a significant contribution to debate and provides some practical assistance.

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Solent NHS Trust
Surrey and Sussex Healthcare NHS Trust

APPENDIX 1

THE ROLE OF THE BOARD OF DIRECTORS

THIS DOCUMENT

This document describes the role and working of the board and is for the guidance of the board, for the information of the trust as a whole and serves as the basis of the terms of reference for the board's own committees.

ROLE AND PURPOSE

The principal purpose of the trust is to 'provide goods and services for the purposes of the health service in England'[1]. It may provide goods and services for any purposes relating to the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and the promotion and protection of public health. More than half of the trust's income from goods and services must come from fulfilling its principal purpose.

The trust has a board of directors which exercises all the powers of the trust on its behalf, but the board may delegate any of those powers to a committee of directors or to an executive director. In addition, certain decisions are made by the council of governors, and certain board of director decisions require the approval of the council of governors.

The board consists of executive directors, one of whom is the chief executive, and non-executive directors, one of whom is the chair.

The board leads the trust by undertaking four key roles:

- setting strategy;
- supervising the work of the executive in the delivery of the strategy and through seeking assurance that systems of control are robust and reliable;
- setting and leading a positive culture for the board and the organisation;
- giving account and answering to key stakeholders, particularly councils of governors.

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 trust so as to maximise the benefits for the members of the corporation as a whole and for the public. Each director also has a duty to avoid conflicts of interest and not to accept benefits from third parties (as well as to declare interests in proposed transactions or arrangements with the trust).[2] Company law[3] places a duty on directors to exercise independent judgement and to exercise reasonable skill, care and diligence in carrying out their duties. It is not unreasonable to infer that these duties also apply to directors of NHS boards.

The practice and procedure of the meetings of the board, and of its committees, are not set out here but are described in the board's standing orders.

GENERAL RESPONSIBILITIES

The general responsibilities of the board are:

- to maintain and improve quality of care;
- to work in partnership with service users,carers, local health organisations, local government authorities and others to provide safe, effective, accessible, and well governed services for [patients] [service users] and [carers];
- to ensure that the trust meets its obligations to the population served, its stakeholders and its staff in a way that is wholly consistent with public sector values and probity;
- to ensure relationships are maintained with the trust's stakeholders, regulators, public, governors, staff and patients, such that the trust can discharge its wider duties;
- to exercise collective responsibility for adding value to the trust by promoting its success through direction and supervision of its affairs in a cost effective manner;
- to ensure compliance with all applicable law, regulation and statutory guidance.

In fulfilling its duties, the trust board will work in a way that makes the best use of the skills of non-executive and executive directors.

LEADERSHIP

The board provides active leadership to the organisation by:

- ensuring there is a clear vision and strategy for the trust that is well known and understood by stakeholders and is being implemented within a framework of prudent and effective controls which enable risk to be assessed and managed;
- ensuring the trust is a good employer by the development of a workforce strategy and its appropriate implementation and operation;
- implementing effective board and committee structures and clear lines of reporting and accountability throughout the organisation.

QUALITY

The board:

- ensures that the trust's quality of service responsibilities for clinical effectiveness, patient safety and patient experience, are achieved;
- has an intolerance of poor standards, and fosters a culture that puts patients first;
- ensures that it engages with all its stakeholders, including patients and staff on quality issues; and
- ensures that issues are escalated appropriately and dealt with.

STRATEGY

The board:

- sets and maintains the trust's strategic vision, aims and objectives ensuring the necessary financial, physical and human resources are in place for it to meet its objectives;
- determines the nature and extent of the risk it is willing to take in achieving its strategic objectives;
- monitors and reviews management performance to ensure the trust's objectives are met;
- oversees both the delivery of planned services and the achievement of objectives, monitoring performance to ensure corrective action is taken when required;
- develops and maintains an annual business plan, with due regard to the views of the council of governors, and ensures its delivery as a means of taking forward the strategy of the trust to meet the expectations and requirements of stakeholders;
- ensures that national policies and strategies are effectively addressed and implemented within the trust.

CULTURE, ETHICS AND INTEGRITY

The board:

- is responsible for setting values, ensuring they are widely communicated and adhered to and that the behaviour of the board is entirely consistent with those values;
- promotes a patient-centred culture of openness, transparency and candour;
- ensures that high standards of corporate governance and personal integrity are maintained in the conduct of foundation trust business;
- ensures the application of appropriate ethical standards in sensitive areas such as research and development;
- establishes appeals panels as required by employment policies particularly to address appeals against dismissal and final-stage grievance hearings;
- ensures that directors and staff adhere to any codes of conduct adopted or introduced from time to time.

GOVERNANCE/COMPLIANCE

The board:

- ensures compliance with relevant principles, systems and standards of good corporate governance and has regard to guidance on good corporate governance and appropriate codes of conduct, accountability and openness applicable to NHs provider organisations.;
- ensures that all licence conditions relating to the trust's governance arrangements are complied with;
- ensures that the trust has comprehensive governance arrangements in place that guarantee that the resources vested in the trust are appropriately managed and deployed, that key risks are identified and effectively managed and that the trust fulfils its accountability requirements;
- ensures that the trust complies with its governance and assurance obligations in the delivery of clinically effective and safe services taking account of patient and carer experiences and maintaining the dignity of those cared for;
- ensures that all the required returns and disclosures are made to the regulators;
- formulates, implements and reviews standing orders and standing financial instructions as a means of regulating the conduct and transactions of foundation trust business;
- agrees the schedule of matters reserved for decision by the board of directors;
- [ensures the proper management of and compliance with the Mental Health Act and other statutory requirements of the trust];
- ensures that the statutory duties of the trust are effectively discharged;
- [acts as corporate trustee for the trust's charitable funds].

RISK

The board:

- ensures an effective system of integrated governance, risk management and internal control across the whole of the trust's clinical and corporate activities;
- ensures that there are sound processes and mechanisms in place to ensure effective user and carer involvement in the development of care plans, the review of quality of services provided and the development of new services;
- ensures there are appropriately constituted appointment and evaluation arrangements for senior positions such as consultant medical staff and those reporting to executive directors.

COMMITTEES

The board is responsible for maintaining committees of the trust board with delegated powers as prescribed by the trust's standing orders and/or by the trust board from time to time.

COMMUNICATION

The board:

- ensures an effective communication channel exists between the trust, its governors, members, staff and the local community;
- meets its engagement obligations in respect of the council of governors and members and ensures that the governors are equipped with the skills and knowledge they need to undertake their role[4];
- holds its meetings in public except where the public is excluded 'for special reasons'[5];
- shares the agenda and minutes of board meetings with the council of governors[6] and ensures that those board proceedings and outcomes that are not confidential are communicated publically, primarily via the trust's website;
- holds an annual meeting of its members which is open to the public[7];
- ensures the effective dissemination of information on service strategies and plans and also provides a mechanism for feedback;
- publishes an annual report and annual accounts.

FINANCE

The board:

- ensures that the trust operates effectively, efficiently, economically;
- ensures the continuing financial viability of the organisation;
- ensures the proper management of resources and that financial responsibilities are fulfilled;
- ensures that the trust achieves the targets and requirements of stakeholders within the available resources;
- reviews performance, identifying opportunities for improvement and ensuring those opportunities are taken.

ROLE OF THE CHAIR

The chair is responsible for leading and presiding over the trust board and the council of governors and for ensuring that they successfully discharge their responsibilities.

The chair is responsible for the effective running of the board and council of governors and ensuring they work well together.

The chair is responsible for ensuring that the board and the council of governors play their part in the development and determination of the trust's strategy and overall objectives.

The chairman is the guardian of the board's and the council of governors' decision-making processes and provides general leadership of the board and the council of governors.

ROLE OF THE CHIEF EXECUTIVE

The chief executive reports to the chairman and to the board directly. All members of the management structure report either directly or indirectly, to the chief executive. The chief executive is responsible to the board for running the trust's business and for proposing and developing the trust's strategy and overall objectives for consideration and approval by the board.

The chief executive is responsible for implementing the decisions of the board and its committees and providing information and support to the board and council of governors.

OTHER MATTERS

The trust board shall be supported by the trust secretary whose duties in this respect will include:

- agreement of the agenda, for board and board committee meetings, with the relevant chair, in consultation with the chief executive;
- collation of reports and papers for board and committee meetings;
- ensuring that suitable minutes are taken, keeping a record of matters arising and issues to be carried forward;

- ensuring that board procedures are complied with;
- supporting the chair in ensuring good information flows within and between the board, its committees, the council of governors and senior management;
- advising the board and board committees on governance matters;
- supporting the chair on matters relating to induction, development and training for directors.

A full set of papers comprising the agenda, minutes and associated reports and papers will be sent within the timescale set out in standing orders to all directors and others as agreed with the chair and chief executive from time to time. The agenda and minutes of board meetings will be shared with the council of governors.

The board shall self assess its performance following each board meeting.

FOOTNOTES

1 National Health Service Act 2006, as amended by the Health and Social Care Act 2012 (the Act), Section 43

2 The Act, Schedule 7, 18B and 18C

3 The Companies Act 2006

4 The Act, Schedule 7, 10B

5 The Act, Schedule 7, 18E

6 The Act, Schedule 7, 18D

7 The Act, Schedule 7, 27A

APPENDIX 2

TERMS OF REFERENCE FOR AN AUDIT COMMITTEE

AUTHORITY

The audit committee is constituted as a standing committee of the foundation trust's board of directors. Its constitution and terms of reference shall be as set out below, subject to consultation with the council of governors and amendment at future board of directors' meetings. The audit committee shall not have executive powers in addition to those delegated in these terms of reference.

The audit committee is authorised by the board of directors to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any member of staff and all members of staff are directed to cooperate with any request made by the audit committee.

The audit committee is authorised by the board of directors to obtain outside legal or other independent professional advice. The committee is authorised by the board of directors to request the attendance of individuals and authorities from outside the foundation trust with relevant experience and expertise if it considers this necessary or expedient to the carrying out of its functions.

PURPOSE

The audit committee has primary responsibility for monitoring the integrity of the financial statements, assisting the board of directors in its oversight of risk management and the effectiveness of internal control, oversight of compliance with corporate governance standards and matters relating to the external and internal audit functions. The audit committee shall provide the board of directors with a means of independent and objective review of financial and corporate governance, assurance processes and risk management across the whole of the foundation trust's activities [(clinical and non-clinical)] both generally and in support of the annual governance statement. The board of directors is responsible for ensuring effective financial decision-making, management and internal control including:

- Management of the foundation trust's activities in accordance with statute and regulations;
- The establishment and maintenance of a system of internal control to give reasonable assurance that assets are safeguarded, waste or inefficiency avoided and reliable financial information produced, and that value for money is continuously sought.

MEMBERSHIP

The committee shall be composed of at least three independent non-executive directors and the committee shall have sufficient skills to discharge its responsibilities. At least one committee member should have recent and relevant financial experience. The chair of the trust shall not chair or be a member of the committee.

ATTENDANCE

Only members of the audit committee have the right to attend meetings, but the chief executive, director of finance, director of assurance and head of internal audit of the foundation trust shall generally be invited to attend routine meetings of the audit committee.

A representative of the external auditors may normally also be invited to attend meetings of the audit committee.

Trust directors and/or staff and executives shall be invited to attend those meetings in which the audit committee will consider areas of risk or operation that are their responsibility.

The trust chair may be invited to attend meetings of the audit committee as required.

A representative of the local counter fraud service may be invited to attend meetings of the audit committee.

Governors may be invited to attend meetings of the audit committee.

The [company secretary] shall be the secretary to the audit committee and will provide administrative support and advice. The duties of the foundation trust secretary in this regard include but are not limited to:

- agreement of the agenda with the chair of the audit committee and attendees together with the collation of connected papers;
- taking the minutes and keeping a record of matters arising and issues to be carried forward;
- advising the audit committee as appropriate; and
- [reviewing every decision to suspend the standing orders].

FREQUENCY OF MEETINGS

Meetings shall be held at least [three] times per year, with additional meetings where necessary.

The external auditor shall be afforded the opportunity at least once per year to meet with the audit committee without executive directors present.

DUTIES

FINANCIAL STATEMENTS AND THE ANNUAL REPORT

Monitor the integrity of the financial statements of the foundation trust, any other formal announcements relating to the trust's financial performance, reviewing the significant financial reporting judgements contained in them.

Review the annual statutory accounts, before they are presented to the board of directors, in order to determine their completeness, objectivity, integrity and accuracy. This review will cover but is not limited to:

- the meaning and significance of the figures, notes and significant changes;
- areas where judgment has been exercised;
- adherence to accounting policies and practices;
- explanation of estimates or provisions having material effect;
- the schedule of losses and special payments;
- any unadjusted statements; and
- any reservations and disagreements between the external auditors and management which have not been satisfactorily resolved.

Review the annual report and annual governance statement before they are submitted to the board of directors to determine completeness, objectivity, integrity and accuracy.

Review each year the accounting policies of the foundation trust and make appropriate recommendations to the board of directors.

Review all accounting and reporting systems for reporting to the board of directors, including in respect of budgetary control.

INTERNAL CONTROL AND RISK MANAGEMENT

Review the foundation trust's internal financial controls to ensure the provision and maintenance of an effective system of financial risk identification and associated controls, reporting and governance.

Review and maintain an oversight of the foundation trust's general internal controls and risk management systems, liaising with any separate risk committee.

Review processes to ensure appropriate information flows to the audit committee from executive management and other board committees in relation to the trust's overall internal control and risk management position [in liaison with the quality committee].

Review the adequacy of the policies and procedures in respect of all counter-fraud work.

To review the adequacy of underlying assurance processes that indicate the degree of achievement of corporate objectives and the effectiveness of the management of principal risks.

To review the adequacy of policies and procedures for ensuring compliance with relevant regulatory, legal and conduct requirements.

WHISTLEBLOWING

Review arrangements that allow staff and other individuals where relevant, to raise, in confidence, concerns about possible improprieties in matters of financial reporting and control, clinical quality, patient safety and other matters.

Ensure that arrangements are in place for the proportionate and independent investigation of such matters, and for appropriate follow-up action, and ensure safeguards are in place for those who raise concerns.

CORPORATE GOVERNANCE

Monitor corporate governance compliance (e.g. compliance with terms of the licence, constitution, codes of conduct, standing orders, standing financial instructions, maintenance of registers of interests).

INTERNAL AUDIT

Monitor and review the effectiveness of the foundation trust's internal audit function, taking into consideration relevant UK professional and regulatory requirements.

Review and approve the internal audit strategy and programme, ensuring that it is consistent with the needs of the organisation.

Oversee on an ongoing basis the effective operation of internal audit in respect of:

- adequate resourcing;
- its coordination with external audit;
- meeting relevant internal audit standards;
- providing adequate independence assurances;
- it having appropriate standing within the foundation trust; and

Consider the major findings of internal audit investigations and management's response and their implications and monitor progress on the implementation of recommendations.

Consider the provision of the internal audit service, the cost of the audit and any questions of resignation and dismissal of internal audit staff.

Conduct an annual review of the internal audit function.

EXTERNAL AUDIT

Review and monitor the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements.

The council of governors should take the lead in agreeing with the audit committee the criteria for appointing, re-appointing and removing external auditors. To support them in this task, the audit committee should:

- provide information on the external auditor's performance, including details such as the quality and value of the work, the timeliness of reporting and fees.
- make recommendations to the council of governors in respect of the appointment, re-appointment and removal of an external auditor and related fees as applicable. To the extent that a recommendation is not adopted by the council of governors, this shall be included in the annual report, along with the reasons that the recommendation was not adopted.

Discuss with the external auditor, before the audit commences, the nature and scope of the audit, and ensure coordination, as appropriate, with other external auditors in the local health economy.

Assess the external auditor's work and fees each year and based on this assessment, to make the recommendation to the council of governors with respect to the re-appointment or removal of the auditor. This assessment should include the review and monitoring of the external auditor's independence and

objectivity and effectiveness of the audit process in light of relevant professional and regulatory standards.

Oversee the conduct of a market testing exercise for the appointment of an auditor at least once every [five] years and, based on the outcome, make a recommendation to the council of governors with respect to the appointment of the auditor.

Review external audit reports, including the annual audit letter, together with the management response, and to monitor progress on the implementation of recommendations.

To develop and implement a policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance.

STANDING ORDERS, STANDING FINANCIAL INSTRUCTIONS AND STANDARDS OF BUSINESS CONDUCT

Review on behalf of the board of directors the operation of, and proposed changes to, the standing orders and standing financial instructions, the constitution, codes of conduct and standards of business conduct; including maintenance of registers.

Examine the circumstances of any significant departure from the requirements of any of the foregoing, and whether those departures relate to a failing, an overruling or a suspension.

Review the scheme of delegation.

OTHER

Review performance indicators relevant to the remit of the audit committee.

Examine any other matter referred to the audit committee by the board of directors and initiate investigation as determined by the audit committee.

Develop and use an effective assurance framework to guide the audit committee's work. This will include utilising and reviewing the work of the internal audit, external audit and other assurance functions as well as reports and assurances sought from directors and managers and other investigatory outcomes so as to fulfil its functions in connection with these terms of reference.

Review the work of all other foundation trust committees in connection with the audit committee's assurance function.

Consider the outcomes of significant reviews carried out by other bodies which include but are not limited to regulators and inspectors within the health [and social care] sector and professional bodies with responsibilities that relate to staff performance and functions.

REPORTING

The minutes of all meetings of the audit committee shall be formally recorded and submitted, together with recommendations where appropriate, to the board of directors. The submission to the board of directors shall include details of any matters in respect of which actions or improvements are needed. This will include details of any evidence of potentially ultra vires, otherwise unlawful or improper transactions, acts, omissions or practices or any other important matters. To the extent that such matters arise, the chair of the audit committee shall present details to a meeting of the board of directors in addition to submission of the minutes.

The trust's annual report shall include a section describing the work of the audit committee in discharging its responsibilities. This report shall include:

- the significant issues that the committee considered in relation to financial statements, operations and compliance, and how these issues were addressed;
- an explanation of how the committee has assessed the effectiveness of the external audit process and the approach taken to the appointment or re-appointment of the external auditor, the value of external audit services and information on the length of tenure of the current audit firm and when a tender was last conducted; and

- if the external auditor provides non-audit services, the value of the non-audit services provided and an explanation of how auditor objectivity and independence are safeguarded.

PERFORMANCE EVALUATION

As part of the board's annual performance review process, the committee shall review its collective performance [and that of its individual members].

REVIEW

The terms of reference of the audit committee shall, [in consultation with the council of governors], be reviewed by the board of directors at least annually.

REQUIRED FREQUENCY OF ATTENDANCE BY MEMBERS

Members of the audit committee must attend at least [set number] of all meetings each financial year but should aim to attend all scheduled meetings.

APPENDIX 3

TERMS OF REFERENCE FOR A BOARD OF DIRECTORS NOMINATION AND REMUNERATION COMMITTEE

AUTHORITY

The nomination and remuneration committee (the committee) is constituted as a standing committee of the trust's board of directors (the board). Its constitution and terms of reference shall be as set out below, subject to amendment at future board meetings.

The committee is authorised by the board to act within its terms of reference. All members of staff are directed to cooperate with any request made by the committee.

The committee is authorised by the board to instruct professional advisors and request the attendance of individuals and authorities from outside the trust with relevant experience and expertise if it considers this necessary for or expedient to the exercise of its functions.

The committee is authorised to obtain such internal information as is necessary and expedient to the fulfilment of its functions.

MAIN PURPOSE

To be responsible for identifying and appointing candidates to fill all the executive director positions on the board and for determining their remuneration and other conditions of service.

MEMBERSHIP

The committee should be composed of non-executive directors, at least three of whom should be independent non-executive directors. However when appointing or removing the chief executive, the committee shall be the committee described in Schedule 7, 17(3) of the National Health Service Act 2006 as amended by the Health and Social care Act 2012 (the Act) (that is all the non-executive directors).

When appointing or removing the other executive directors the committee shall be the committee described in Schedule 7, 17(4) of the Act (that is the trust chair, the chief executive and the non-executive directors). The trust chair shall chair the committee.

CONFLICTS OF INTEREST

Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest. No director should be involved in deciding his or her own remuneration.

APPOINTMENTS ROLE

The committee will:

- regularly review the structure, size and composition (including the skills, knowledge, experience and diversity) of the board, making use of the output of the board evaluation process as appropriate, and make recommendations to the board, and nomination committee of the council of governors, as applicable, with regard to any changes;
- give full consideration to and make plans for succession planning for the chief executive and other executive board directors taking into account the challenges and opportunities facing the trust and the skills and expertise needed on the board in the future;
- keep the leadership needs of the trust under review at executive level to ensure the continued ability of the trust to operate effectively in the health economy;
- be responsible for identifying and appointing candidates to fill posts within its remit as and when they arise;

- when a vacancy is identified, evaluate the balance of skills, knowledge and experience on the board, and its diversity, and in the light of this evaluation, prepare a description of the role and capabilities required for the particular appointment. In identifying suitable candidates the committee shall use open advertising or the services of external advisers to facilitate the search; consider candidates from a wide range of backgrounds; and consider candidates on merit against objective criteria;
- ensure that a proposed executive director is a 'fit and proper' person as defined in law and regulation;
- ensure that a proposed executive director's other significant commitments (if applicable) are disclosed before appointment and that any changes to their commitments are reported to the board as they arise;
- ensure that proposed appointees disclose any business interests that may result in a conflict of interest prior to appointment and that any future business interests that could result in a conflict of interest are reported;
- carefully consider what compensation commitments (including pension contributions) the directors' terms of appointment would give rise to in the event of early termination to avoid rewarding poor performance. Contracts should allow for compensation to be reduced to reflect a departing director's obligation to mitigate loss. Appropriate claw back provisions should be considered in case of a director returning to the NHS within the period of any putative notice;
- consider any matter relating to the continuation in office of any board executive director including the suspension or termination of service of an individual as an employee of the trust, subject to the provisions of the law and their service contract.

REMUNERATION ROLE

The committee will:

- establish and keep under review a remuneration policy in respect of executive board directors [and senior managers on locally-determined pay];
- consult the chairperson and/or chief executive about proposals relating to the remuneration of the other executive directors.

In accordance with all relevant laws, regulations and trust policies, decide and keep under review the terms and conditions of office of the trust's executive directors [and senior managers on locally-determined pay], including:

- salary, including any performance-related pay or bonus;
- provisions for other benefits, including pensions and cars;
- allowances;
- payable expenses;
- compensation payments.

In adhering to all relevant laws, regulations and trust policies:

- establish levels of remuneration which are sufficient to attract, retain and motivate executive directors of the quality and with the skills and experience required to lead the trust successfully, without paying more than is necessary for this purpose, and at a level which is affordable for the trust;
- decide whether a proportion of executive director remuneration should be structured so as to link reward to corporate and individual performance;
- make sure that any performance-related elements of executive remuneration are stretching and promote the long-term sustainability of the foundation trust, and take as a baseline for performance any competencies required and specified within the job description for the post;
- consider all relevant and current directions relating to contractual benefits such as pay and redundancy entitlements;
- use national guidance and market benchmarking analysis in the annual determination of remuneration of executive directors [and senior managers on locally-determined pay], while ensuring that increases are not made where trust or individual performance do not justify them;
- be sensitive to pay and employment conditions elsewhere in the trust, especially when determining annual salary increases;

- monitor and assess the output of the evaluation of the performance of individual executive directors, and consider this output when reviewing changes to remuneration levels;
- monitor procedures to ensure that existing directors are and remain 'fit and proper' persons as defined in law and regulation.

SECRETARY

The [trust secretary] shall be secretary to the committee.

ATTENDANCE

Only members of the committee have the right to attend committee meetings.

At the invitation of the committee, meetings shall normally be attended by the [director of human resources].

Other persons may be invited by the committee to attend a meeting so as to assist in deliberations.

Any non-member, including the secretary to the committee, will be asked to leave the meeting should their own conditions of employment be the subject of discussion.

FREQUENCY OF MEETINGS

Meetings shall be called as required, but at least [twice] in each financial year.

MINUTES AND REPORTING

Formal minutes shall be taken of all committee meetings.

Once approved by the committee, the minutes should be circulated to the board unless it would be inappropriate to do so.

The committee will report to the board after each meeting.

The committee shall receive and agree a description of the work of the committee, its policies and all executive director emoluments in order that these are accurately reported in the required format in the trust's annual report and accounts.

Where remuneration consultations are appointed, a statement should be made available as to whether they have any other connection with the foundation trust.

PERFORMANCE EVALUATION

As part of the board's annual performance review process, the committee shall review its collective performance [and that of its individual members].

REVIEW

The terms of reference of the committee shall be reviewed by the board when required, but at least [annually].

APPENDIX 4

TERMS OF REFERENCE FOR A COUNCIL OF GOVERNORS NOMINATION AND REMUNERATION COMMITTEE

Please note that all references in these terms of reference to non-executive directors are to be taken to include the chair, unless specifically indicated otherwise.

AUTHORITY

The council of governors' nomination and remuneration committee (the committee) is constituted as a standing committee of the council of governors. Its constitution and terms of reference shall be as set out below, subject to amendment at future meetings of the council of governors.

The committee is authorised by the council of governors to act within its terms of reference. All members of staff are requested to cooperate with any request made by the committee.

The committee is authorised by the council of governors, subject to funding approval by the board of directors, to request professional advice and request the attendance of individuals and authorities from outside the trust with relevant experience and expertise if it considers this necessary for or expedient to the exercise of its functions.

The committee is also authorised to request such internal information as is necessary and expedient to the fulfilment of its functions.

CONFLICTS OF INTEREST

The chair of the trust, or any non-executive director present at committee meetings, will withdraw from discussions concerning his/her own re-appointment, remuneration or terms of service.

NOMINATION ROLE

The committee will:

- periodically review the balance of skills, knowledge, experience and diversity of the non-executive directors and, having regard to the views of the board of directors and relevant guidance on board composition, make recommendations to the council of governors with regard to the outcome of the review;
- review the results of the board of directors' performance evaluation process that relate to the composition of the board of directors;
- review annually the time commitment requirement for non-executive directors;
- give consideration to succession planning for non-executive directors, taking into account the challenges and opportunities facing the trust, and its plans to address them, and consulting with the board of directors as to the skills and expertise needed on the board of directors in the future;
- make recommendations to the council of governors concerning plans for succession;
- keep the leadership needs of the trust under review at non-executive level to ensure the continued ability of the trust to operate effectively in the health economy;
- keep up to date and fully informed about strategic issues and commercial changes affecting the trust and the environment in which it operates;
- agree with the council of governors a clear process for the nomination of a non-executive director;
- take into account the views of the board of directors on the qualifications, skills and experience required for each position;

- for each appointment of a non-executive director, prepare a description of the role and capabilities and expected time commitment required;
- identify and nominate suitable candidates to fill vacant posts within the committee's remit, for appointment by the council of governors;
- ensure that a proposed non-executive director is a 'fit and proper' person as defined in law and regulation;
- ensure that a proposed non-executive director's other significant commitments are disclosed to the council of governors before appointment and that any changes to their commitments are reported to the council of governors as they arise;
- ensure that proposed appointees disclose any business interests that may result in a conflict of interest prior to appointment and that any future business interests that could result in a conflict of interest are reported. Determine whether or not any non-executive director proposed for appointment is independent (according to the definition in the foundation trust code of governance and/or in the trust's constitution or governance procedures);
- ensure that on appointment non-executive directors receive a formal letter of appointment setting out clearly what is expected of them in terms of time commitment, committee service and involvement outside board of director meetings;
- carefully consider what compensation commitments executive directors' terms of appointment would give rise to in the event of early termination to avoid rewarding poor performance. Contracts should allow for compensation to be reduced to reflect a departing executive director's obligation to mitigate loss. Appropriate claw back provisions should be considered in case of an executive director returning to the NHS within the period of any putative notice;
- advise the council of governors in respect of the re-appointment of any non-executive director in accordance with the constitution. Any term beyond six years must be subject to a particularly rigorous review;
- advise the council of governors in regard to any matters relating to the removal of office of a non-executive director;
- make recommendations to the council of governors on the membership of committees as appropriate, in consultation with the chairs of those committees.

REMUNERATION ROLE

The committee will:

- recommend to the council of governors a remuneration and terms of service policy for non-executive directors, taking into account the views of the chair (except in respect of his own remuneration and terms of service) and the chief executive and any external advisers;
- in accordance with all relevant laws and regulations, recommend to the council of governors the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors;
- agree the process and receive and evaluate reports about the performance of individual non-executive directors and consider this evaluation output when reviewing remuneration levels;
- in adhering to all relevant laws and regulations establish levels of remuneration which;
- are sufficient to attract, retain and motivate non-executive directors of the quality and with the skills and experience required to lead the trust successfully, without paying more than is necessary for this purpose, and at a level which is affordable for the trust;
- reflect the time commitment and responsibilities of the roles;
- take into account appropriate benchmarking and market-testing[1], while ensuring that increases are not made where trust or individual performance do not justify them; and
- are sensitive to pay and employment conditions elsewhere in the trust, especially when determining annual salary increases;
- monitor procedures to ensure that existing directors remain 'fit and proper' persons as defined in law and regulation;
- oversee other related arrangements for non-executive directors.

MEMBERSHIP

The membership of the committee shall consist of governors appointed by the council of governors.

The committee will normally be chaired by the trust chair. Where the chair has a conflict of interest, for example when the committee is considering the chair's re-appointment or remuneration, the committee will be chaired by the [senior independent director] [a governor member of the committee].

A quorum shall be three members, two of whom must be [public] governors.

SECRETARY

The [company secretary] shall be secretary to the committee.

ATTENDANCE

Only members of the committee have the right to attend committee meetings.

At the invitation of the committee, meetings shall normally be attended by the chief executive and director of human resources.

Other persons may be invited by the committee to attend a meeting so as to assist in deliberations.

FREQUENCY OF MEETINGS

Meetings shall be held as required, but at least [twice] in each financial year.

MINUTES AND REPORTING

Formal minutes shall be taken of all committee meetings and once approved by the committee, circulated to all members of the council of governors unless a conflict of interest, or matter of confidentiality exists.

The committee will report to the council of governors after each meeting.

The committee shall receive and agree a description of the work of the committee, its policies and all non-executive director emoluments in order that these are accurately reported in the required format in the trust's annual report.

Where remuneration consultations are appointed, a statement should be made available as to whether they have any other connection with the foundation trust.

PERFORMANCE EVALUATION

The committee shall review annually its collective performance.

REVIEW

The terms of reference of the committee shall be reviewed by the council of governors at least annually.

FOOTNOTES

1 Monitor foundation trust code of governance states at D.2.3 that the council of governors should consult external professional advisers to market-test the remuneration levels of the chair and other non-executive directors at least once every three years and when they intend to make material changes.

APPENDIX 5

TERMS OF REFERENCE FOR A QUALITY COMMITTEE

AUTHORITY

The [clinical governance][patient safety and quality] committee is constituted as a standing committee of the trust's board of directors. Its constitution and terms of reference shall be as set out below, subject to amendment at future board of directors meetings.

The [clinical governance][patient safety and quality] committee is authorised by the board of directors to act within its terms of reference. All members of staff are directed to cooperate with any request made by the [clinical governance][patient safety and quality] committee.

The [clinical governance][patient safety and quality] committee is authorised by the board of directors to instruct professional advisors and request the attendance of individuals and authorities from outside the trust with relevant experience and expertise if it considers this necessary for or expedient to the exercise of its functions.

The [clinical governance][patient safety and quality] committee is authorised to obtain such internal information as is necessary and expedient to the fulfilment of its functions.

ROLE

To enable the board to obtain assurance that high standards of care are provided by the trust and, in particular, that adequate and appropriate governance structures, processes and controls are in place throughout the trust to:

- promote safety and excellence in patient care;
- identify, prioritise and manage risk arising from clinical care;
- ensure the effective and efficient use of resources through evidence-based clinical practice;
- protect the health and safety of trust employees; and
- ensure compliance with legal, regulatory and other obligations.

DUTIES

In particular, in respect of general governance arrangements:

- to ensure that all statutory elements of clinical governance are adhered to within the trust;
- to develop and recommend for approval by the board trust-wide clinical governance priorities and give direction to the clinical governance activities of the trust's services and divisions, not least by reviewing and approving each service's and division's annual [clinical governance][patient safety and quality] plan;
- to review and approve the trust's annual [clinical governance] [patient safety and quality] report before submission to the board;
- to approve the terms of reference and membership of its reporting sub-committees (as may be varied from time to time at the discretion of the [clinical governance] [patient safety and quality] committee) and oversee the work of those sub-committees, receiving reports from them as specified by the [clinical governance] [patient safety and quality] committee in the sub-committees' terms of reference for consideration and action as necessary;
- to consider matters referred to the [clinical governance][patient safety and quality] committee by the board;

- to consider matters referred to the [clinical governance][patient safety and quality] committee by its sub-committees;
- to review and recommend for approval by the board the annual clinical audit programme;
- to obtain assurance that the trust's policies and procedures with respect to the use of clinical data and patient identifiable information are compliant with all relevant legislation and guidance including the Caldicott Guidelines and the Data Protection Act 1998;
- to make recommendations to the audit committee concerning the annual programme of internal audit work, to the extent that it applies to matters within these terms of reference;
- to review and approve relevant policies and procedures, including but not limited to:
- infection prevention and control annual report and programme
- obstetric and gynaecology risk management strategy
- health and safety policies and procedures complaints policy
- claims policy
- incident reporting policy
- consent policy
- safeguarding children policy
- safeguarding adults policy
- [others]
- to foster [clinical governance] [patient safety and quality] links with primary care and other stakeholders including patient forum members.

In respect of safety and excellence in patient care, in particular:

- to agree the annual safety plan and monitor progress;
- to ensure that internal standards are set and monitored, including (without limitation):
- to commission the setting of standards by the board (e.g. in trust policies), [name here any joint management or clinical committees], and ensure that a mechanism exists for these standards to be monitored;
- to ensure the standards outlined in national service frameworks are implemented and monitored;
- to ensure the trust complies with NHS Litigation Authority standards;
- to ensure the registration criteria of the Care Quality Commission continue to be met;
- to implement an engagement programme with the leaders of clinical units to ensure regular and constructive scrutiny of activities;
- to support the board to promote within the trust a culture of open and honest reporting of any situation that may threaten the quality of patient care in accordance with the trust's policy on reporting issues of concern and monitoring the implementation of that policy;
- to ensure that robust arrangements are in place for the review of patient safety incidents (including near-misses, complaints, claims reports from HM Coroner) from within the trust and wider NHS to identify similarities or trends and areas for focussed or organisation-wide learning;
- to ensure that actions for improvement identified in incident reports, reports from HM Coroner and other similar documents are addressed;
- to identify areas for improvement in respect of incident themes and complaint themes from the results of national patient survey / PALS and ensure appropriate action is taken;
- to oversee the system within the trust for obtaining and maintaining any licences relevant to clinical activity in the trust (e.g. licences granted by the Human Tissue Authority or any successor organisation), receiving such reports as the [clinical governance] [patient safety and quality] committee considers necessary;
- to monitor the trust's compliance with the national standards of quality and safety of the Care Quality Commission, and Monitor's licence conditions that are relevant to the [clinical governance] [patient safety and quality] committee's area of responsibility, in order to provide relevant assurance

to the board so that the board may approve the trust's annual declaration of compliance and corporate governance statement;

- to ensure that risks to patients are minimised through the application of a comprehensive risk management system including, without limitation:
- to review the trust's risk management strategy prior to its presentation to the board of directors for approval;
- to ensure that processes are in place to ensure the escalation of risks from local and clinical unit risk registers to the corporate risk register and receive reports from the trust's risk manager;
- to identify areas of significant risk, set priorities and place actions using the assurance framework;
- to ensure the trust incorporates the recommendations from external bodies e.g. the National Confidential Enquiry into Patient Outcomes and Death or Care Quality Commission, as well as those made internally e.g. in connection with serious incident reports and adverse incident reports, into practice and has mechanisms to monitor their delivery;
- to maintain and monitor the trust's risk management policy;
- to ensure those areas of risk within the trust are regularly monitored and that effective disaster recovery plans are in place;
- to ensure implementation of the National Patient Safety Agency reporting system;
- to assure that there are processes in place that safeguard children and adults within the trust; and
- to escalate to the executive board and/or audit committee and/or board any identified unresolved risks arising within the scope of these terms of reference that require executive action or that pose significant threats to the operation, resources or reputation of the trust;
- to agree the annual patient experience plan and monitor progress;
- to assure that the trust has reliable, real time, up-to-date information about what it is like being a patient experiencing care administered by the trust, so as to identify areas for improvement and ensure that these improvements are effected.

In particular, in respect of efficient and effective use of resources through evidence-based clinical practice:

- to review and recommend for approval by the board the annual quality plan and to monitor progress;
- to review proposals for cost improvement programmes and other significant service changes and to monitor their impact on the trust's quality of care (ensuring that there is a clear process for staff to raise associated concerns and for these to be escalated to the committee) and report any concern relating to an adverse impact on quality to the board of directors;
- to ensure that care is based on evidence of best practice/national guidance;
- to assure that procedures stipulated by professional regulators of chartered practice (i.e. General Medical Council and National Midwifery Council) are in place and performed to a satisfactory standard;
- to ensure that there is an appropriate process in place to monitor and promote compliance across the trust with clinical standards and guidelines including but not limited to NICE guidance and guidelines and radiation use and protection regulations (IR(ME)R);
- to assure the implementation of all new procedures and technologies according to trust policies;
- to review the implications of confidential enquiry reports for the trust and to endorse, approve and monitor the internal action plans arising from them;
- to monitor trends in complaints received by the trust and commission actions in response to adverse trends where appropriate;
- to monitor the development of quality indicators throughout the trust;
- to generally monitor the extent to which the trust meets the requirements of commissioners and external regulators;
- to identify and monitor any gaps in the delivery of effective clinical care ensuring progress is made to improve these areas, in all specialties;
- to ensure the research programme and governance framework is implemented and monitored;

- to ensure that there is an appropriate mechanism in place for action to be taken in response to the results of clinical audit and the recommendations of any relevant external reports (e.g. from the Care Quality Commission);
- to ensure that where practice is of high quality, that practice is recognised and propagated across the trust; and
- to ensure the trust is outward-looking and incorporates the recommendations from external bodies into practice with mechanisms to monitor their delivery.

MEMBERSHIP

The membership of the [clinical governance][patient safety and quality] committee shall consist of[1]:

- [two][three] non-executive directors (one of whom will be the committee chair)
- medical director [(who will act as the joint executive lead)]
- chief executive [and]
- director of nursing [(who will act as the joint executive lead)] [and]
- [director of [clinical governance] [patient safety and quality[2]]
- [director of human resources]
- [director of infection prevention and control]
- [director of pharmacy services]

The [clinical governance][patient safety and quality] committee will be deemed quorate to the extent that the following members are present:

- medical director or the executive director of nursing;
- [director of [clinical governance] [patient safety and quality];
- the trust risk manager; and
- at least one non-executive director.

The chair will be appointed by the trust board.

For the avoidance of doubt, trust employees who serve as members of the [clinical governance][patient safety and quality] committee do not do so to represent or advocate for their respective department, division or service area but to act in the interests of the trust as a whole and as part of the trust-wide governance structure.

ATTENDANCE

The following participants are required to attend meetings of the [clinical governance][patient safety and quality] committee:

- [director of [clinical governance] [patient safety and quality]]
- [director of human resources]
- [director of infection prevention and control]
- [director of pharmacy services]
- trust risk manager
- [head of diagnostic, drug and therapeutic services]
- [head of quality assurance]
- [clinical tutor]
- [head of safeguarding children team]
- [commissioning representative] [and]
- [head of patient advice and liaison].

Meetings of the [clinical governance][patient safety and quality] committee may be attended by:

- the [head of [clinical governance] [patient safety and quality]'s personal assistant], who will act as secretary;
- any nominated deputy attending in place of a member of the [clinical governance][patient safety and quality] committee; and/or
- any other person who has been invited to attend a meeting by the [clinical governance][patient safety and quality] committee so as to assist in deliberations.

Other than as set out in paragraphs 5.1 and 5.2, only members of the [clinical governance][patient safety and quality] committee are entitled to be present at its meetings.

Members listed at paragraph 4.1 and attendees listed at paragraph 5.1 are, respectively, required to attend at least [half][two thirds] of the meetings held annually.

FREQUENCY OF MEETINGS

Meetings shall be held monthly.

Additional meetings may be held on an exceptional basis at the request of the chairman or any three members of the [clinical governance][patient safety and quality] committee.

MINUTES AND REPORTING

The minutes of all meetings of the [clinical governance] [patient safety and quality] committee shall be formally recorded.

The [clinical governance][patient safety and quality] committee will report to the full board and executive board after each meeting.

The following reports will also be made by the [clinical governance][patient safety and quality] committee:

- exception reports from the clinical management board, its sub-committees and the education and workforce development committee (via major issues report and minutes as appropriate);
- quarterly major issues report covering all elements of [clinical governance] [patient safety and quality] (including issues arising from the minutes of reporting committees and groups – clinical risk group, information governance steering group, infection control committee, research management committee);
- quarterly assurance framework report;
- Annual [clinical governance] [patient safety and quality] report card including highlighting areas for improvement;
- twice-yearly updates of compliance with CQC national standards; and
- directorate [clinical governance] [patient safety and quality] report cards at twice-yearly reviews by executive directors.

The following sub-committees shall report to the [clinical governance][patient safety and quality] committee:

- health and safety committee
- infection control committee
- maternity risk committee
- health records committee/information governance steering group
- healthcare information group
- research and development committee
- clinical audit committee
- diagnostics, drugs and therapeutic committee
- new procedures committee
- clinical guidelines committee
- education and workforce development committee
- radiological effectiveness committee
- clinical effectiveness committee
- resuscitation committee
- blood transfusion committee
- safeguarding children team
- patient and public involvement committee
- tissue bank committee
- complaints and clinical claims review group
- nutrition action group
- thrombosis committee
- clinical information group
- [others]

REVIEW

The terms of reference of the committee shall be reviewed by the board of directors at regular intervals, but at least [annually].

APPROVED BY THE BOARD OF DIRECTORS ON [INSERT DATE]

FOOTNOTES

1 Pursuant to paragraph 15 of Schedule 7 to the National Health Service Act 2006, the powers of the trust are to be exercised by the board or to a committee of directors or to an executive director. As such, only individuals meeting that description should be listed as members – others should be listed as mandatory attendees.

2 Consider whether the parties in square brackets meet the requirements of paragraph 15 of Schedule 7 to the National Health Services Act 2006. To the extent that their role meets the requirement, they may be full members.

APPENDIX 6

PLANNING THE BOARD'S ANNUAL CYCLE OF BUSINESS

INTRODUCTION

- To be effective boards must discharge a range of duties each year, and additionally, respond to ad hoc and unexpected events and changes from time to time.
- To do so, the board must maintain a structured approach to managing its time and business so as to optimise the efficacy of its work. This is generally a matter for the secretary and chair, in consultation with the chief executive.
- The secretary should maintain a plan of work for each financial year, for the board and its committees with monthly, quarterly, biannual, annual, biennial and triennial milestones, events, and reports assigned to officers of the trust for action.
- This advice is written particularly to assist a newly appointed trust secretary setting about this task for the first time.

FIRST STEPS

- It is essential to begin this process well in advance and ideally a full year, but not less than six months, before the start of the year in question.
- The board should be invited to review the day and time on which it holds its meetings and the length and frequency of its meetings, taking into account its duties and reporting responsibilities, and the varying demands throughout the year. For example, acute boards will be under more time pressure in winter months due to 'winter pressures'.
- The trust standing orders will specify how far in advance of those meetings the information and materials are to be provided. Using portable devices to access board materials significantly improves this process from a time and content management perspective.
- The role and functions of board committees will, for foundation trusts, have been derived from the requirements of the NHS provider licence, and as such, each committee will have a predetermined work stream associated with it.
- The secretary should aim to space meetings of committees and the board in order to meet external and internal deadlines, such as quarterly regulatory returns, or contract signing, audit, and annual reporting requirements. You can usually base the calendar on the one from the previous year as a starting point, but consideration should be given, in consultation with the chairman and chief executive, to changes which might need to be made - this could be, for example, due to a new regulatory requirement which requires a board approval at a time of year which the existing calendar would not support.
- Committee meetings should be scheduled to allow time for minutes/reports of the discussions to be shared with the board at the next board meeting, and for committee recommendations/reviews to be ready to feed into the board meeting at which the related board discussion/approval is planned.
- Check local preferences for the vetting of papers (whether in terms of format or content) by for example the chief executive and/or trust secretary. This will determine the point in advance of each board meeting when the trust secretary needs to be provided with a board paper (so if for example board papers go out one week before a meeting, board papers would need to be submitted for vetting before this to allow time for corrections to be made as necessary).
- Boards of directors are required to hold their meetings in public, but may hold private sessions for special reasons. In addition to private sessions, instead of meeting as a board, board members will sometimes hold meetings such as workshops,

business meetings and as committees consisting of the whole board all of which will have an impact on the shape of the meeting schedule.

- Any agreed process changes may need to be reflected in the standing orders.

NEXT STEPS

- Armed with a draft schedule of board and committee meetings for the following year, and a summary of agenda items considered the previous year as a prompt for the discussions, the trust secretary should then approach the chief executive and all other executive directors to seek comments on the timetabling and expected agenda items and agree the process around the provision of papers.
- If there are guidelines on board paper format the executive directors can be reminded of these.
- The executive directors must confirm that they can meet the deadlines for submission of papers to the trust secretary in the required format throughout the year. As part of this process the executive directors could be encouraged to consult with any team members who will be involved with the writing of the board papers to ensure that the deadlines are practicable for all involved.
- It is particularly important to reach the clearest agreement with the directors responsible for finance and performance reports, for submission of compliance returns and key planning documentation to external agencies.

THE SCHEDULE

- The trust secretary should then draw up a revised schedule, agree it with the chairman and then circulate it for sign-up by the chief executive and executive directors.
- It is for the chief executive to play a key role in reminding the executive directors that they are in effect each about to enter into a performance contract and that this is their final opportunity to register any objection to what, once agreed, will be a commitment on their part to supply full and complete board papers on time. It should be made clear that this is a commitment to which the executive directors will be held once the board as a whole has approved the schedule.
- Subject to any final corrections, the schedule should then be submitted to the board and formally adopted. The chair should once again emphasise that the agreed schedule is a binding commitment and must be adhered to. The reason for this being so important is that a missed step in the board's business has direct and often extensive knock-on effects for committees, directors, and departments, and in worst cases, can mean a breach of the terms of the licence.

POPULATING THE SCHEDULE AND THE AGENDA

- The annual schedule will by now contain all of the agenda items which can be predicted in advance. Inevitably, further business items will arise.
- In terms of the content of individual meeting agendas it is a good discipline for the trust secretary to aim to work three meetings ahead.

THE DISCIPLINE OF COMPLIANCE

- Once an individual meeting agenda is set and the papers have been distributed to board members the agenda should not be varied except in exceptional circumstances and only then as approved by the chairman. This is because an important element of facilitating effective decision-making by directors at meetings is ensuring they have adequate time to properly consider the issues in advance.

HEADINGS FOR THE AGENDA PLAN

- Each board is different and it is not the intention of this note to be prescriptive. There is no single best practice model for board agendas but trust secretaries would be wise to obtain and review as many other examples as they can to acquaint themselves with the degree of variation and to be able to source suggestions for good practice to propose to their own board.

- Depending on local circumstances, there will be an inevitable core list of items for the planner which will occur at every meeting, regular meetings or occasional meetings. Examples follow:

Every meeting

- Apologies
- Declarations of interest
- Minutes of the previous meeting, action log, and matters arising
- A report from the chair
- A report from the chief executive
- Quality and patient experience report
- Strategic discussion, highlighting any emerging risks
- Significant changes to the risk register
- Finance
- Activity/performance
- Secretary's report (governance and accountability)
- Future meeting date(s), next draft agenda

Regular meetings

- Monitor submissions and feedback
- Infection prevention and control report
- Child protection report
- Committee reports

Occasional meetings

- Annual plan
- Annual report and accounts
- Annual reviews of standing orders/terms of reference/standing financial instructions, etc.

APPENDIX 7

INTEGRATED PERFORMANCE REPORT

KEY

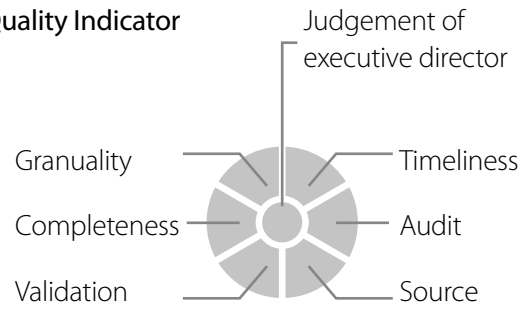
Change

▲	Improvement on last period
▼	Deterioration on last period
=	No change

Target Type

Nat	National
CQUIN	CQUIN
Loc	Local
NUH	Target set within NUH

Data Quality Indicator



DEFINITIONS AND NOTES

Serious incidents (per 1000 OBDs) excludes RCA-related serious incidents such as falls, pressure ulcers, IPC, maternity. SIs counted in month declared.

18 week incomplete pathways refers to patients who have not yet been treated and whose RTT clock is still ticking

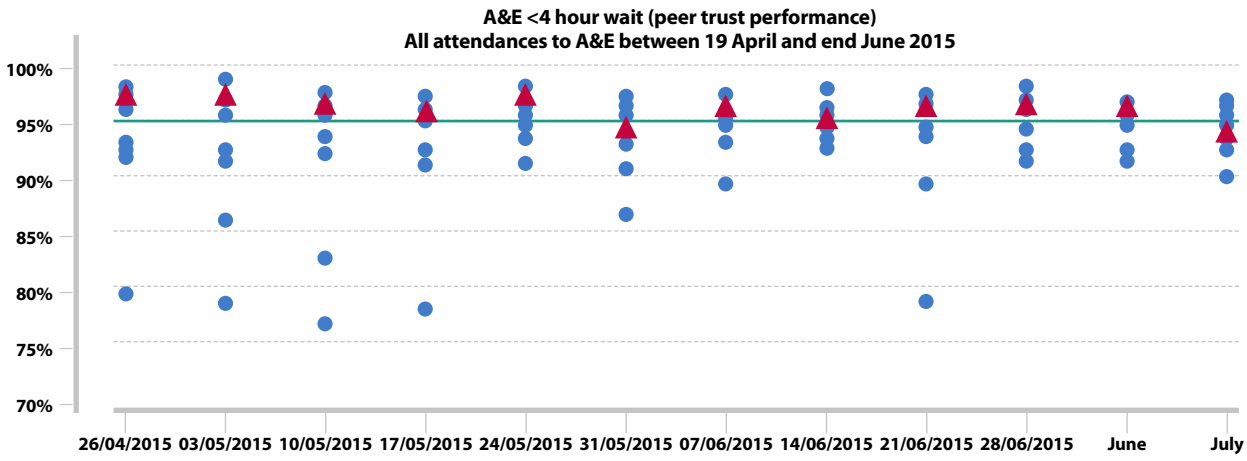
Diagnostic waiters, 6 weeks and over-DM01- a monthly statutory return monitoring waiting times for 15 specific diagnostic tests and procedures within imaging, physiological measurement and endoscopy.

Insufficient
Sufficient
Not yet assessed

An entirely red Data Quality Kitemark indicates that the ratings have not been reviewed for three months or more

Integrated Performance Report: Benchmarking slide (3/3)

Source: www.england.nhs.uk



28th June was the last week in which national ED performance was published weekly. Future data will reflect monthly performance

Indicator	Target	Basis	Period	Cambridge University Hospitals FT	Central Manchester University Hospitals FT	Lancashire Teaching Hospitals FT	
A&E achievement	95%	Month	Jul-15	✗ 86.1%	✗ 92.6%	✗ 94.9%	
Cancer 62d Urg RTT	85%	Quarter	Q1 2015/15	✗ 74.9%	✗ 81.4%	✗ 77.7%	
Cancer 62d Urg RTT – Screening Service	90%	Quarter	Q1 2015/15	✓ 93.5%	✗ 78.9%	✗ 77.1%	
Cancer 31d DTT	96%	Quarter	Q1 2015/15	✗ 93.8%	✓ 97.3%	✓ 96.5%	
Cancer 31d DTT – Subs: Surgery	94%	Quarter	Q1 2015/15	✗ 86.3%	✓ 94.9%	✓ 96.8%	
Cancer 31d DTT – Subs: Drugs	98%	Quarter	Q1 2015/15	✓ 99.5%	✓ 100.0%	✓ 100.0%	
Cancer 31d DTT – Subs: Radiotherapy	94%	Quarter	Q1 2015/15	✓ 98.1%	✓ 100.0%	✓ 98.7%	
Cancer 2ww	93%	Quarter	Q1 2015/15	✗ 85.9%	✓ 93.8%	✓ 93.4%	
Cancer 2ww – Breast Symptoms	93%	Quarter	Q1 2015/15	✗ 88.2%		✓ 93.5%	
Diagnostic Test WT	1%	Month	Jul-15	✗ 5.2%	✗ 7.0%	✓ 0.4%	
DToC – Acute/Non-Acute 18+	Minimum	Month	Jul-15	✗ 49	48	42	
Friends & Family – A&E (% recommend)	Local	Month	Jul-15	92.5%	89.8%	85.4%	
Friends & Family – A&E (Response Rate)	Local	Month	Jul-15	23.4%	9.2%	23.5%	
Friends & Family – IP (% recommend)	Local	Month	Jul-15	95.2%	93.6%	91.9%	
Friends & Family – IP (Response Rate)	Local	Month	Jul-15	19.1%	19.3%	62.8%	
MRSA	0	Month	Jul-15	✓ 0	✗ 1	✓ 0	
C-Diff	Local	Month	Jul-15	2	22 [66]	6	
MSA Breaches	Minimum	Month	Jul-15	0	0	0	
Avg MSA Breach Rate (per 1000 fin cons eps)	Minimum	Month	Jul-15	0.0	0.0	0.0	
RTT – Admitted	90%	Month	Jul-15	✗ 73.0%	✗ 89.6%	✗ 75.4%	
RTT – Non-admitted	95%	Month	Jul-15	✗ 84.5%	✗ 92.3%	✗ 93.2%	
RTT – Incomplete	92%	Month	Jul-15	✗ 90.5%	✓ 92.0%	✓ 92.1%	

	Leeds Teaching Hospitals	Nottingham University Hospitals	Oxford Radcliffe Hospitals	Royal Liverpool and Broadgreen University Hospitals	Sheffield Teaching Hospitals FT	Southampton University Hospitals	The Newcastle Upon Tyne Hospitals FT	University Hospital Birmingham FT	University Hospitals Bristol FT	University of Leicester
	✓ 95.7%	✗ 93.4%	✓ 96.0%	✗ 91.6%	✗ 92.8%	✗ 91.0%	✗ 93.9%	✗ 94.4%	✗ 94.5%	✗ 86.9%
	✗ 79.3%	✗ 79.6%	✗ 81.3%	✓ 87.0%	✗ 83.6%	✓ 87.3%	✓ 87.6%	✗ 64.9%	✗ 72.2%	✗ 76.9%
	✓ 97.7%	✓ 91.7%	✓ 91.4%	✓ 95.7%	✓ 100.0%	✓ 92.2%	✓ 96.2%	✗ 86.4%	✗ 78.6%	✗ 89.0%
	✓ 97.0%	✓ 96.4%	✓ 97.8%	✓ 96.9%	✓ 97.5%	✓ 97.6%	✓ 97.6%	✗ 90.4%	✓ 96.9%	✗ 95.1%
	✓ 97.6%	✓ 94.3%	✓ 96.0%	✓ 95.2%	✗ 93.7%	✓ 96.9%	✓ 95.2%	✗ 84.0%	✓ 96.4%	✗ 89.1%
	✓ 99.9%	✓ 100.0%	✓ 100.0%	✓ 100.0%	✓ 100.0%	✓ 99.6%	✓ 99.2%	✓ 99.5%	✓ 99.3%	✓ 99.2%
	✓ 99.2%	✓ 99.4%	✓ 98.8%	✓ 100.0%	✓ 99.1%	✓ 99.6%	✓ 98.8%	✓ 97.4%	✓ 96.7%	✓ 94.3%
	✗ 92.2%	✗ 90.4%	✓ 94.9%	✓ 96.2%	✓ 94.2%	✓ 96.9%	✓ 95.8%	✓ 97.0%	✓ 94.8%	✗ 90.1%
	✓ 93.5%	✓ 94.3%	✓ 98.2%	✓ 93.7%	✓ 96.4%	✓ 93.2%	✓ 94.4%	✓ 100.0%		✓ 94.9%
	✗ 1.9%	✓ 1.0%	✓ 0.2%	✓ 0.1%	✓ 1.0%	✓ 0.7%	✓ 0.8%	✗ 2.7%	✗ 1.2%	✗ 10.9%
	67	48	122	8	29	66	15	19	59	8
	87.4%	94.3%	86.3%	84.7%	85.2%	92.4%	86.9%	86.8%	75.3%	95.9%
	23.5%	24.5%	27.6%	20.1%	19.4%	14.3%	1.4%	17.6%	12.3%	14.1%
	94.7%	96.7%	96.5%	92.0%	95.9%	96.4%	98.1%	96.9%	96.8%	96.3%
	22.0%	48.5%	7.8%	33.2%	35.8%	23.0%	16.1%	35.7%	20.5%	23.7%
	✗ 2	✗ 2	✓ 0	✓ 0	✓ 0	✓ 0	✓ 0	✗ 2	✓ 0	✓ 0
	13	13	23 [67]	1	5	2	9	9	3	4
	0	0	0	0	0	0	0	0	0	0
	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	✗ 82.1%	✓ 94.2%	✗ 88.1%	✓ 90.1%	✓ 90.0%	✓ 90.2%	✓ 90.7%	✓ 94.8%	✗ 84.2%	✓ 91.8%
	✗ 89.9%	✓ 96.7%	✗ 93.4%	✗ 94.4%	✓ 95.3%	✗ 91.2%	✗ 94.4%	✓ 95.9%	✗ 87.8%	✗ 92.9%
	✓ 94.1%	✓ 98.2%	✓ 92.1%	✓ 92.8%	✓ 93.9%	✓ 94.4%	✓ 94.4%	✓ 96.0%	✗ 90.2%	✓ 95.3%

Indicator	Target	Basis	Period	Cambridge University Hospitals FT	Central Manchester University Hospitals FT	Lancashire Teaching Hospitals FT	
A&E achievement	95%	YTD	Jul-15	✗ 86.0%	✗ 94.9%	✓ 95.3%	
Cancer 62d Urg RTT	85%	YTD	Q1 2015/15	✗ 74.9%	✗ 81.4%	✗ 77.7%	
Cancer 62d Urg RTT – Screening Service	90%	YTD	Q1 2015/15	✓ 93.5%	✗ 78.9%	✗ 77.1%	
Cancer 31d DTT	96%	YTD	Q1 2015/15	✗ 93.8%	✓ 97.3%	✓ 96.5%	
Cancer 31d DTT – Subs: Surgery	94%	YTD	Q1 2015/15	✗ 86.3%	✓ 94.9%	✓ 96.8%	
Cancer 31d DTT – Subs: Drugs	98%	YTD	Q1 2015/15	✓ 99.5%	✓ 100.0%	✓ 100.0%	
Cancer 31d DTT – Subs: Radiotherapy	94%	YTD	Q1 2015/15	✓ 98.1%	✓ 100.0%	✓ 98.7%	
Cancer 2ww	93%	YTD	Q1 2015/15	✗ 85.9%	✓ 93.8%	✓ 93.4%	
Cancer 2ww – Breast Symptoms	93%	YTD	Q1 2015/15	✗ 88.2%		✓ 93.5%	
Diagnostic Test WT	1%	YTD	Jul-15	✗ 3.2%	✗ 6.2%	✓ 0.4%	
DToC – Acute/Non-Acute 18+	Minimum	YTD	Jul-15	✗ 181	147	135	
Avg Friends & Family – A&E (% recommend)	Local	YTD	Jul-15	92.3%	89.5%	84.8%	
Friends & Family – A&E (Response Rate)	Local	YTD	Jul-15	18.2%	9.3%	22.2%	
Avg Friends & Family – IP (% recommend)	Local	YTD	Jul-15	95.3%	93.8%	91.5%	
Friends & Family – IP (Response Rate)	Local	YTD	Jul-15	23.1%	15.4%	54.4%	
MRSA	0	YTD	Jul-15	✗ 2	✗ 4	✓ 0	
C-Diff	Local [Target]	YTD	Jul-15	19 [61]	22 [66]	26 [51]	
MSA Breaches	Minimum	YTD	Jul-15	0	0	0	
Avg MSA Breach Rate (per	Minimum	YTD	Jul-15	0.0	0.0	0.0	
RTT – Admitted	90%	YTD	Jul-15	✗ 73.4%	✓ 90.8%	✗ 75.3%	
RTT – Non-admitted	95%	YTD	Jul-15	✗ 84.9%	✗ 94.2%	✗ 94.8%	
RTT – Incomplete	92%	YTD	Jul-15	✗ 89.7%	✓ 92.2%	✓ 92.5%	

	Leeds Teaching Hospitals	Nottingham University Hospitals	Oxford Radcliffe Hospitals	Royal Liverpool and Broadgreen University Hospitals	Sheffield Teaching Hospitals FT	Southampton University Hospitals	The Newcastle Upon Tyne Hospitals FT	University Hospital Birmingham FT	University Hospitals Bristol FT	University of Leicester
	✓ 96.5%	✓ 95.1%	✗ 94.7%	✗ 93.8%	✗ 94.7%	✗ 90.9%	✗ 94.8%	✓ 95.5%	✗ 94.5%	✗ 91.7%
	✗ 79.3%	✗ 79.6%	✗ 81.3%	✓ 87.0%	✗ 83.6%	✓ 87.3%	✓ 87.6%	✗ 64.9%	✗ 72.2%	✗ 76.9%
	✓ 97.7%	✓ 91.7%	✓ 91.4%	✓ 95.7%	✓ 100.0%	✓ 92.2%	✓ 96.2%	✗ 86.4%	✗ 78.6%	✗ 89.0%
	✓ 97.0%	✓ 96.4%	✓ 97.8%	✓ 96.9%	✓ 97.5%	✓ 97.6%	✓ 97.6%	✗ 90.4%	✓ 96.9%	✗ 95.1%
	✓ 97.6%	✓ 94.3%	✓ 96.0%	✓ 95.2%	✗ 93.7%	✓ 96.9%	✓ 95.2%	✗ 84.0%	✓ 96.4%	✗ 89.1%
	✓ 99.9%	✓ 100.0%	✓ 100.0%	✓ 100.0%	✓ 100.0%	✓ 99.6%	✓ 99.2%	✓ 99.5%	✓ 99.3%	✓ 99.2%
	✓ 99.2%	✓ 99.4%	✓ 98.8%	✓ 100.0%	✓ 99.1%	✓ 99.6%	✓ 98.8%	✓ 97.4%	✓ 96.7%	✓ 94.3%
	✗ 92.2%	✗ 90.4%	✓ 94.9%	✓ 96.2%	✓ 94.2%	✓ 96.9%	✓ 95.8%	✓ 97.0%	✓ 94.8%	✗ 90.1%
	✓ 93.5%	✓ 94.3%	✓ 98.2%	✓ 93.7%	✓ 96.4%	✓ 93.2%	✓ 94.4%	✓ 100.0%		✓ 94.9%
	✗ 1.5%	✗ 1.3%	✓ 0.2%	✓ 0.6%	✓ 0.9%	✓ 0.5%	✓ 0.8%	✗ 2.6%	✗ 1.4%	✗ 4.7%
	318	110	523	33	209	283	104	142	240	52
	86.2%	93.9%	86.2%	84.5%	87.4%	91.2%	89.1%	87.8%	74.4%	95.8%
	22.5%	25.7%	12.8%	19.2%	21.2%	15.9%	1.2%	19.6%	8.1%	14.3%
	94.3%	96.4%	96.6%	90.5%	95.9%	96.0%	98.0%	96.6%	96.3%	96.2%
	21.5%	36.3%	8.3%	33.3%	30.8%	22.8%	16.0%	38.8%	18.4%	22.8%
	✗ 2	✗ 2	✗ 2	✗ 2	✓ 0	✗ 2	✗ 3	✗ 6	✗ 2	✓ 0
	51 [127]	46 [91]	23 [67]	9 [48]	20 [94]	14 [29]	23 [80]	22 [67]	13 [40]	12 [81]
	0	0	0	0	0	0	0	0	0	0
	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	✗ 83.5%	✓ 92.9%	✗ 87.4%	✓ 90.2%	✗ 87.9%	✗ 89.9%	✓ 90.4%	✓ 95.9%	✗ 81.5%	✓ 90.5%
	✗ 92.4%	✓ 97.9%	✗ 94.6%	✓ 95.5%	✓ 96.6%	✗ 94.7%	✓ 95.6%	✓ 96.1%	✗ 90.0%	✗ 94.6%
	✓ 93.7%	✓ 98.3%	✓ 92.9%	✓ 93.3%	✓ 94.1%	✓ 94.8%	✓ 94.1%	✓ 96.2%	✗ 90.5%	✓ 96.3%

At a glance		Indicator	Target	
QUALITY, SAFETY AND PATIENT EXPERIENCE	Patient Safety	HSMR (basket of 56 diagnosis groups)	Not higher than expected	
		SHMI	Not higher than expected	
		Falls per 1000 OBDs resulting in harm	≤1.7	
		Clostridium difficile (NUH acquired)	≤7	
		MRSA bacteremia – NUH acquired cases	0	
		Eligible patients having Venous Thromboembolism (VTE) risk assessment	≥95%	
		Serious Incidents (per 1000 OBDs)	TBC	
		Never Events	0	
		Harm-free NUH care	≥95%	
	Safe Staffing Levels	Safe Staffing Levels – overall fill rate	≥80%	
		Number of wards below 80% fill rate	0	
	Same Sex	Same Sex Accommodation Standards breaches	0	
	Complaints	% complaint responses dispatched within appropriate number of days	≥90%	
		Number of complaints	≤88	
		Reopened complaints	0	
	Friends and Family	Friends and Family Inpatients	–	
		Sample size: Friends and Family Inpatients	≥30%	
		Friends and Family Accident and Emergency	–	
		Sample size: Friends and Family Accident and Emergency	≥20%	
	Emergency Access	Emergency access within four hours	≥95%	
		12 hour trolley waits	0	
		Ambulance handover > 30 minutes	0	
		Ambulance handover > 60 minutes	0	
OPERATIONAL STANDARDS	Elective Access	18 weeks referral to treatment time – admitted	≥90%	
		18 weeks referral to treatment time – non-admitted	≥95%	
		Specialities exceeeding 18 week referral to treatment time	0	
		18 weeks referral to treatment time – incomplete pathways	≥92%	
		Number of cases exceeding 52 weeks referral to treatment	0	
		Diagnostic waiters, 6 weeks and over-DM01	≤1%	
	Cancelled Operations	Total non-clinical cancelled elective operations	≤3.2%	
		Last minute non-clinical cancelled elective operations	≤0.8%	
		Breaches of the 28 day readmission guarantee	≤5%	
		Urgent operations cancelled more than once	0	

	Set by	Period	Performance	Change	YTD	Next period	Next period +2	Next period +3	DQ New
	NUH	May	118.4	▼	114.0	2	2	2	
	NUH	Jul	0.97	▼	0.96				
	NUH	Aug	1.1	▲	1.3	1	1	1	
	Nat	Aug	6	▲	52	2	2	2	
	Nat	Aug	0	▲	2	2	2	2	
	Nat	Aug	93.9	▼	95.1	2	1	1	New
	–	Aug	0.02	=	0.02				
	Nat	Aug	0	=	0	1	1	1	
	CQUIN	Aug	98.8	▲	98.0	1	1	1	
	Nat	Aug	101.0	–	101.4	1	1	1	
	Nat	Aug	0	–	0	1	1	1	
	Nat	Aug	5	▼	5	1	1	1	
	NUH	Aug	97.0	▲	96.6	1	1	1	
	NUH	Aug	32	▲	232	1	1	1	
	NUH	Aug	4	▲	39	2	1	1	New
	NUH	Aug	96.7	▼	96.5				
	NUH	Aug	43.8	▼	37.6	1	1	1	
	NUH	Aug	94.2	▼	94.0				
	NUH	Aug	28.9	▲	26.3	1	1	1	
	Nat	Aug	93.2	▼	95.0	1	1	1	
	Nat	Aug	0	=	2	1	1	1	
	Nat	Aug	8	▲	132	2	2	1	
	Nat	Aug	0	=	0	1	1	1	
	Nat	Aug	92.6	▼	92.9	1	1	1	
	Nat	Aug	98.1	▼	98.3	1	1	1	
	Nat	Aug	4	▼	13	2	2	2	
	Nat	Aug	97.9	▼	97.9	1	1	1	
	Nat	Aug	0	=	0	1	1	1	
	Nat	Aug	1.9	▼	1.4	2	2	1	
	NUH	Aug	2.2	▲	2.3	1	1	1	
	Nat	Aug	0.5	▲	0.5	1	1	1	
	Nat	Aug	2.3	▼	1.7	1	1	1	
	Nat	Aug	0	=	0	1	1	1	

At a glance		Indicator	Target	
OPERATIONAL STAND	**Cancer Access**	2 week GP referral to 1st outpatient appointment	≥93%	
		31 day diagnosis to treatment	≥96%	
		31 day second or subsequet treatment (drug)	≥98%	
		31 day second or subsequet treatment (surgery)	≥94%	
		31 day second or subsequet treatment (radiotherapy)	≥94%	
		62 days urgent referral to treatment	≥85%	
		62 days urgent referral to treatment (adjusted)	≥85%	
		62 days urgent referral to treatment from screening	≥90%	
		14 days referral for breast symptoms to assessment	≥93%	
R&D	**Research and Development**	Number of patients recuited into clinical trials	≥4500	
		Mean time from valid research application to NHS permission (days)	≥15%	
		Median time from VRA to first patient recruited (days)	≥70%	
		Commercial studies completed to time and target	≥80%	
VALUE FOR MONEY	**Finance**	Monitor Risk Rating	3	
		EBITDA margin	5%	
		EBITDA achieved (of plan)	≥85%	
		Net return after Financing	≥1%	
		I&E Surplus margin	≥1%	
		Liquidity ratio (days)	≥ -5 Days	
		Total income (actual versus plan) of plan	0%- +2%	
		Pay expenditure (actual versus plan) above plan	<0.5%	
		Non pay expenditure (actual versus plan)above plan	<1%	
		Fiancial Efficiency Saving FEP actual versus plan)	≤-5%	
		Capex (forecast) of plan	≤+/-5%	
		Agency spend (% of pay)	≤3.5%	
WORKFORCE	**HR**	**Indicator**	**Target**	
		% of eligible staff appraised within last 12 months	≥90%	
		WTE lost as a % of contracted WTE due to sickness absence within last 12 months	≤3.5%	
		% aligible staff attending core mandatory training within the last 12 months	≥90%	
		Turnover (rolling 12 months)	≤9.9%	
		Staff Satisfaction Survey results (Quarterly)	91%-73%	

	Set by	Period	Performance	Change	YTD	Next period +1	Next period +2	Next period +3	DQ New
	Nat	Jul	90.0	▲	90.3	2	1	1	
	Nat	Jul	97.5	▲	96.6	1	1	1	
	Nat	Jul	100.0	=	100.0	1	1	1	
	Nat	Jul	94.7	▼	94.7	1	1	1	
	Nat	Jul	97.0	▼	98.4	1	1	1	
	Nat	Jul	83.9	▲	80.6	2	2	2	
	Nat	Jul	88.2	▲	85.7				
	Nat	Jul	96.4	▲	93.1	1	1	1	
	Nat	Jul	86.4	▼	92.0	2	1	1	
	Nat	Q4 14/15	91.3	_	_	1	1	1	
	Nat	Q1 15/16	18.0	▼	_	1	1	1	
	Nat	Q1 15/16	67.0	▼	_	1	1	1	
	Nat	Q1 15/16	66.7	▲	_	2	2	1	
	Nat	Aug	2	_	1	2			
	Nat	Aug	-4.6%	_	-2.1%	2			
	Nat	Aug	-183.3%	_	-138.2%	2			
	Nat	Aug	-1.6%		-14.1%	2			
	Nat	Aug	-10.2%	_	-7.5%	2			
	Nat	Aug	-11.4%	_	-11.4	2			
	NUH	Aug	-1.0%	_	0.4%	1			
	NUH	Aug	3.1%	_	1.6%	2			
	NUH	Aug	0.0%	_	1.8%	1			
	NUH	Aug	-22.4%	_	-6.7%	2			
	NUH	Aug	-43.5%	_	0.0%	2			
	NUH	Aug	7.4%	_	7.5%	2			
	Set by	**Period**	**Rolling Year**	**Change**	**Period Actual**	**Next period**	**Next period +2**	**Next period +3**	**DQ New**
	NUH	Aug	89.0	▲	87.0	2	2	2	
	NUH	Aug	3.4	=	3.2	1	1	1	
	NUH	Aug	90.0	▼	87.0	1	1	1	
	NUH	Aug	10.3	▲	10.3	2	2	2	
	–	Q1 15/16	–	_	73.0				

APPENDIX 8

BOARD MINUTES TEMPLATE

TITLE, DATE, TIME AND LOCATION OF THE MEETING

PRESENT

[This should only list directors and should show the agenda item where they joined/left if not present for the full meeting.]

IN ATTENDANCE

[This should list officers, governors and guests by name and post but need not list other members of the public – "and XX members of the public" is sufficient.]

APOLOGIES FOR ABSENCE

[Apologies should be listed here only if apologies were actually received.]

DECLARATIONS OF INTEREST

[Should state who has declared the interest, the nature of the interest and the action taken, e.g. x left the meeting for the duration of the consideration of item y.]

MINUTES OF THE MEETING HELD ON [DATE]

["The minutes were agreed to be a correct record" must appear with, if necessary, "subject to the following amendments…"]

MATTERS ARISING

[This must refer back to the original minute by meeting date and minute number]

[Careful check of progress of actions in the last minutes if not dealt with elsewhere]

REPORTS

[In the actual order in which presented, even if this did not correspond to the structure of the agenda.]

[REPORT TITLE]

[Description of the main subject matter and purpose of the report and identity of the presenter.]

[Description of what issues were taken into account in reaching each decision and what was discounted including recording relevant challenge from any director, non-executive or executive.]

[Any other pertinent issues - discussion arising from main subject of report.]

[Description of the decision reached against each recommendation.]

[Clear actions to be taken, by whom with timescale.]

DATE OF NEXT MEETING

APPENDIX 9

CHAIR ROLE DESCRIPTION

GENERAL

The chair is responsible for leadership of the board of directors and the council of governors, ensuring their effectiveness in all aspects of their role.

The chair's responsibilities include:

- promoting the highest standards of integrity, probity and corporate governance throughout the organisation and particularly at the level of the board of directors;
- demonstrating visible and ethical personal leadership by modelling the highest standards of personal conduct and ensuring that the board of directors follows this example;
- leading the board in establishing effective decision-making processes and acting as the guardian of due process;
- ensuring that constructive relationships based on candour, trust and mutual respect exist between executive and non-executive directors, (and for foundation trusts) elected and appointed members of the council of governors and between the board of directors and the council of governors;
- developing productive working relationships with all executive directors, the chief executive in particular, providing support, guidance and advice;
- promoting an understanding of the role of the board, the scheme of reservation and delegation, the role of non-executive directors and the role of executive directors;
- for foundation trusts, ensuring that the board of directors and council of governors work together effectively.

BOARD LOGISTICS

The chair is responsible for:

- managing meetings and ensuring compliance with the board of directors' approved procedures;
- proposing a schedule of matters reserved to the board of directors, terms of reference for each board of directors' committee and other board policies and procedures;
- regularly reviewing board composition and considering succession planning for the board (working with the trust secretary and appropriate board committee(s));
- appointing suitable directors to be members and chairs of board committees (the trust chair will often chair the board remuneration and nomination committees);
- working with and supporting the trust secretary in their corporate governance role.

THE CHAIR AND THE BOARD OF DIRECTORS

The chair is responsible for:

- ensuring that the board of directors as a whole plays a full part in the development and determination of the foundation trust's vision, values, strategy and overall objectives, having regard for the views of the council of governors;
- setting a board annual cycle of business to adequately discharge the full range of board duties on any one year;
- ensuring that meeting agendas take full account of the important strategic issues and key risks facing the foundation trust and that key issues are reserved for board decision;

- ensuring that the board of directors identifies the key risks the foundation trust faces in implementing its strategy; determines its approach and attitude to providing effective oversight of those risks and ensures that prudent controls are in place to manage risk;
- ensuring that the board of directors receives suitable, accurate, and timely information;
- ensuring the board collectively and directors severally apply sufficient challenge, ensuring that no significant decisions are taken until they have been sufficiently tested;
- facilitating the effective contribution of all members of the board of directors, drawing on their individual skills, experience, and knowledge and in the case of non-executive directors, their independence;
- liaising with and consulting the senior independent director when appropriate;
- leading on director development, including thorough induction programmes for new directors and periodic reviews with each director in respect of their development needs;
- taking account of their own development needs particularly in respect of the effective operation of the board;
- ensuring annual evaluation of the collective and individual performance of directors and board committees, and acting on the results of the evaluations;
- where necessary, overseeing the process for the removal of executive and non-executive directors from office;
- for foundation trusts, ensuring effective communication with governors, members and other key stakeholders, ensuring that all directors are aware of the views of those who commission or use the foundation trust's services;
- arranging informal meetings of the directors, to ensure that sufficient time and consideration is given to complex, contentious or sensitive issues;
- the chairs of each board committee fulfil an important leadership role similar to that of the chair of the board, particularly in creating the conditions for overall committee and individual director effectiveness.

THE CHAIR AND THE COUNCIL OF GOVERNORS (IN FOUNDATION TRUSTS)

The chair is responsible for:

- chairing the council of governors;
- facilitating the work of the council of governors on member engagement such that the governors can carry out their statutory duty to represent the interests of foundation trust members and the general public to the foundation trust;
- ensuring that the governors have the information, and dialogue with directors they need to hold the non-executive directors (which includes the chair), individually and collectively to account for the performance of the board;
- facilitating the work of the council of governors in meeting its duties in respect of appointments, remuneration, audit, and quality accounts, annual reporting and planning and statutory decision making;
- managing meetings of the council of governors and ensuring compliance with approved procedures;
- setting an agenda for the council of governors that is focused on strategy, quality, trust and board performance, set out in such a way that it facilitates the council's contribution to strategy and to holding the non-executive directors (which includes the chair) to account for the performance of the board;
- facilitating the effective contribution of the council of governors individually and collectively;
- ensuring that the council of governors receives accurate, timely, high quality and clear information that is tailored to their needs;
- ensuring that the council of governors collectively and its individual members receive sufficient training and development to enable them to effectively carry out their role;
- ensuring the flow of information between the board of directors, committees, council of governors and members of both and between senior management and non-executive directors, individual members of the council of governors and senior management.

APPENDIX 10

SENIOR INDEPENDENT DIRECTOR ROLE DESCRIPTION

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.

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.

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.

In addition to the duties described here the senior independent director has the same duties as the other non-executive directors.

THE SENIOR INDEPENDENT DIRECTOR, THE CHAIR AND NON-EXECUTIVE DIRECTORS

The senior independent director has a key role in supporting the chair in leading the board of directors and acting as a sounding board and source of advice for the chair. The senior independent director also has a role in supporting the chair as chair of the council of governors.

The senior independent director should hold a meeting with the other non-executive directors in the absence of the chair at least annually as part of the appraisal process.

There may be other circumstances where such meetings are appropriate. Examples might include the appointment or re-appointment process for the chair, where governors have expressed concern regarding the chair or when the board is experiencing a period of stress as described below.

THE SENIOR INDEPENDENT DIRECTOR AND THE COUNCIL OF GOVERNORS

While the council of governors determines the process for the annual appraisal of the chair, the senior independent director is responsible for carrying out the appraisal of the chair on their behalf as set out as best practice in the code of governance.

The senior independent director might also take responsibility for an orderly succession process for the chair role where a reappointment or a new appointment is necessary.

The senior independent director should maintain regular contact with the council of governors and attend meetings of the council of governors to obtain a clear understanding of governors' views on the key strategic and performance issues facing the foundation trust.

The senior independent director should also be available to governors as a source of advice and guidance in circumstances where it would not be appropriate to involve the chair; chair's appraisal or setting the chair's objectives for example.

In rare cases where there are concerns about the performance of the chair, the senior independent director should provide support and guidance to the council of governors in seeking to resolve concerns or, in the absence of a resolution, in taking formal action. Where the foundation trust has appointed a lead governor the senior independent director should liaise with the lead governor in such circumstances.

THE SENIOR INDEPENDENT DIRECTOR AND THE BOARD

In circumstances where the board is undergoing a period of stress the senior independent director has a vital role in intervening to resolve issues of concern.

These might include unresolved concerns on the part of the council of governors regarding the chair's performance; where the relationship between the chair and chief executive is either too close or not sufficiently harmonious; where the trust's strategy is not supported by the whole board; where key decisions are being made without reference to the board or where succession planning is being ignored.

In the circumstances outlined above the senior independent director will work with the chair, other directors and/or governors, to resolve significant issues.

Boards of directors and councils of governors need to have a clear understanding of the circumstances when the senior independent director might intervene so that the senior independent director's intervention is not sought in respect of trivial or inappropriate matters.

APPENDIX 11

NON-EXECUTIVE DIRECTOR ROLE DESCRIPTION

The board of directors is a unitary board. This means that within the board of directors, the non-executive directors and executive directors make decisions as a single group and share the same responsibility and liability. All directors, executive and non-executive, have responsibility to constructively challenge during board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy. Non-executive directors play a crucial role in bringing an independent perspective to the boardroom in addition to any specific knowledge and skills they may have. Non-executive directors have a duty to uphold the highest standards of integrity and probity and to foster good relations in the boardroom. They should apply similar standards of care and skill in their role as a non-executive director of a trust as they would in similar roles elsewhere.

In foundation trusts the non-executive directors, including the chair, have a particular role in engaging with and giving account to the council of governors so that the governors can hold the non-executive directors to account for the performance of the board of directors.

Non-executive directors are expected to participate fully as members of committees of the board of directors to which they are appointed and to take the role of committee chair when so appointed.

Non-executive directors will meet periodically with the chair in the absence of executive directors to discuss issues of interest or concern in addition to the annual meetings to deal with appraisal of and objective setting for the executive directors.

Non-executive directors will meet at least once a year with the senior independent director in the absence of the chair to participate in the chair's appraisal and the setting of objectives for the chair. In exceptional circumstances they may be asked to meet with the senior independent director to attempt to resolve issues concerning the chair's performance or to take action in that respect.

THE NON-EXECUTIVE DIRECTOR ROLE

Non-executive directors have a responsibility to:

- support the chair, chief executive and executive directors in promoting the foundation trust's values;
- support a positive culture throughout the trust and adopt behaviours in the boardroom and elsewhere that exemplify the corporate culture;
- constructively challenge the proposed decisions of the board and ensure that appropriate challenge is made in all circumstances;
- help develop proposals on priorities;
- help develop proposals on risk mitigation;
- help develop proposals on values and standards;
- contribute to the development of strategy.

Non-executive directors have a duty to:

- scrutinise the performance of the executive management in meeting agreed goals and objectives;
- satisfy themselves as to the integrity of financial, clinical and other information;
- satisfy themselves that financial and clinical quality controls and systems of risk management and governance are sound and that they are used;
- commission and use external advice as necessary;
- ensure that they receive adequate information in the form that they specify and to monitor the reporting of performance.

Non-executive directors are responsible (acting in the appropriate committees) for:

- determining appropriate levels of remuneration of executive directors;
- participating in the appraisal of executive directors, their fellow non-executive directors and the chair;
- in foundation trusts, appointing the chief executive (with the approval of the council of governors);
- appointing other executive directors along with the chief executive;
- where necessary removing executive directors;
- succession planning for key executive posts.

RELATIONS WITH THE COUNCIL OF GOVERNORS (IN FOUNDATION TRUSTS)

Non-executive directors should:

- engage with the council of governors and in particular give account to governors so that they can hold the non-executive directors to account for the performance on the board;
- attend meetings of the council of governors with sufficient frequency to ensure that they understand the views of governors on the key strategic and performance issues facing the foundation trust;
- take into account the views of governors and other members to gain a different perspective on the foundation trust and its performance;
- have an on-going dialogue with the council of governors on the progress made in delivering the foundation trust's strategic objectives, the high level financial and operational performance of the foundation trust;
- receive feedback from the council of governors regarding performance and ensure that the board of directors is aware of this feedback.

INDUCTION AND REFRESHING SKILLS

It is essential that new non-executive directors become conversant at the earliest opportunity with the trust's business activities, its strategy and the main areas of risk.

Non-executive directors should:

- participate in the foundation trust's induction programme including partnering executive directors, attending briefings, meetings and reading induction materials;
- familiarise themselves with documents set out in the director's induction schedule particularly the key areas of risk facing the foundation trust;
- take opportunities to develop and refresh their knowledge and skills and ensure that they are well informed in respect of the main areas of the foundation trust's activity.

TIME COMMITMENT

The letter of appointment to the position of non-executive director (which for NHS trusts will come from the NHS Trust Development Authority and for foundation trusts from the trust (on behalf of the governors) will have set out the minimum time commitment to fulfil the duties and responsibilities of the role and any additional time commitment that is likely to be needed at times of increased board activity. Prior to taking the appointment successful candidates should inform the council of governors of any other time commitments. Once appointed, non-executive directors should inform the chair of any changes to their time commitments. It is the responsibility of each non-executive director to ensure that they can make sufficient time available to discharge their responsibilities effectively.

APPENDIX 12

RESPECTIVE ROLES: CHAIR AND CHIEF EXECUTIVE

Chair	Chief executive
Reports to the board of directors.	Reports to the chair and to the board of directors.
Other than the CEO, no executive reports to the chair.	All members of the management structure report either directly or indirectly, to the chief executive.
Ensures effective operation of the board of directors and council of governors.	Runs the trust's operation and day-to-day business.
Ensures that the board of directors as a whole play a full part in the development and determination of the foundation trust's strategy and overall objectives.	Responsible for proposing and developing the foundation trust's strategy and overall objectives.
The guardian of the board of directors' decision-making processes.	Implements the decisions of the board of directors and its committees.
Leads the board of directors and the council of governors.	Ensures the provision of information and support to the board of directors and council of governors.
Ensures the board of directors and council of governors work together effectively.	Facilitates and supports effective joint working between the board of directors and council of governors.
Oversees the operation of the board of directors and sets its agenda.	Provides input to the board of director's agenda on behalf of the executive team.
Ensures the board of director's and council of governor's agendas take full account of the important issues facing the trust.	Ensures the chair is aware of the important issues facing the trust and proposes agenda items accordingly.
Ensures the board of directors and council of governors receive accurate, timely and clear information.	Ensures the provision of reports to the board of directors which contain accurate, timely and clear information.
Ensures compliance with the board of director's approved procedures.	Ensures the compliance of the executive team with the board of director's approved procedures.
Arranges informal meetings of the directors to ensure that sufficient time and consideration is given to complex, contentious or sensitive issues.	Ensures that the chair is alerted to forthcoming complex, contentious or sensitive issues affecting the foundation trust.
Proposes a schedule of matters reserved to the board of directors; proposes terms of reference for each board of directors committee and proposes other board policies and procedures.	Provides input as appropriate on changes to the schedule of matters reserved to the board of directors and committee terms of reference.
Facilitates the effective contribution and the provisions of effective challenge by all members of the board of directors.	Supports the chair in facilitating effective contributions by executive directors including effective challenge.
Facilitates constructive relationships between executive and non-executive members of the board of directors.	Supports the chair in sustaining constructive relations between executive and non-executive members of the board.

Ensures that constructive relations exist between elected and appointed members of the council of governors.	Supports the chair in ensuring constructive relations between elected and appointed members of the council of governors.
Ensures constructive and productive relations between the board of directors and the council of governors.	Supports the chair in ensuring constructive relations between the board of directors and the council of governors.
Ensures that the non-executive directors are able to lead in being accountable to the council of governors for the board of directors.	Ensures the presence and support of executives to the non-executive directors in order to facilitate the accountability relationship.
Leads the council of governors in holding the non-executive directors to account, ensuring the accountability process works effectively.	Supports the chair in delivering an effective accountability process.
Chairs the remuneration committee and initiates change succession planning measures at board level to ensure appropriate change. Ensures the appointment of effective and suitable members and chairs for board of directors committees.	Provides information and advice on succession planning to the chair, the remuneration committee and to other members of the board of directors, particularly in respect of executive directors.
Proposes the membership and the chairs of board of directors committees.	If so appointed by the board of directors, serve on any committee.
Ensures effective communication on the part of the trust with patients, members, clients, staff and other stakeholders.	Lead the communication programme with members and stakeholders.
Lead the provision of a properly constructed induction programme for new directors.	Contribute to induction programmes for new directors and ensure that appropriate management time is made available for the process.
Lead in updating the skills and knowledge and in meeting the development needs of individual directors and of the board of directors as a whole.	Ensure that the development needs of the executive directors and other senior management staff are identified and met.
Ensure that members of the council of governors have the skills, knowledge and familiarity with the foundation trust to fulfil their role.	Ensure the provision of appropriate development, training and information for the council of governors.
Ensure that the performance of the board of directors and council of governors as a whole, their committees, and individual members of both are periodically assessed. This will include an externally led assessment at least once in every three years.	Ensure that performance reviews are carried out at least once a year for each of the executive directors. Provide input to the wider board of directors' and council of governors' evaluation process.
Promote the highest standards of integrity, probity and corporate governance throughout the [organisation] and particularly at board of director level.	Conduct the affairs of the foundation trust in compliance with the highest standards of integrity, probity and corporate governance. Promote continuing compliance across the organisation.
Ensure a good flow of information each way between the board of directors, board committees, the council of governors, senior management and non-executive directors.	Provide effective information and communication systems.

APPENDIX 13

THE BOARD ROLE OF EXECUTIVE DIRECTORS

In addition to and separate from their management duties, as board members, executive directors have the same duties and responsibilities as their non-executive director colleagues (see the non-executive director role description). The executive director's role as a board member covers all of the business of the board, not just their management specialism. Executive directors share the board's collective and individual responsibility for the decisions of the board. Executive directors, as board members, share the same legal liabilities as non-executive directors. Executive directors are expected to 'own' all board decisions and act in accordance with collective decisions.

The National Health Service Act 2006 as amended by the Health and Social Care Act 2012 sets out the duties of directors of NHS foundation trusts. Other directors' duties specifically covered by NHS legislation can be inferred from common law as set out in statute in Chapter 2 of the Companies Act 2006. The duties of the directors of NHS trusts are not defined in NHS legislation, but once again can be inferred from common law.

The duties of directors are as follows:

- to act within their powers: this means boards must comply with all relevant legislation and regulation;
- to promote the success of the foundation trust so as to maximise the benefits for members and for the public: this means taking account of the long term consequences of decisions so as to provide sound stewardship of the resources of the trust and ensuring the delivery of high quality healthcare, it also means taking account of and balancing the interests of stakeholders;
- to avoid conflicts of interest and to declare any unanticipated conflicts that may arise;
- not to accept benefits from a third party for doing or not doing anything in their capacity as a director;
- to exercise independent judgement: in their board capacity executive directors are directors, not part of the chief executive's team;
- to use reasonable care, skill and diligence: this means using the skills and knowledge necessary to carry out the role as well as using any other relevant skills and knowledge that the individual director may have.

APPROPRIATE CHALLENGE

Executive directors will have been party to extensive discussion of board reports as executive and other management meetings prior to the board meeting. They may feel therefore that they have already carried out their challenge role before the matter comes to the board. They may also feel that as part of the chief executive's team it is their duty to support rather than challenge colleagues. Both of these perceptions misunderstand the role of the board of directors.

The board has a specific role in assuring itself that strategy is being implemented and risks are being systematically, comprehensively and effectively managed. This assurance role will mean a different dynamic in the board from that at executive meetings and means that executive directors will not be rehashing the discussions that took place at executive meetings. Challenge is a key element of obtaining of the assurance process and as such requires the participation of executives as well as their non-executive colleagues. Executives should also be open to having their proposals and reports challenged and tested as part of the assurance process.

INFORMATION

Executive directors have a particular responsibility for ensuring that the information provided to the board of directors is accurate, timely, of high quality and is presented in the form required by the board. This means the production of reports that are concise as well as full. Executive directors also have a particular responsibility to ensure that the council of governors is provided with accurate, timely high quality information in the form required by the council.

ACCOUNTABILITY

Although legislation specifies that governors hold the non-executive directors to account for the performance of the board, executive directors will need to provide support in facilitating good accountability relationships. In practice this will mean that non-executive directors are present to answer questions to ensure that governors have the information they need to form a view of the board's, and by inference the foundation trust's, performance.

INDUCTION

The induction process for executive directors should include induction on their wider board responsibilities (see the director induction checklist). In common with their non-executive colleagues, executive directors should be given opportunities to refresh their skills and knowledge as board members to complement their professional development.

APPENDIX 14

COMPANY/TRUST SECRETARY JOB DESCRIPTION

JOB DETAILS

This role description covers the company secretary role in both NHS foundation trusts and NHS trusts. The role description addresses both the core company secretary duties and additional corporate duties that post-holders are likely to carry out particularly if they are the trust's lead for corporate services. The company secretary needs to be able to provide independent advice to the board without fear or favour, including giving advice of the sort that is not always easy to receive. We therefore recommend that the appointment of the company secretary is made by trust's board of directors (the board). The company secretary needs to be 'of the board': acknowledged as one of the board's principal advisors. However their ability to give independent advice might be optimised if the company secretary is not a board member. This does not preclude a board director from being company secretary, but it does mean such a post-holder needs to give special consideration to maintaining independence.

The convention is that the company secretary is accountable to the chief executive in respect of executive and management responsibilities, but in some trusts the company secretary reports to another executive director. Whatever the arrangement it is vital that the company secretary reports to the chair on all board governance matters.

Job title: Company secretary

Time commitment: Probably full-time

Remuneration:

Base:

Organisational arrangements
Accountability: Chief executive/chair

Budget:

PURPOSE OF THE ROLE

The company secretary will be responsible for supporting the board [and council of governors] in meeting their obligations to ensure that the foundation trust is adequately prepared to comply, and can secure ongoing compliance, with the legislative and regulatory framework.

The company secretary will support the chair and advise the board [and council of governors] via the chair, where appropriate the chief executive, and directly on matters of governance.

[The company secretary will also be appointed company secretary to any companies established by the trust and may be the company secretary of any joint ventures of which the trust is a member.]

ROLE SUMMARY

The post holder will:

- act as principal advisor to the chair, chief executive, board [and council of governors] on all issues relating to corporate governance, ensuring the trust's corporate affairs are undertaken with the highest standards of probity and in accordance with all relevant legislative and regulatory requirements;
- support the chief executive in fulfilling his/her accounting officer responsibility with respect to good governance and to maintain the highest standards of prudence, propriety and regularity;
- manage the trust secretariat, [including the foundation trust membership function]; and
- [as a member of the management board] contribute to the formulation of strategy, policy and the delivery of corporate and statutory objectives.

DUTIES AND RESPONSIBILITIES

Corporate governance:

- Support the chair and chief executive in ensuring that the trust has a robust governance infrastructure that complies with [Monitor's licence conditions as relate to governance][regulations and TDA guidance], and takes account of Monitor's code of governance and other relevant best practice recommendations in corporate governance.
- Provide advice to the board, council of governors, their committees, directors [and governors], on all governance matters.
- With the chair, ensure that the board, [council of governors] and their committees are properly constituted, operated and supported, according to standing orders and the regulatory framework.
- Ensure there is appropriate coordination and good information flows between the board, [the council of governors,] their committees and executive management.
- Establish and monitor procedures to ensure that the trust is able to comply with the requirements of the legislative and regulatory framework.
- [Ensure that the foundation trust complies with its constitution, and review, propose and implement approved changes to the constitution.]
- Provide advice to chair, chief executive, board [and council of governors] on [legal and] constitutional matters and the correct and proper conduct of business and meetings.
- Commission and provide briefings for external legal advice where necessary to ensure the efficient and effective resolution of issues.
- Scrutinise and report to the board [and council of governors] new regulatory developments.
- Ensure all registers required [by the constitution] or relevant legislation are established and maintained, and made available for public inspection in line with statutory requirements.
- Ensure standing orders are in place, acted upon and reviewed as necessary, and with the chief financial officer, ensure standing financial instructions are similarly in place, reviewed and acted upon by the board.
- With the chief executive and chief financial officer, take a leading role in the preparation and publication of the annual report and accounts [and ensure it is properly submitted to Monitor and laid before Parliament].
- Coordinate and assist with the production/ submission of all appropriate returns, reports and plans to regulatory bodies.
- Contribute to the development of systems, controls and risk management arrangements that comply with internal and external governance and best practice requirements.
- [Act as the key point of contact between the board, council of governors and Monitor.]
- Ensure reporting arrangements enable the board [and council of governors (to the extent applicable)] to focus on those goals and objectives in the corporate plan that are at risk of not being delivered.
- [With the chief executive, executive directors and [next in line managers reporting to executive directors], ensure effective risk management and reporting for the trust, including the submission of [quarterly] reports to the board].
- [Support the chief executive, executive directors and other senior managers in the development of an effective performance management framework that facilitates effective delivery of the trust's strategy and agreed performance standards].

COUNCIL OF GOVERNORS/MEMBERSHIP

Ensure that appropriate arrangements are in place to:

- manage the membership function of the foundation trust;
- ensure an accurate membership database is maintained including the public register;
- manage legal and constitutionally compliant arrangements for elections to the council of governors; manage the process for resignations and replacements between elections;

- undertake regular monitoring of the foundation trust's membership community to ensure it represents the diversity of the local population; recommending strategies to address any shortcomings;
- develop internal and external communication channels with potential members and governors;
- contribute to the development of and manage the implementation of any engagement strategy with members and governors;
- ensure the provision of support and advice to the council of governors, including interpretation of their duties under the National Health Service Act 2006, the constitution, standing orders and other policies/procedures;
- ensure that general meetings of the council of governors and members are properly held in accordance with the foundation trust's constitution.

Trust secretariat:

- Provide a secretariat function, which will provide administrative resource and support to facilitate the effective working of the board, [the council of governors] and their committees.
- Facilitate the smooth operation of all board, [council of governors] and related committee meetings.
- Work with the chair and chief executive to create a rolling annual plan of meetings, and expected agenda items. Make sure that the work flow between committees and the board [and/or council of governors] is properly planned to meet internal and external deadlines and such that items of business are being considered at the appropriate time in the most appropriate forum.
- Formulate individual meeting agendas with the relevant chair (in consultation with the chief executive) and advise management of all requirements in respect of the production of papers.
- Work with the chair and chief executive to develop and maintain an agreed policy and process for identifying which items of business of a board [or council of governor meeting] should be discussed in private.
- Circulate the agenda and papers for meetings in sufficient time for the attendees to be able to fully consider the issues in advance of any meeting.
- Ensure that formal minutes of all meetings are taken, ensuring that appropriate record is made of challenge made in the debate, decisions made and agreed actions.
- Keep a record of actions after each meeting, and ensure that actions are followed up and reported on at the meeting which follows.
- Monitor the governance implications of business papers put to the board [and council of governors.]
- On a regular basis review the secretariat's processes with the chair (such as agenda/board paper format) to ensure they are fit for purpose.
- Provide advice as required to the chairs of the meetings on issues around conduct of meetings.

Wider responsibilities:

- Support the chair in the establishment of effective arrangements for the proper induction of directors [and governors.]
- Support the chair in the identification of the ongoing development needs of directors [and governors] (using the output of the annual evaluation and appraisal processes as appropriate) and facilitate training and development programmes where needed.
- Contribute to the corporate development of the trust through the leadership of key areas of work allocated by the chief executive.
- Support the chief executive in the day-to-day management of the trust, and its relationships with external bodies.
- With the chief executive, play a leading role in managing relationships with the regulators, [and in particular Monitor].
- Support the [chief operating officer and] chief of clinical operations in ensuring that effective management arrangements are in place throughout the trust.
- Maintain systems to ensure that all policies and procedures are up to date and for the monitoring of such policies.

- Put in place processes to enable the board to review and update trust policies and procedures reserved for its determination.
- Maintain on behalf of the chair and chief executive relationships with external professional advisers including but not limited to the trust's lawyers and management consultants.
- Ensure a system is in place for the management of requests under the Freedom of Information Act 2000 and maintain the publication scheme.
- Contribute to the maintenance of constructive and fruitful working relationships with all members of the health community to foster a strong culture of partnership working;
- [Act as gatekeeper to the trust's legal advisors with budgetary responsibilities, managing the trust's legal affairs and ensuring relevant professional advice and response is readily available.]
- [Oversee the trust's application for foundation trust status.]
- [Take overall responsibility for managing the trust HQ function including reception and conference room bookings.]

Management board member:

- As a member of the trust's management board, contribute to the development and delivery of trust strategy and policies.
- Contribute to the development and review of the foundation trust (and directorate) business plans ensuring they are consistent with foundation trust strategy and direction, NHS priorities and stakeholder requirements and that plans are successfully delivered.
- Take responsibility with other members of the management board for the quality of service and care provided to patients, the strategic direction of the foundation trust and the delivery of performance and the financial targets.]

[Company secretary of companies established by the foundation trust:

- To be company secretary, an accountable officer of the company of any companies established by the foundation trust, responsible for ensuring these companies comply with all statutory requirements under the Companies Act 2006 and any other related legislation or other mandatory requirements;
- Advising Companies House as necessary on changes, including the appointment and removal of directors, ensuring mandatory returns are completed within statutory timescales, including the completion and filing of annual returns to Companies House, the completion of returns to the Office of Fair Trading where appropriate, and ensuring appropriate banking arrangements are in place for those companies.
- Advising the boards of those companies on corporate governance and legal matters including shareholders' interests and agreements, assurance, risk, insurance and compliance with any agreements entered into.]

APPENDIX 15

BOARD EVALUATION

BACKGROUND

Board evaluation has been a major feature of corporate life for a number of years and there is an explicit requirement for this in the *UK corporate governance code* at main principle B6. The NHS has also sought in recent years to adopt this as best practice and the requirement that 'the board of directors should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors' appears in Monitor's code of governance as main principle B6 (with supporting principles and provisions). This regulatory principle has a clear purpose, namely that it is an important measurement of effectiveness at the top of the organisation and links closely to the duty owed by directors to promote the success of the trust to maximise the benefits for the members as a whole and for the public, as laid out in the National Health Service Act 2006[1]. More recently, Monitor has adopted a more prescriptive approach with the publication of its *Well-led framework for governance reviews*.

WHY DO IT?

Quite apart from the risks of non-compliance there are many sound reasons for establishing a regular (at least annual) culture of board evaluation. It allows the board a chance to benchmark itself against its own objectives, assess its rate of progress, set action plans and identify development gaps. It also allows an assessment of the board's skill mix for succession planning and it provides for a measurement of overall effectiveness.

WHAT SHOULD BE EVALUATED?

The following areas should be evaluated:

- the collective performance of the board
- the performance of the board's committees
- the individual performance of the directors.

The performance appraisal of individual directors in their capacity as board members will be led by the chair. The appraisal of the chair is likely to be led by the senior independent director. Since governors are responsible for the remuneration and reappointment of non-executive directors they will have a keen interest in the outcome of the appraisal process and will be involved in the process according to local circumstances. Appraisal of the board's committees is likely to follow a similar pattern to that of the full board.

HOW SHOULD IT BE DELIVERED?

Custom and practice has established three main methods of completing board evaluation:

- **internal** – where the foundation trust's own resources are used to conduct the work;
- **facilitated** – where some external assistance is used to enable the foundation trust to conduct the work;
- **external** – where an independent assessor is used to deliver the evaluation (this is now a requirement of the Monitor Code (Code Provision B.6.2) at least every three years. This evaluation must be carried out against Monitor's *Well-led framework for governance reviews* on a comply or explain basis).

Each method has its merits and most organisations vary the choice of delivery over time to achieve a broader review of the board's progress. Typically boards will choose the external method every three or so years, whenever major change has been delivered or after a significant turnover in board personnel, and internal when the board's work is in a more steady state.

Different evaluations can test different aspects, for example an HR focus would look at personality mixes, and a legally-based examination would look at the conduct of board business, while all evaluations look at information flows and behaviours.

Tools of evaluation include individual interviews, completion of questionnaires, meeting observations and 360 degree appraisals. All have their place and again it is healthy to try a number of these over time.

The trust secretary is likely to be a key enabler of all three evaluation methods and will probably act as the principal source of advice and information and coordinator for those carrying out the evaluation.

It should also be remembered that this is a time consuming process which should be carried out with focus and diligence to minimise disruption to the board.

RISKS TO CONSIDER

Any evaluation is likely to make board members nervous so clear explanation of the process in advance is essential. By implication an evaluation is a test of intra-board communication and the chair should be prepared for reverberations after completion.

The process will identify any board division or factions, and again the chair will need to be prepared for this. For the chair, an evaluation can also be seen as a chance to re-establish control or authority, and for any board member to score points. All of these things are to be avoided.

Useful outcomes of the process usually include an action plan and the identification of training and development needs at board and individual director level. The chair, with the support of the trust secretary, should take ownership for these outputs and ensure they are followed up.

Finally, evaluation is a chance for the board to reflect on its recent achievements and the important opportunity for it to recognise the work that has gone before.

A BOARD SELF APPRAISAL QUESTIONNAIRE

The questionnaire set out below is a specimen questionnaire for a self-evaluation.

Area	Question
Support and infrastructure	Does the board receive timely information?
	Is it of the right quality?
	Is it sufficiently concise?
	Is information in the right form to enable the board to make sound decisions?
Structure	Does the board have the right balance of skills, knowledge and experience to deal with current and anticipated challenges?
	Is a succession plan in place?
Leadership	Does the board periodically review organisational culture and plan to maintain a positive culture?
	Does the board collectively and individually model behaviours consistent with organisational values and culture?
	Is the agenda set by the chair/vice-chair sufficient to allow the board to carry out its functions?
	Does the agenda prioritise the right issues?
	Is the board satisfied that sufficient time is spent on each agenda item?
	Does the time spent on strategy result in defined proposals to be incorporated into the business plan?
	Is the board satisfied that sufficient time is spent on each agenda item?
	Does the chair ensure that there is sufficient challenge on each issue on the board's agenda?
Effectiveness	Is the board satisfied that it has identified the strategic risks facing the organisation, and that it has the controls to manage them?
	What is the evidence?
	Is the board assurance framework effective?
Policy development	To what extent do policies adopted by the board reflect the views of the membership? How does the board monitor this?
Stakeholder engagement	How does the board inform and involve key stakeholders in its work? How does it check their views?

METHODOLOGY AND TIMING

The methodology for the process should be relatively simple:

- the chair of the board should lead the process, with whatever support the chair feels necessary;
- each board member should complete a questionnaire;
- the questionnaires will be analysed on behalf of the chair, with a report produced to form the basis of a full debate at the board; and
- the board would then agree targets for the following year and plan to meet them.

Alongside this the chair should carry out informal appraisals with individual board members, to identify any issues and training needs.

The board appraisal process should take place between January and March each year.

PEER OBSERVATION

The board may wish to consider inviting a chair or chief executive from an outside organisation to observe proceedings at the board and give feedback.

FOOTNOTES

1 National Health Service Act 2006, Schedule 7, 18A

APPENDIX 16

COMMITTEE EFFECTIVENESS FLOWCHART

APPENDIX 17

DIRECTOR INDUCTION INFORMATION CHECKLIST

The purpose of the induction is to enable the new director to become effective as soon as possible. Some of the information below may have been included in the recruitment pack; the director's role description for example. However it would be unwise to rely on information distributed for recruitment purposes being retained. This guidance applies to NHS trusts and NHS foundation trusts, applies to the induction of both executive and non-executive directors and is separate from induction provided to executive directors as employees.

FIRST PHASE INFORMATION

The following information is essential and needs to be given to the new director immediately and certainly prior to the first board meeting. Ideally the company secretary or chair should run through the contents of the pack with the new director. Provision of this information is not a substitute for briefings, presentations, site visits and one-to-one meetings with key staff and members of the board that are likely to form part of any induction programme. This induction programme should be planned over a reasonably extended period to avoid overloading a director with all the information within too short a timescale.

We advise tailoring the programme, in consultation with the new director; depending on his/her experience to date and review the induction process with the director during or after the process has been completed to ensure that he/she considers that it has been adequate.

INFORMATION ON THE DIRECTOR'S ROLE

New directors should be supplied with copies of the following:

- a role description for executive and non-executive directors, the chair, senior independent director, chief executive, company secretary and for foundation trusts, the govenors and lead govenor;
- the code of conduct for directors and any statement of trust values;
- a description of the director's statutory responsibilities and liabilities, where not set out in the role description;
- [for foundation trusts, the NHS provider licence, highlighting conditions on NHS foundation trust governance arrangements;]
- for foundation trusts, the NHS foundation trust code of governance;
- the Financial Reporting Council's *Guidance on board effectiveness*, explaining the extent to which it applies (optional);
- the scheme of delegation and matters reserved to the board of directors.

The chair should explain to the new director:

- the concept of the unitary board and his/her expectations of directors in respect of boardroom behaviours;
- the board support framework, including the role of the trust secretary.

INFORMATION ON THE BOARD OF DIRECTORS

New directors should be supplied with copies of the following:

- [for foundation trusts, the foundation trust constitution;]

- [any standing orders, policies and procedures, including board procedures and arrangements for board meetings: distribution of papers, start time, location etc.;]
- the last board agenda and papers, and minutes for the last six board meetings;
- terms of reference of board committees including membership and details of the chair;
- agenda, papers and 12 months of minutes of meetings of any committee that the director will be joining;
- policy for obtaining independent professional advice for directors;
- schedule of dates of future board meetings and board committee meetings as appropriate.

[INFORMATION ON THE COUNCIL OF GOVERNORS IN FOUNDATION TRUSTS

New directors should be supplied with copies of the following:

- terms of reference of the council of governors;
- description of the council of governors' statutory duties and responsibilities;
- any standing orders relating to governor meetings;
- code of conduct for governors;
- terms of reference of committees and task and finish groups etc;
- the agenda and papers of the last council of governors' meeting and minutes for the last three meetings;
- schedule of dates of future council of governors meetings and committees and task and finish groups as appropriate.

The chair should explain how the board and council of governors work together, and explain the ongoing process and dialogue which enables the council of governors to hold the non-executive directors to account for the performance of the board.]

INFORMATION ON THE FOUNDATION TRUST AND ITS BUSINESS

New directors should be supplied with copies of the following:

- the trust's strategic aims and mission statement and any key (related) risks;
- current annual plan;
- the well led framework and how it applies to trusts;
- [current year's Risk Assessment Framework];
- latest in-year reports;
- risk ratings or other assessments/satus reports from regulators including the NHS Trust Development Authority, Monitor and the Care Quality Commission
- CQC rating and any concerns/issues;
- current market analysis;
- budgets for the year;
- revised forecast and medium term plan;
- latest annual report, quality account and accounts, any interims where available;
- narrative summary of the main events over the last three years: major and significant transactions, new services, diversification into new areas such as community services, restructuring etc;
- explanation of the board assurance framework and key performance indicators;
- details of the last board self-assessment and the last independent governance evaluation;
- details of any joint ventures;
- details of any formal or informal shared services arrangements;
- details of major insurance policies including directors and officers liability insurance;
- any significant litigation, current or potential, against the foundation trust or being pursued by the trust;
- funding position and arrangements;
- any other relevant reports, e.g. environmental impact report.

CONTACTS, EXECUTIVE RESPONSIBILITIES AND LOGISTICS

New directors should be supplied with copies of the following:

- contact details of all members of the board of directors, the company secretary and other key executives and employees;
- brief biographical details of members of the board of directors including any specialist knowledge of non-executive directors;
- managerial responsibilities of executive directors and an indication of the duration of their time in post;
- [details of the membership of the council of governors];
- expenses policy and method of reimbursement;
- internal email, telephone and location address directory;
- details of office and meeting room locations, main sites, including maps;
- details of administrative support to members of the board of directors including the provision of IT equipment and IT support.

SECOND PHASE DOCUMENTS

In order to avoid overloading a new director, these are documents that, in some cases, may not need to be read and assimilated prior to the director's first board meeting, but need to be read and understood during the induction programme. These documents may be made available with the first phase information or distributed later if the foundation trust wishes to manage the phasing of the induction process.

- details of the trust's main services;
- trust organisation chart;
- [for foundation trusts, details of all policies, protocols and procedures dealing with the relationship between the board of directors and the council of governors];
- details of the foundation trust's risk management policies, procedures and relevant disaster r ecovery plans;
- details of key staff responsible for the day-to-day management of financial and non-financial risks including reputational risk;
- any policies relating to business ethics;
- details of the whistle-blowing procedure with details of its use and utility;
- details of the complaints procedure, statistical analysis of complaints and examples of significant complaints;
- a map or narrative of the trust's key accountability relationships identifying the most significant commissioners with details of how the relationships operate and the significant issues involved;
- any recent press reports and articles in relation to the trust;
- details of the trust's lawyers, internal and external auditors and any other advisors including details of the individual who leads in advising the trust;
- [papers from the last annual meeting of members and agendas and minutes from the previous two years];
- documents relating to succession planning for executive positions;
- copies of all management accounts since the last audited accounts;
- details of the largest suppliers to the trust;
- health and safety policy and supporting procedures;
- details of any trust-related charity, whether the board of directors operates as a corporate trustee and if so relevant documents concerning the charity's aims, governance and financial standing;
- details of how the trust fits into the wider NHS;
- any other relevant background information about the trust;
- any other relevant policies, protocols and procedures.

APPENDIX 18

SHAPING ORGANISATIONAL CULTURE

The leadership role of the board in delivering a positive organisational culture has been promoted within the foundation trust sector and outside for some time. The case for the board of directors in providing leadership in this area is set out below.

The *Independent Commission on Good Governance in Public Services* suggested that 'the spirit or ethos of good governance can be expressed as values and demonstrated in behaviour'. Monitor's *Code of Governance for NHS foundation trusts* states that '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, patients and other stakeholders are understood, clearly communicated and met.'[1]

The Financial Reporting Council states 'an effective board develops and promotes its collective vision of the company's purpose, its culture, its values and the behaviours it wishes to promote in conducting its business. In particular it demonstrates ethical leadership, displaying – and promoting throughout the company – behaviours consistent with the culture and values it has defined for the organisation.' It goes on to identify the key leadership role of the chair: 'the chairman should demonstrate the highest standards of integrity and probity, and set clear expectations concerning the company's culture, values and behaviours...' (*Guidance on Board Effectiveness*, March 2011).[2]

The NHS Leadership Academy discusses in its foreword to the *Healthy NHS Board 2013* the 'critical role that the board plays in shaping and exemplifying an organisational culture that is open, accountable and compassionate and puts patients first.'[3]

In his final report of the Mid Staffordshire NHS Foundation Trust public inquiry, Robert Francis QC's second recommendation states:

'The NHS and all who work for it must adopt and demonstrate a shared culture in which the patient is the priority in everything done. This requires:

- a common set of core values and standards shared throughout the system;
- leadership at all levels from ward to the top of the Department of Health, committed to and capable of involving all staff with those values and standards;
- a system which recognises and applies the values of transparency, honesty and candour;
- freely available, useful, reliable and full information on attainment of the values and standards;
- a tool or methodology such as a cultural barometer to measure the cultural health of all parts of the system.'[4]

The NHS Constitution provides further context for standards and values at a more local level.

Harvard Business School advocates that boards should develop a climate of trust and candour and foster a culture of open dissent as a means of avoiding pitfalls that can lead to organisational failure (*What makes great boards great?*)

West et al in their paper for The King's Fund, *Developing collective leadership for healthcare* state that 'The most important determinant of the development and maintenance of an organisation's culture is current and future leadership. Every interaction by every leader at every level shapes the emerging culture of an organisation.'[5]

A number of themes are common to each of these sources:

- the role of the board in setting standards and promoting them throughout the organisation;
- the need for commitment from the board of directors;
- the need for the board to lead in modelling the highest standards of behaviour;
- the board of directors taking steps to ensure that the decisions it takes are consistent with the organisation's culture and values;
- the role of the board in fostering leadership at all levels of the organisation;
- the need for leaders at all levels to be conscious of the impact of their actions in influencing culture;
- the need for policies and processes to take account of and be consistent with organisational values;
- the need for boards to communicate the organisation's values to key stakeholders and to continue to reinforce its commitment to its values.

FOOTNOTES

1 http://www.opm.co.uk/publications/good-governance-standard-for-public-services/

2 https://www.frc.org.uk/getattachment/c9ce2814-2806-4bca-a179-e390ecbed841/Guidance-on-Board-Effectiveness.aspx

3 http://www.leadershipacademy.nhs.uk/wp-content/uploads/2013/06/NHSLeadership-HealthyNHSBoard-2013.pdf

4 http://webarchive.nationalarchives.gov.uk/20150407084003/http://www.midstaffspublicinquiry.com/report

5 http://www.kingsfund.org.uk/sites/files/kf/field/field_publication_file/developing-collective-leadership-kingsfund-may14.pdf

APPENDIX 19

THE FIT AND PROPER PERSONS REQUIREMENT

INTRODUCTION

The intention of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 is to ensure that all individuals, who have director level responsibility for the quality and safety of care and for meeting the fundamental standards, are fit and proper to carry out that important role. While the CQC cannot prosecute for a breach of the regulation or its parts, it can take regulatory action.

PURPOSE

This appendix provides an overview of Regulation 5, but further information regarding related legislation and guidance, and detailed information for providers, can be found on the CQC website. That includes information for NHS bodies, and for providers of adult social care, primary medical and dental care, and independent healthcare.

REGULATION SCOPE

The regulation applies to all providers where the service provider is a body other than an individual or partnership.

For NHS bodies it applies to executive and non-executive, permanent, interim or associate positions, irrespective of voting rights.

It also applies to equivalent director posts in other providers, including trustees of charitable bodies and members of governing bodies of unincorporated associations.

It does not apply to elected members where a local authority is the provider.

REQUIREMENT

A service provider must not appoint or have in place an individual as a director of the service provider, or performing the functions of, or functions equivalent or similar to the functions of a director, unless the individual satisfies all the requirements.

The requirements are that the individuals:

- are of good character.
- have the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed.
- are able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position or work for which they are employed.
- have not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.

And none of the grounds of unfitness apply to the individual.

GOOD CHARACTER

Providers must follow robust processes to gather all available information to confirm an individual is of good character, and have regard to whether the individual has been: convicted of an offence; or erased, removed or struck off a register of professionals maintained by a regulator of healthcare or social work professionals. If the provider considers the person to be suitable despite information relevant to the above, the provider's reasons should be recorded.

While it is not possible to outline every trait, it is expected that account is taken of an individual's honesty, trustworthiness, reliability and respectfulness.

QUALIFICATIONS, SKILLS, EXPERIENCE

Providers must have appropriate processes for assessing and checking individuals hold the required qualifications, and have the appropriate competence, skills and experience required. This may include appropriate communication and leadership skills, and a caring and compassionate nature. Relevant records must be kept.

All providers are expected to follow the relevant guidelines for value-based recruitment, appraisal and development, and disciplinary action, including dismissal for chief executives, chairs and directors. They are also expected to have implemented procedures in line with best practice, including the Nolan seven principles of public life.

HEALTH

Providers must have processes for considering an individual's physical and mental health in line with the requirements of their role. All reasonable steps must be made to make adjustments for people to enable them to carry out their role, in line with the Equality Act 2010.

MISCONDUCT AND MISMANAGEMENT

Providers must have processes in place to assure themselves that individuals have not been party to any serious misconduct or mismanagement in the carrying on of a regulated activity. This includes investigating any such allegation, and making independent enquiries.

Providers must not employ such persons.

Should an individual be implicated in a breach due to how the entire management team organised and managed its activities, the provider must establish what role that individual played and hence whether they are unfit.

Unlike for convictions or bankruptcies which may be considered 'spent', there is no time limit for considering serious misconduct or responsibility for failure in a previous role.

GROUNDS FOR UNFITNESS

Providers must have robust systems in place and seek all available information to ensure that individuals do not breach the fit and proper persons test. The test defines individuals as being unfit if they are:

- an undischarged bankrupt, or have had sequestration awarded in respect of their estate for which they have not been discharged;
- subject to a bankruptcy restrictions order or interim such order;
- subject to a moratorium period under a debt relief order under the Insolvency Act 1986;
- party to a composition or arrangement with, or have granted a trust deed for, creditors and not been discharged in respect to it;
- included in the children's barred list or adults barred list maintained under the Safeguarding Vulnerable Groups Act 2006, or corresponding list maintained under an equivalent enactment in Scotland or Northern Ireland;
- prohibited from holding the relevant office or position, or from carrying on the regulated activity, or under any enactment.

Individuals acting within a role that falls within the definition of a 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006 must be subject to a check by the Disclosure and Barring Service.

OFFICE HOLDER

Providers must assess and regularly review the fitness of directors for their role: how often to review fitness must be based on the assessed risk to business delivery and/or to the people using the service.

Where an office holder no longer meets the requirements, service providers must take appropriate and timely action to investigate and rectify the matter, and such action as is necessary and proportionate to ensure that the office or position is held by an individual who meets the requirements. If the individual is a health care professional, social worker or other professional registered with a healthcare or social care regulator, the provider must inform the regulator in question.

Providers must have arrangements in place to respond to concerns about a person's fitness, and where fitness is being investigated appropriate interim measures may be required to minimise any risk to those people who use the service.

INFORMATION

The following information must be made available to be supplied to the CQC regarding each individual who holds an office or position:

- proof of identity;
- where required under the Police Act 1997, a copy of a criminal record certificate, together with information under the Safeguarding Vulnerable Groups Act 2006;
- where required under the Police Act 1997, a copy of an enhanced criminal record certificate, together with suitability information relating to working with children or vulnerable adults;
- satisfactory evidence of conduct in previous employment concerned with the provision of services relating to health or social care, or children or vulnerable adults;
- where a person has been previously employed in a position involved with working with children or vulnerable adults, satisfactory verification so far as reasonably practicable of the reason why that person's employment ended;
- satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed, so far as it is reasonably practicable to obtain it;
- a full employment history with satisfactory written explanation of any gaps in employment;
- satisfactory information about any physical or mental health conditions relevant to the persons' capability, after reasonable adjustments are made, to properly perform tasks that are intrinsic to their employment, for the purpose of the regulated activity.

APPENDIX 20

BOARD ASSURANCE FRAMEWORK

BACKGROUND

The trust board has overall responsibility for ensuring systems and controls are in place, sufficient to mitigate any significant risks which may threaten the achievement of the organisational objectives. Assurance may be gained from a wide range of sources, but where ever possible it should be systematic, supported by evidence, independently verified, and incorporated within a robust governance process. The trust board achieves this, primarily through the work of its committees, through use of audit and other independent inspection and by systematic collection and scrutiny of performance data, to evidence the achievement of the objectives.

STRATEGIC AIMS AND ORGANISATIONAL OBJECTIVES:

Barnet, Enfield and Haringey Mental Health NHS Trust agreed the following aims and objectives at the trust board meeting held on 30 March 2015:

- provide excellent services for patients (coloured yellow);
- provide excellent quality of care and improve the experience of all our patients – evidenced in the outcome of the CQC inspection due in 2015/16;
- develop our enablement principles (Live, Love, Do) with patients, carers, partners and our staff;
- evaluate and learn from our initial enablement pilots to shape further roll out of the programme in 2015/16;
- develop our staff (coloured purple);
- develop each member of staff and help them to deliver excellent care;
- increase the engagement of our staff – evidenced in improved staff survey results;
- be clinically and financially sustainable (coloured blue);
- develop a long term sustainability plan with our partners.

DEFINITIONS

The controls and the assurances have been grouped together to indicate the relevant sources of assurances for the respective controls.

Category	Definition
Objective	The organisational objective to which the risk refers to.
Risk	What could prevent the objective from being achieved?
Board lead	The relevant executive director(s) with overall responsibility for mitigating the identified risk.
CQC domains	The five domains of the Care Quality Commission's (CQC) inspection framework (safe; effective; caring; responsive; well-led)
CQC outcomes	Links to the 28 outcomes which the CQC checks for compliance in relation to essential standards of quality and safety.
Initial risk score	Initial consideration of the risk based on the probability x likelihood (5 x 5) matrix (see risk rating matrix below).
Current risk score	An assessment of the risk based on the probability x likelihood (5 x 5) matrix following consideration of the controls, assurances and progress to mitigate the risk.
Tolerable risk	The level of risk that the trust is willing to accept or retain.
Controls	The controls (or systems) in place to assist in addressing the risk.
Assurances	Sources of information (usually documented) which serve to assure the board that the controls are having an impact, are effective and comprehensive.
Gaps in assurances	What further sources of assurance are required.
Mitigating actions	Additional actions required to assist in mitigating the risk.
Current performance	An outline on the progress made to mitigate the risk.

RISK RATING MATRIX

The overall risk ratings below are calculated as the product of the probability and the impact score.

Impact Score				
Level	**Injury / Harm**	**Service Delivery**	**Financial / Litigation**	**Reputation / Publicity**
Catastrophic	Fatality, multiple fatalities or large number injured or affected.	Complete breakdown of critical service/significant under-performance against key targets.	Losses; claims/damages; criminal prosecution, over-spending; resourcing shortfall: >£1m.	International adverse publicity/reputation irreparably damaged.
4 Major (HIGH)	Fatality/multiple serious injuries/major permanent loss of function/increased length of stay or level of care >15 days.	Intermittent failures of a critical service/' under-performance against key targets'.	£501k - £1m	Adverse national publicity
3 Moderate (MEDIUM)	Semi-permanent harm (1 month-1 year). Increased length of stay/ level of care 8-15 days, >1 month's absence from work.	Failure of support services/under-performance against other key targets'.	£51k - £500k	>3 days local media publicity
2 Minor (LOW)	Short-term injury (<1 month). Increased length of stay or level of care <7 days, 3 days-1 month absence for staff.	Service Disruption.	£11k - £50k	<3 days local media publicity
1 (Insignificant)	No harm. Injury resulting in <3 days' absence from work for staff.	No service disruption.	<£10k	

Likelihood Score		
Level		
5	Almost certain	Will occur frequently given existing controls
4	Likely	Will probably occur given existing controls
3	Possible	Could occur given existing controls
2	Unlikely	Not expected to occur given existing controls
1	Rare	Not expected to occur, except for in exceptional circumstances, given existing controls

Risk Rating Matrix					
Impact Likelihood	1	2	3	4	5
5	5 (Low)	610 (Medium)	15 (High)	20 (Catastrophic)	25 (Catastrophic)
4	4 (Low)	8 (Medium)	12 (Medium)	16 (High)	20 (Catastrophic)
3	3 (Low	6 (Medium)	9 (Medium)	12 Medim)	15 (High)
2	2 (Low)	4 (Low)	6 (Medium)	8 (Medium)	10 (Medium)
1	1 (Low)	2 (Low)	3 (Low)	4 (Low)	5 (Low)

Impact score x likelihood score = risk rating

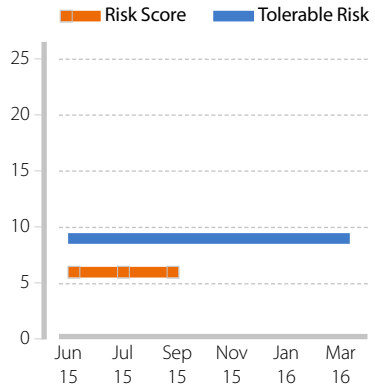
UPDATES TO RISKS

- All updates to risks since the previous meeting are shown in blue, with removed text shown with a line through in order to assist in identifying updated information between meetings.

Objective			Provide excellent quality of care and improve the experience of all our patients – evidenced in the outcome of the CQC inspection due in 2015/16	Board Lead	Mary Sexton	Date last reviewed	September 2015
Risk ID	1	Risk:	If services consistently do not meet regulatory core standards in respect of essential standards for quality and safety, this will impact on the quality of care given to patients	CQC Domain:	Caring / Effective / Responsive / Safe / Well-led	CQC Outcomes	4 – Care and welfare of people who use services

Risk Rating: (Likelihood x impact):

Initial Risk Score	3 x 4 = 12
Previous Risk Score:	2 x 3 = 6
Current Risk Score:	2 x 3 = 6
Tollerable Risk:	3 x 3 = 9
Direction of travel:	⟷



Releveant key Performance

Indicator	May	Jun	Jul	15/16 Target	15/16 Forecast
Number of serious incidents	3	10	4	N/A	63
Number of Never Events	0	0	0	0	0
Formal Complaints received	21	0	0	0	198
Overall Patient Satisfaction	87%	88%	89%	80%	88.5%
Overall Carer Satisfaction	90%	90%	92%	80%	90%
CQC Compliance actions	1	1	1	N/A	N/A

Rationale for current score:

1 The Trust has just one outstanding non-compliance for Edgware which is awaiting re-inspection.
2 Trust-wide Steering Group, with representatives from all Borough Teams, has been established to drive continued improvement and prepare the organisation for the Chief Inspector of Hospital's inspection.
3 CQC intelligent monitoring score = 4.

Controls: (What are we currently doing about the risk?)	Assurances: (How do we know if the things we are doing are having an impact?)
1 Quality Strategy 2013-2016, which aims to address quality issues for patients	Quality metrics reported to every meeting of the Quality and Safety Committee and Trust Board via the Integrated Performance Dashboard Report and the Clinical, Quality and Safety Report. • Patient feedback via complaints & claims, as reported in the KPIs reported to every Trust Board meeting. • Safety Thermometer data submitted and reviewed quarterly. • Safe Staffing Report to every meeting of the Trust Board. • Appraisal / revalidation in place across all Trust teams. • Articulation of organisational values.
2 Quality Account, which details the quality priorities for the Trust:	• Quality Account priorities considered by Quality and Safety Committee on 5.05.15 and agreed by the Board on 15.06.15. Published on 30.6.15. • Six monthly update reports to the Quality and Safety Committee and Commissioning Quality Review Group. • Quality metrics reported to every meeting of the Quality and Safety Committee and Trust Board via the Integrated Performance Dashboard Report. • External Audit review of the Quality Account which confirmed that it has been produced in line with national guidance and meets in full the statutory requirements for Quality Accounts presented to Quality and Safety Committee on 8.9.15.
3 Statutory Committees in respect of Safeguarding, Health and Safety and Infection Control.	• Safeguarding Adults at Risk Annual Report 2014 / 2015 considered at Quality and Safety Committee on 6.7.15 and by the Board on 27.7.15. • Annual Health and Safety Report considered at Quality and Safety Committee on 6.7.15 and by the Board on 27.7.15. • Infection Control Annual Report considered at Quality and Safety Committee on 6.7.15 and by the Boardon 27.7.15.

4	Internal Peer Assessment Programme which mirrors CQC inspections.	• Twice yearly Thematic Review of Service Peer Reviews considered by Quality and Safety Committee (last considered on 5.5.15).
5	Skill Mix Review.	• Twice yearly Skill Mix Review report considered by Trust Board (last considered on 30.03.15).
6	CQUIN and Contract monitoring process.	• Twice yearly CQUIN report considered by Quality and Safety Committee (last considered on 6.7.15). • CQUIN delivery monitored through meetings of the Integrated Performance Meeting.
7	Quality impact review process of all CIP plans.	• All CIPs have a Quality Impact Assessment in place and key milestones tracked through to delivery and monitored via the Integrated Performance Meeting.
8	Serious Incident Groups at Team / Borough Level	• All serious Incidents scrutinised and action plans in place to address learning
9	Borough Level Clinical Governance meetings.	• All key clinical governance indicators reviewed and actions agreed to address any variations
10	Raising Concerns at Work Policy.	• Details of raising concerns issues reported to the Quality and Safety Committee and Trust Board
11	Patient Experience Committee.	• Regular feedback report on the work of the Patient Experience Committee reported to every meeting of the Quality and Safety Committee. • Twice yearly report on Patient Experience to the Quality and Safety Committee. • Friends and Family Test and 'You said, we did' identifies actions taken. • Patient Experience and Complaints Annual Report considered at Quality and Safety Committee on 6.7.15

Gaps in controls and assurances: (What additional controls and assurances should we seek?)	Mitigating actions: (What more should we do?)		
1 Nurse Staffing levels reported in real time. 2 New CQC Inspection regime may present new expectations. Work is being done to identify resource needs and data requirements in anticipation of the new CQC Comprehensive Inspection scheduled for 30 November 2015.	Action	Lead	Deadline
	Implement the Safe Staffing module of the e-rostering system to enable real time nurse staffing levels to be reported.	MV	Dec 2015
	Trust-wide Steering Group to identify resource needs and data requirements in anticipation of the new CQC inspection.	MS	In place and ongoing
Current performance: (With these actions taken, how serious is the problem?)	Additional Comments:		
	The CQC's Chief Inspector of Hospital's inspection is will take place 30 November – 4 December 2015		

APPENDIX 21

RISK MANAGEMENT CHECKLIST

This note sets out some key points of good practice for risk management. It is derived from the Oxford University Hospitals NHS Foundation Trust publication *Making risk management a reality*. A copy of the full document can be found on the NHS Providers website: http://www.nhsproviders.org/home/

LEADERSHIP

- There is a clear, visible and dedicated board lead with responsibility for risk.
- A partnership working arrangement exists between the chair of the audit committee and the executive lead for risk.
- Accountability and responsibility for risk are clearly defined at all levels of the organisation.

CULTURE

- There is a shared knowledge and understanding of risk at board level.
- The board has defined clearly its risk appetite at a general level and for each of its strategic risks.
- The trust promotes ownership of risk through involvement and engagement with staff.
- Patient involvement is encouraged as part of a risk awareness campaign.

SYSTEMS AND PROCESSES

- A detailed diagnostic has been completed to identify the adequacy of existing systems at all levels of the organisation.
- The risk management strategy is informed by the diagnostic and sets out a clear vision for risk management and how it will be implemented in the organisation.
- The trust understands its level of risk maturity[1] and has plans in place to improve this where necessary.

TRAINING AND EDUCATION

- There is a well-defined training and education programme in place to support staff involved with managing risk at all levels of the organisation.
- Training tools and materials have been developed with staff participation and tested in situ.
- The risk awareness campaign includes activities to increase the involvement of patients in helping to identify and manage risks at 'bedside'.

IDENTIFYING AND RECORDING

- Risk registers exist at the right levels of the organisation with a transparent system for aggregating the registers into a corporate risk register.
- The link between the board assurance framework and the corporate risk register is evident and the purpose of both tools is understood by the board.
- Risks to the organisation are described in terms of cause, effect and impact of the risk materialising.
- An estimate of the proximity of the risk materialising is included in risk registers.
- Relevant and robust controls are in place to mitigate against the identified risk materialising.
- Contingency plans are described for each risk where appropriate, in the event that specific controls fail and the risk materialises.
- Accountability for all risks identified in the board assurance framework and corporate risk register is assigned to individual executive leads.

MANAGING AND MONITORING

- There is a defined escalation and de-escalation process to deal with movement in risk scores.
- Risk registers are linked integrally to the business planning and performance management processes.
- Risk registers are presented to the board and its committees in a way that promotes focussed debate on the adequacy of controls and contingencies.
- The board assurance framework and corporate risk register are used to drive a programme of 'deep dives' into specific risks.

FOOTNOTES

1 Assessed using criteria set out in Risk Assessment Framework, HM Treasury 2009

APPENDIX 22

COUNCIL OF GOVERNORS TERMS OF REFERENCE

PURPOSE

The establishment of, and the role of, the council of governors is derived from Schedule 7 and other sections of the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 (the Act). This document should be read in conjunction with the Act and with the foundation trust code of governance and other guidance from Monitor.

GENERAL DUTIES

The statutory general duties of the council of governors are:

- to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and
- to represent the interests of the members of the corporation as a whole and the interests of the public.

MEMBERSHIP

The composition of the council of governors is set out in the constitution. The chair of the board of directors is the chair of the council of governors and presides over the meetings of the council of governors. In the absence of the chair, another non-executive director or another person as defined in the constitution or standing orders will preside.

QUORUM

The quorum for meetings of the council of governors is set out in the constitution or the standing orders and shall be [25% of the membership].

COUNCIL OF GOVERNORS COMMITTEES

The council of governors may establish the following committees:

- remuneration committee
- nominations committee
- such other committees as required from time to time
- task and finish working groups as necessary.

THE ROLE OF THE COUNCIL OF GOVERNORS

HOLDING THE NON-EXECUTIVE DIRECTORS TO ACCOUNT

- hold the non-executive directors individually and collectively to account for the performance of the board.

NON-EXECUTIVE DIRECTORS, CHIEF EXECUTIVE AND THE EXTERNAL AUDITOR

- Approve the policies and procedures for the appointment and where necessary for the removal of the chair of the board of directors and non-executive directors.
- Approve the appointment (or removal) of the chair of the board of directors.
- Approve the appointment (or removal) of a non-executive director.
- Approve the policies and procedures for the appraisal of the chair of the board of directors and non-executive directors.

- Approve changes to the remuneration, allowances and other terms of office for the chair and other non-executive directors.
- Consider and if considered appropriate approve the appointment of a proposed candidate as chief executive recommended by the chair and the non-executive directors.
- Approve the criteria for appointing, re-appointing or removing the auditor.
- Approve the appointment or re-appointment and the terms of engagement of the auditor.

CONSTITUTION AND COMPLIANCE

- Following consultation with the board of directors, approve amendments to the constitution. Any changes in respect of the powers, duties or role of the council of governors being considered, need to be approved at the next general meeting of members.
- Notify Monitor if the council of governors is concerned that the trust has breached, or is at risk of breaching, its licence conditions if these concerns cannot be resolved through engagement with the board of directors.

GOVERNORS

- Approve the appointment of governors to any committees or working groups of the council of governors or the board of directors.
- Determine whether to create the role of lead governor and, if there is one, approve the process for appointment or election to the role.
- Receive reports from the chairs of any committees or working groups of the council of governors on the discharge of the committees' duties.
- Approve the removal from office of any governor in accordance with procedure set out in the constitution.
- Approve jointly with the board of directors the procedure for the resolution of disputes and concerns between the board of directors and the council of governors.

STRATEGY, PLANNING, REORGANISATIONS

- In response to requests from the board of directors, provide feedback on the development of the annual plan and the strategic direction of the foundation trust.
- Contribute to the development of stakeholder strategies, including member engagement strategies.
- Where the forward plan[1] contains a proposal that the trust will carry on an activity other than the provision of goods and services for the purposes of the NHS in England, determine whether the council of governors is satisfied that such activity will not interfere in the fulfilment by the trust of its principal purpose (the provision of goods and services for the purposes of the health service in England). Notify the board of its determination.
- Consider and if appropriate approve proposed increases to the amount of income derived from the provision of goods and services other than for the purpose of the NHS in England where such an increase is greater than 5% of the total income of the trust in the relevant financial year.
- Consider and if appropriate approve proposals from the board of directors for mergers, acquisitions, separations and dissolutions. Any such proposals may only be approved if more that half of the total number of governors agree with them.
- Consider and if appropriate approve proposals for significant transactions where defined in the constitution or such other transactions as the board may submit for the approval of governors from time to time. Any proposals for significant transactions (as defined in the constitution) may only be approved if more than half of governors voting at a quorate meeting of the council of governors agree with them.

REPRESENTING MEMBERS AND THE PUBLIC

- Represent the interests of the members of the trust as a whole and of the public.
- Consider and if appropriate approve the membership engagement strategy.

- Contribute to members' and other stakeholders' understanding of the work of the trust in line with engagement and communication strategies.
- Seek the views of stakeholders, including members and the public and feed back relevant information to the board of directors or to individual managers within the trust as appropriate.
- Promote membership of the foundation trust and contribute to opportunities to recruit members in accordance with the membership strategy.
- Report to members each year on the performance of the council of governors.

Some of the following may support this process and dialogue:

- receive the agenda of the meetings of the board of directors before the meeting takes place;
- receive the minutes of the meeting of the board of directors as soon as is practicable after the meeting;
- be equipped by the trust with the skills and knowledge they require in their capacity as governors;
- receive the annual report of the audit committee on the work, fees and performance of the auditor;
- receive the annual report and accounts (including quality accounts).;
- receive the quarterly report of the board of directors on the performance of the trust against agreed key financial, operational, quality and regulatory compliance indicators and stated objectives;
- participate in opportunities to review services and environments such as PEAT inspections/quality reviews/local activities and evaluation of user/carer experience;
- receive and review quarterly assurance reports;
- receive reports from the board on important sector-wide or strategic issues;
- use information obtained through the above sources to monitor performance and progress against the key milestones in the strategic and annual plans and to hold the non-executive directors to account for the performance of the board of directors;
- if considered necessary (as a last resort), in the fulfilment of this duty, obtain information about the foundation trust's performance or the directors' performance by requiring one or more directors to attend a council of governor meeting[2].

COLLECTIVE EVALUATION OF PERFORMANCE

- The council of governors will commission an annual review of its effectiveness and efficiency in the discharge of its responsibilities and achievement of objectives.

FREQUENCY OF MEETINGS

The council of governors meets [four] times a year.

MINUTES

Minutes of the meetings will be circulated promptly to all members of the council of governors as soon as reasonably practical. The target date for issue is [10] working days from the date of the meeting.

REVIEW

The council of governors will review this document annually.

FOOTNOTES

1 under Schedule 7, 27

2 Schedule 7, 10C

APPENDIX 23

LEAD GOVERNOR ROLE DESCRIPTION

AN OPTIONAL ROLE

Foundation trusts may choose whether or not to have a lead governor. Where the foundation trust decides to adopt the role, the lead governor should be chosen by the council of governors.

THE CORE ROLE

The code of governance recommends to all foundation trusts that they should have a lead governor who can be a point of contact for Monitor and can liaise with Monitor, on behalf of the governors, in circumstances where it would be inappropriate for Monitor to contact the chair, or vice versa.

Such contact is likely to be a rare event and would be seen, for example, should Monitor wish to understand the view of the governors about the capability of the chair, or be investigating some aspect of an appointment process of decision which may not have complied with the constitution.

OPTIONAL ADDITIONS TO THE ROLE

It was not Monitor's original intention that the 'lead governor' should 'lead' the governors, but in addition to the above some foundation trusts have developed an enhanced role for lead governors. This should always be done with the approval of the council of governors. In listing possible additional duties we are not seeking to endorse one approach over another or to encourage the adoption of a particular set of duties.

It is also worth remembering that it is the council of governors as a whole (and no individual governor) that has the responsibilities and powers in statute.

A list of optional duties is set out below:

- carrying out a vice chair of governors role (leading the council of governors in exceptional [circumstances] when it is not appropriate for the chair or another non-executive to do so);
- collating the input of governors for the senior independent director or chair regarding annual performance appraisals of the chair and non-executive directors;
- leading governors on the nominations committee in the process for appointing a chair and non-executive directors;
- acting as a point of contact and liaison for the chair and senior independent director;
- acting as a coordinator of governor responses to consultations;
- chairing informal governor only meetings;
- rouble-shooting and problem solving by raising issues with the chair and chief executive;
- leading governors in holding the non-executive directors to account;
- acting as a point of contact for the CQC.

APPENDIX 24

GOVERNOR INDUCTION CHECKLIST

ESSENTIAL INFORMATION

In common with directors, new governors will have a great deal of information to assimilate in order to become effective in their role. The following information is essential and needs to be given to the new governor as soon as possible after appointment and certainly prior to the first council of governors meeting. Ideally the company secretary or chair should run through the contents of the pack with the new governor. Provision of this information is not a substitute for briefings, presentations, site visits and one-to-one meetings with key staff and other members of the council of governors and members of the board of directors.

INFORMATION ON THE COUNCIL OF GOVERNORS

New governors should be supplied with copies of the following:

- the constitution;
- terms of reference of the council of governors;
- any standing orders relating to governor meetings;
- code of conduct for governors;
- role description and contact details for the lead governor;
- terms of reference of committees and task and finish groups etc;
- the agenda and papers of the last council of governors meeting and minutes for the last three meetings;
- Monitor's *Your statutory duties guide for NHS foundation trust governors*;
- council of governors who's who and contact list;
- schedule of dates of future council of governors meetings and committees and task and finish groups as appropriate;
- confidentiality policy;
- policy for dealing with the press and the media;
- guide to NHS terms and acronyms;
- details of all available training and development.

INFORMATION ON THE TRUST SECRETARY'S ROLE

New governors should be supplied with copies of the following:

- role description of the advisory and support function of the trust secretary/secretariat;
- contact details.

INFORMATION ON THE DIRECTOR'S ROLE

New governors should be supplied with copies of the following:

- role description for the chair, non-executive director/executive director as a member of the board of directors;
- respective duties of the chair and chief executive;
- code of conduct for directors;
- Monitor's code of governance for NHS foundation trusts.

INFORMATION ON THE BOARD OF DIRECTORS

New governors should be supplied with copies of the following:

- a description of the role and duties of the board of directors;
- Monitor licence, highlighting conditions on NHS foundation trust governance arrangements;
- terms of reference of board of directors committees and details of the chair;
- the last board of directors agenda and papers and minutes.

INFORMATION ON THE FOUNDATION TRUST AND ITS BUSINESS

New governors should be supplied with copies of the following:

- current annual plan;
- monitor risk ratings and explanation;
- CQC rating and explanation of concerns/issues;
- latest annual report, quality account and accounts;
- explanation of the key performance indicators used by the board;
- any other relevant reports.

CONTACTS, EXECUTIVE RESPONSIBILITIES AND LOGISTICS

New governors should be supplied with copies of the following:

- contact details for key contacts;
- how and where to raise matters of concern;
- details of the membership of the council of governors;
- expenses policy and method of reimbursement;
- internal email, telephone and location address directory;
- details of office and meeting room locations, main sites, including maps;
- details of administrative support to members of the council of governors including the provision of IT equipment and IT support.

SECOND PHASE DOCUMENTS

These are documents that do not need to be read and assimilated prior to the governor's first council meeting, but need to be read and understood during the first six months in the role. These documents may be made available with the essential information or distributed later if the foundation trust wishes to manage the phasing of the induction process:

- details of the foundation trust's main services;
- foundation trust organisation chart;
- details of any policies, protocols and procedures dealing with the relationship between the board of directors and the council of governors;
- an overview of the foundation trust's risk management policies and procedures;
- information on appraisal;
- any policies relating to business ethics;
- details of the trust-wide whistle-blowing procedure;
- details of the complaints procedure;
- a copy of the communication with members strategy;
- a map or narrative of the foundation trust's key accountability;
- any recent press reports and articles in relation to the foundation trust;
- any other relevant background information about the foundation trust;
- any other relevant policies, protocols and procedures.

APPENDIX 25

COUNCIL OF GOVERNORS APPRAISAL PROCESS

Many foundation trust chairs meet each year with individual governors to carry out an individual appraisal of the previous year and to identify their individual development needs. However, if the scale of this exercise is prohibitive, it is important that councils of governors carry out a collective evaluation of their effectiveness as a body (including considering whether they are fulfilling their statutory duties), and identify any weaknesses that need to be addressed.

The evaluation process should be led by the chair in their capacity as chair of the governors' meetings, but all governors should be invited to participate, both in the gathering of information on the council's performance and on its interpretation. The senior independent director may also have a role where the evaluation or review encompasses the role of the chairman as the chair of the council of governors.

We suggest a 360 degree evaluation process consisting of a questionnaire to be completed by all governors, followed by input from the chair, chief executive, trust secretary, membership manager and any other director the foundation trust feels could contribute effectively.

Foundation trusts are likely to be seeking a wide variety of information from their governors, however we suggest that as a minimum the evaluation should cover the areas set out below.

THE COUNCIL OF GOVERNORS

- Does the council of governors have the right the mix of skills, experience, knowledge and diversity in the context of the council's statutory duties and challenges facing the foundation trust?
- Have the governors been equipped by the trust with the skills and knowledge they require as governors?
- Does the council of governors carry out its work in accordance with the values of the foundation trust?
- To what extent does the council work together as a unit and in accordance with the tone set by the chair?
- How well do key relationships on the council work, particularly between the chair and governors?
- How effective are individual governors?
- Does each governor make a valuable contribution?
- How effective are the council's committees and working groups and do they operate within their terms of reference?
- How does the council communicate with, listen and respond to members and other stakeholders?
- Has the council agreed overall development plans to ensure that it is equipped to meet future challenges and have these been effective?

PROCESSES AND INFORMATION

- How effective are the processes in place to ensure sufficient debate for major decisions or contentious issues?
- How good is the general information provided on the foundation trust and its performance?
- How good is the quality of papers and presentations to the council of governors?
- How good is the quality of discussions around individual issues?
- How effective is the secretariat in supporting governors?
- How clear is the decision process?
- To what extent do governors make use of the development opportunities available to them?

- Do the council of governors understand the procedure for escalating matters internally, and to Monitor/CQC if necessary?
- If applicable, has the council of governors correctly used internal procedures to escalate difficulties/ differences with the board, and have the procedures proved fit for purpose and effective?

MAKING APPOINTMENTS

- Have members of the nominations committee been trained in all aspects of the appointment process and related issues such as equality and diversity?
- How effective was the training and is follow-up training required?
- Is there a succession plan for the committee?

REMOVING NON-EXECUTIVE DIRECTORS

- Has a policy and procedure been agreed for consideration of the removal of the chair and the other non-executive directors?
- To what extent are governors aware of their duties in the event that this is necessary?

REMUNERATION

- Have members of the remuneration committee (or the nominations committee if a single committee combines both roles) been trained in all matters relating to their role in setting the remuneration and allowances and the other terms and conditions of office of non-executive directors?
- How effective was the training and is follow-up training required?
- Is there a succession plan for the remuneration committee?

AUDITORS

- Has the relevant group of governors been trained in all aspects of the process for appointment and removal of auditors?
- How effective was the training and is follow-up training required?
- Is there a succession plan for this group of governors?

APPROVING THE APPOINTMENT OF THE CHIEF EXECUTIVE

- Has the relevant group of governors been trained in all aspects of the process for the approval?
- Have governors considered the grounds on which it would be reasonable to withhold approval?
- How effective was the training and is follow-up training required?
- Is there a succession plan for this group of governors?

RECEIVING THE ANNUAL REPORT AND ACCOUNTS

- Are governors able to understand the key points in the foundation trust's report and accounts?
- Can governors ask relevant questions on the report and accounts?

CONSTITUTION

- Do the council of governors understand their role in approving, with the board of directors, any amendments to the constitution?
- If the constitution has been amended, has the governor approval process been efficient and effective?

INFLUENCING STRATEGY

- To what extent have governors been involved in strategy development sessions?
- Are there specific examples of governor input to strategy?
- Are there examples of strategy being informed by the input of governors?

NON-NHS INCOME

- Does the council of governors understand the principal purpose of the trust (the provision of goods and services for the purposes of the health service in England) and its need to satisfy itself that proposals in the forward plan do not interfere with the fulfilment of this principal purpose to any significant extent?
- Does the council of governors understand that it is required to approve increases to non-principal purpose income (if increasing by 5% or more of total trust income)?
- Has the council been effective in the way it has carried out these responsibilities (as applicable)?

REPRESENTING THE INTERESTS OF MEMBERS AND THE PUBLIC

- In what ways do governors apprise themselves of the views of members and the public and represent their interests?
- Are there examples of governors using this information to question directors on the foundation trust's performance?
- Are there examples of governors using this information to support the development of strategy?
- In what ways do governors feed back information about the foundation trust to members and the public?

APPROVING TRANSACTIONS

- To what extent can governors distinguish between different transactions ('significant' ones as defined in the constitution, mergers, acquisitions, separations and dissolutions, and smaller transactions about which their views may be sought)?
- To what extent are governors aware of their role in approving or not approving such transactions?
- To what extent are governors able to analyse a business case identifying the strengths and weaknesses of the case?
- To what extent are governors capable of analysing the risks involved in pursuing/not pursuing a certain course of action?

HOLDING NON-EXECUTIVE DIRECTORS TO ACCOUNT

- Has the council of governors agreed a process and dialogue with the non-executive directors and the trust to enable it to carry out its general duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors?
- Is the remit of that role – the performance of the board as distinct from the performance of the trust – well understood?
- Has the process and dialogue met the needs of the council of governors?
- Can governors identify the key performance issues facing the foundation trust?
- Can governors ask relevant questions regarding performance reports?
- How effective are governors in reviewing risks?
- How effective are governors in reviewing the mechanisms by which the board obtains evidence and assurance?
- Do governors ask relevant questions regarding non-executive director triangulation?
- Do governors ask relevant questions about challenge at meetings of the board?

APPENDIX 26

BOARD OF DIRECTORS CODE OF CONDUCT

INTRODUCTION

High standards of corporate and personal conduct are an essential component of public service. The purpose of this code is to provide clear guidance on the standards of conduct and behaviour expected of all directors.

This code, with the code of conduct for governors (in foundation trusts) and the NHS constitution, forms part of the framework designed to promote the highest possible standards of conduct and behaviour within the trust. The code is intended to operate in conjunction with the constitution, standing orders and, for foundation trusts, the foundation trust code of governance. The code applies at all times when directors are carrying out the business of the trust or representing the trust.

PRINCIPLES OF PUBLIC LIFE

All directors are expected to abide by the Nolan principles of public life:

Selflessness
Holders of public office should act solely in terms of the public interest: they should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness
Holders of public office should be as open as possible about all the decisions and actions they take: they should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty
Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership
Holders of public office should promote and support these principles by leadership and example.

GENERAL PRINCIPLES

Foundation trust boards of directors have a duty to conduct business with probity, to respond to staff, patients and suppliers impartially, to achieve value for money from the public funds with which they are entrusted and to demonstrate high ethical standards of personal conduct. The general duty of foundation trust board of directors, and of each director individually, is to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public. The board of directors therefore undertakes to set an example in the conduct of its business and to promote the highest corporate standards of conduct.

The board of directors will lead in ensuring that the provisions of the constitution, the standing orders, financial standing orders and accompanying scheme of delegation conform to best practice and serve to enhance standards of conduct. The board of directors expects that this code will inform and govern the decisions and conduct of all directors.

CONFIDENTIALITY AND ACCESS TO INFORMATION

Directors must comply with the trust's confidentiality policies and procedures. Directors must not disclose any confidential information, except in specified lawful circumstances and advisably, only in consultation with the trust secretary.

Information on decisions made by the board of directors and information supporting those decisions should be made available in a way that is understandable. Positive responses should be given to reasonable requests for information and in accordance with the Freedom of Information Act 2000 and other applicable legislation and directors must not seek to prevent a person from gaining access to information to which they are legally entitled.

The trust has adopted policies and procedures to protect confidentiality of personal information and to ensure compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 and other relevant legislation which will be followed at all times by the board of directors.

Nothing said in this code precludes directors from making a protected disclosure within the meaning of the Public Disclosure Act 1998.

REGISTER OF INTERESTS

Directors are required to register all relevant interests in the trust's register of interests in accordance with the provisions of the policy and, for foundation trusts, the constitution. It is the responsibility of each director to provide an update to their register entry if their interests change. A pro forma is available from the trust secretary. Failure to register a relevant interest in a timely manner may constitute a breach of this code.

FIT AND PROPER PERSON

It is a legal and regulatory requirement that a director serving on the board of directors is a 'fit and proper person'. Directors must certify on appointment, and each year, that they are/remain a fit and proper person. If circumstances change so that a director can no longer be regarded as a fit and proper person or if it comes to light that a director is not a fit and proper person they are suspended from being a director with immediate effect pending confirmation and any appeal. Where it is confirmed that a director is no longer a fit and proper person their board membership is terminated.

CONFLICTS OF INTEREST

Foundation trust directors have a statutory duty to avoid a situation in which they have (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the foundation trust. Such directors have a further statutory duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

If a director has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors. If such a declaration proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. Any such declaration must be made at the earliest opportunity and before the trust enters into the transaction or arrangement.

The chair will advise directors in respect of any conflicts of interest that arise during board of directors meetings, including whether the interest is such that the director should withdraw from the meeting for the period of the discussion. In the event of disagreement it is for the board of directors to decide whether a director must withdraw from the meeting. The trust secretary will provide advice on any conflicts that arise between meetings.

GIFTS AND HOSPITALITY

The board of directors will set an example in the use of public funds and the need for good value when incurring public expenditure. The use of trust funds for hospitality and entertainment, including hospitality at conferences or seminars, will be carefully considered. All expenditure on these items should be capable of

justification as reasonable in the light of the general practice in the public sector. The board of directors is conscious of the fact that expenditure on hospitality or entertainment is the responsibility of management and is open to be challenged by the internal and external auditors and that ill-considered actions can damage the reputation of the trust in the eyes of the community.

The board of directors has adopted a policy on gifts and hospitality which will be followed at all times by directors. Directors must not accept gifts or hospitality other than in compliance with this policy.

RAISING MATTERS OF CONCERN OR WHISTLE-BLOWING

The board of directors acknowledges that staff must have a proper and widely publicised procedure for voicing complaints or concerns about maladministration, malpractice, breaches of this code and other concerns of an ethical nature. The board of directors has adopted a whistle-blowing policy on raising matters of concern which will be maintained at all times.

PERSONAL CONDUCT

Directors are expected to conduct themselves in a manner that reflects positively on the foundation trust and not to conduct themselves in a manner that could reasonably be regarded as bringing their office or the foundation trust into disrepute.

Specifically directors must:

- act in the best interests of the foundation trust and adhere to its values and this code of conduct;
- respect others and treat them with dignity and fairness;
- seek to ensure that no one is unlawfully discriminated against and promote equal opportunities and social inclusion;
- be honest and act with integrity and probity;
- contribute to the workings of the board of directors as a board member in order for it to fulfil its role and functions;
- recognise that the board of directors is collectively responsible for the exercise of its powers and the performance of the foundation trust;
- raise concerns and provide appropriate challenge regarding the running of the trust or a proposed action where appropriate;
- recognise the differing roles of the chair, senior independent director, chief executive, executive directors and non-executive directors;
- make every effort to attend meetings where practicable;
- adhere to good practice in respect of the conduct of meetings and respect the views of others;
- take and consider advice on issues where appropriate;
- acknowledge the responsibility of the council of governors to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and represent the interests of the foundation trust's members, public and partner organisations in the governance and performance of the foundation trust, and to have regard to the views of the council of governors;
- not use their position for personal advantage or seek to gain preferential treatment; nor seek improperly to confer an advantage or disadvantage on any other person;
- accept responsibility for their performance, learning and development.

COMPLIANCE

The members of the board of directors will satisfy themselves that the actions of the board of directors and directors in conducting board of directors business fully reflect the values, general principles and provisions in this code and, as far as is reasonably practicable, that concerns expressed by staff or others are fully investigated and acted upon. All directors, on appointment, will be required to give an undertaking to abide by the provisions of this code of conduct.

APPENDIX 27

COUNCIL OF GOVERNORS: CODE OF CONDUCT

INTRODUCTION

The purpose of this code is to provide clear guidance on the standards of conduct and behaviour expected of all governors.

This code, with the code of conduct for directors and the NHS constitution, forms part of the framework designed to promote the highest possible standards of conduct and behaviour within the trust. The code is intended to operate in conjunction with the constitution, standing orders and Monitor's code of governance. The code applies at all times when governors are carrying out the business of the trust or representing the trust.

UNDERTAKING AND COMPLIANCE

Governors are required to give an undertaking that they will comply with the provisions of this code. Failure to comply with the code may result in disciplinary action in accordance with agreed procedure, including the removal of the governor in question from office.

INTERPRETATION AND CONCERNS

Questions and concerns about the application of the code should be raised with the trust secretary. At meetings the chair will be the final arbiter of interpretation of the code.

PRINCIPLES OF PUBLIC LIFE

The principles underpinning this code of conduct are drawn from the seven principles of public life and are as follows:

- **Selflessness**
  Holders of public office should act solely in terms of the public interest: they should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity**
  Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability**
  Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness:** Holders of public office should be as open as possible about all the decisions and actions they take: they should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty**
  Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

- **Leadership**
  Holders of public office should promote and support these principles by leadership and example.

CORPORATE VISION AND VALUES

[Description of how the code relates to the corporate vision, any mission statement and statement of values.][1]

THE COUNCIL OF GOVERNORS, DIRECTORS' DUTIES AND LIABILITIES

The general duties of the council of governors are to hold the non-executive directors individually and collectively to account for the performance of the board of directors and represent the interests of the members of the trust as a whole and the interests of the public. The role is set out in detail in the constitution, standing orders, the foundation trust code of governance and is further addressed in Monitor's guidance for governors. In carrying out its work the council of governors needs to take account of and respect the statutory duties and liabilities of the board of directors and individual directors.

CONFIDENTIALITY

Governors must comply with the trust's confidentiality policies and procedures. Governors must not disclose any confidential information, except in specified lawful circumstances, and must not seek to prevent a person from gaining access to information to which they are legally entitled.

Nothing said in this code precludes governors from making a protected disclosure within the meaning of the Public Disclosure Act 1998. The trust secretary should be consulted for guidance.

FIT AND PROPER PERSON

It is a condition of the trust's licence that each governor serving on the council of governors is a 'fit and proper person'. A person may not continue as a member of the council if they are:

a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged,

(b) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,

(c) a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her,

(d) subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.

Governors must certify on appointment, and each year, that they are/remain a fit and proper person. If circumstances change so that a governor can no longer be regarded as a fit and proper person or if it comes to light that a governor is not a fit and proper person they are suspended from being a governor with immediate effect pending confirmation and any appeal. Where it is confirmed that a governor is no longer a fit and proper person their membership of the council of governors is terminated in accordance with the constitution.

CONFLICTS OF INTEREST

Governors must avoid a situation in which they have a direct or indirect interest that conflicts or may conflict with the interests of the trust. Governors must not accept a benefit from a third party by reason of being a governor for doing (or not doing) anything in that capacity. Governors must not offer a benefit to a third party by reason of being a governor for doing (or not doing) anything in that capacity.

Governors are required to declare the nature and extent of any interest at the earliest opportunity. If such a declaration proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. It is then for the chair to advise whether it is necessary for the governor to refrain from participating in discussion of the item or withdraw from the meeting. Failure to comply is likely to constitute a breach of this code.

REGISTER OF INTERESTS

Governors are required to register all relevant interests in the foundation trust's register of interests in accordance with the provisions of the constitution. It is the responsibility of each governor to provide an update to their register entry if their interests change. A pro forma is available from [the membership office]. Failure to register a relevant interest in a timely manner may constitute a breach of this code.

MEETINGS

Governors have a responsibility to attend meetings of the council of governors and of any committees to which they are appointed. When this is not possible apologies should be submitted to the trust secretary in advance of the meeting. Persistent absence from council of governors meetings without good reason is likely to constitute a breach of this code.

PERSONAL CONDUCT

Governors are expected to adopt and promote the values of the trust and the NHS. Governors are expected to conduct themselves in a manner that reflects positively on the trust and not to conduct themselves in a manner that could reasonably be regarded as bringing their office or the trust into disrepute. Specifically, governors must treat each other, directors and trust staff with respect; not breach the equality rights and not bully any person. Governors must not seek to use their position improperly to confer an advantage or disadvantage on any person and must comply with the foundation trust's rules on the use of its resources. Finally governors must have regard to advice provided by the chair and trust secretary pursuant to their duties.

TRAINING AND DEVELOPMENT

[Name of trust] is committed to providing appropriate training and development opportunities for governors to enable them to carry out their role effectively. Governors are expected to undertake to participate in training and development opportunities that have been identified as appropriate for them. To that end governors will participate in the appraisal process and any skills audit carried out by the foundation trust.

REVIEW AND REVISION OF THE CODE

This code has been agreed by the council of governors and where appropriate by the board of directors. The trust secretary will lead periodically a review of the code. It is for governors to agree to any amendments or revisions to the code.

DECLARATION

I hereby confirm that I will adopt and comply with this code of conduct for governors.

Signed:

Name:

Date:

FOOTNOTES

1 Insert relevant local policies and strategy statements.

APPENDIX 28

NON-EXECUTIVE DIRECTOR TRIANGULATION

INTRODUCTION

Non-executive directors in NHS foundation trusts and trusts face particular challenges. They should equip themselves with the information they need to do their job, although trusts should support directors' learning and development. Non-executive directors have the same statutory duties and the same accountability as executive directors. Many come with valuable experience of membership of the boards of other public and private sector organisations but nevertheless find the NHS uniquely challenging.

One of the reasons for this is that the organisations they manage, the NHS hospital being a prime example, are large, complex and difficult to understand. Services are delivered by a mixture of very highly trained and highly qualified professionals and, often in key patient facing resource roles, a larger number of relatively low paid support staff. Management and governance structures are usually complex but not always effective in fully connecting the board to the ward.

Non-executive directors find it particularly difficult to acquire a satisfactory level of knowledge to understand what is actually going on in every corner of the organisation (so that they can make an informed contribution to board discussions) while avoiding the trap of trying to micro-manage. Non-executives are very aware of the intense challenges and pressures faced by their executive director colleagues and are sometimes reluctant to add to that burden by imposing additional requests for information or clarification.

Executive directors sometimes find it difficult to know which information to supply to their non-executive director colleagues. Non-executive directors therefore sometimes feel as if they are being 'kept in the dark', while executive directors occasionally feel as if they are constantly being interrogated and asked to prove themselves.

Reports of adverse outcomes in NHS organisations (whether from public inquiries or Monitor/TDA responses to lapses in governance) often refer to a perceived lack of non-executive director challenge. Non-executive directors in the most successful organisations have adopted a simple strategy to inform themselves: this consists of looking for three distinct sources of information and comparing them, and is called triangulation.

These sources of information are:

INFORMATION

Non-executive directors are provided with information and formal board reports and briefings. Sometimes, however, these reports are in a format determined by the executive directors or others, without sufficient involvement of, or feedback from, non-executive directors about what they actually find of value. Board reports in particular are very varied across different trusts, convey information in different ways and measure against different benchmarks and parameters.

All directors are entitled to the information that they want, when they want it, and in the form they require it. They should insist that this is provided alongside information to show both performance against other comparable organisations and their own organisation over time. For multi-site organisations it might be useful to compare performance between sites; this can reveal opportunities for sharing good practice which has historically resulted in one site performing better than another. Directors should also agree the parameters which are used for "traffic light" dashboard type reports. Any performance which falls outside the parameters should always be accompanied by an exception report and the agreed actions tracked and reported to the board. Data included in reports – for example, key performance indicators or measures of clinical safety

– should be accompanied by analysis and explanation, thereby providing the basis of constructive debate and challenge.

The content and format of the information provided to directors should be kept under review and it would be unusual for it not to be changed at least once per year. While undertaking such reviews directors should consider sources of assurance as to the accuracy and quality of the information they receive, so that they are confident that they can rely on it in their discussions. Such assurance could be obtained through formal audits of certain data, or through triangulating findings as described elsewhere in this note. While such formal reviews should take place it is also likely that non-executive directors' requirements for information will develop as they consider issues over time, gradually iterating and improving the information in partnership with the executives. Through this approach it is possible for the directors to agree together the information that is required for them, particularly the non-executive directors, to discharge their roles whilst at the same time ensuring efficiency so that the time taken to produce reports is optimised.

Non-executive directors should triangulate using the sources of information identified in this note – information, people and observations – but it is also possible to triangulate between different sets of data. For example, feedback from patient surveys, data on the number and type of complaints, and data about clinical incidents could be triangulated to indicate concerns about a particular service area which might not be obvious (or at least the extent of the concerns might not be obvious) from any one of these data sets.

PEOPLE

The principal sources of briefings or clarifications for non-executive directors should of course be the executive directors, but must not be exclusively so.

Non-executive directors should also ask for access to the next line of reporting staff and other staff who can add insight. For example it would be entirely appropriate for the chief accountant to explain to a non-executive director how the finance report was constructed and to be ready to answer detailed questions about it on any future occasion. It would be equally appropriate for the lead clinician in a particular service area to attend a meeting to discuss concerns about performance or plans for development. Such access to staff helps non-executive directors to form a balanced view on key issues, ensuring that it is not only the views of the executive directors that they hear. It also helps to connect the board to senior staff in the organisation, and thereby to mitigate any impression that the board is remote from staff, helping the board to promote the culture and values which it sets for the organisation.

OBSERVATION

Non-executive directors should seek out one or more sources of verification so that they can be sure that the information they are being presented with and the information they are being given by the individuals, is also reflected in what is actually happening on the ground.

Essentially this means looking through the patient's eye view. It is increasingly common for non-executive directors to take part in programmes of visits to clinical service areas. In their interaction with governors and members they also have another source of verification.

It is essential that non-executive directors do not become involved in the management of their organisations but, as a further means to inform them about services and issues, it may be appropriate for them to attend some management committees. If they do so they should be observers only to avoid involvement in management but such engagement can assist by providing another source of information which non-executive directors can use to triangulate with information received at board meetings.

It would be inappropriate for non-executive directors to review the detail of all, or most, complaints and claims but for them to be able to occasionally see examples or indeed to meet and hear from individual patients has proven to be exceptionally valuable. Apart from acting as a source of information, such involvement, if constructed appropriately, can provide assurance as to the quality of complaint handling. Many boards have adopted the practice of hearing a 'patient story' on a regular basis, often focusing on care which did not meet the applicable standards so that the board focuses on continuous improvement.

CONCLUSION

In any of the reported service failures which have beset the health service over the last decade or two, one or more of these three aspects has been found to be missing or there has been no record of it having taken place. Non-executive directors who can show that they have taken reasonable steps to:

- look at the right data

and verify that by

- talking to the right staff

and verify both of those by

- reviewing observations of patients and members of the public

are in a much better position to discharge their duty to ensure that the trust is providing efficient and safe services and to demonstrate, should the need arise, that they have done so.

APPENDIX 29

BOARDROOM CHALLENGE

WHAT IS CHALLENGE?

All boards have a duty to make informed decisions. They need to be able to set out the process by which decisions were made and the evidence upon which decisions were based to those to whom they are accountable. Challenge is the process by which decisions on strategy and reported performance are tested in the boardroom. Typically, challenge takes the form of probing questions, but it may also be a request for further information or evidence to inform the debate.

The role of challenge from non-executive directors and executive directors is to enable the board to be confident about the rationale for all decisions. In subsequent monitoring of the implementation of those decisions, the board must be satisfied that it is being supplied with robust evidence on the basis of which it can be assured. The role of challenge here is to validate the credibility of such evidence.

This does not imply that challenge needs to be aggressive or hostile. Although executive directors sometimes complain that board meetings occasionally feel like an 'inquisition' by non-executive directors, they are ultimately being protected by the questions that they are being asked. If answers to questions are forthcoming, credible and positive, and can be evidenced if necessary, the board can form a view as to the veracity of the statements

The outcome is equally valuable if an answer is absent or unsatisfactory. In this case the questioner has rendered a valuable service to the board by identifying a potential source of future failure at the point at which there is time and opportunity to take action to prevent the failure occurring.

Challenge can also have the beneficial effect of exposing and rectifying imbalances on the board. There are situations in which one or more of the executive directors can be overconfident and/or overly dominant. Challenging the basis for their confidence has been known to expose situations in which such confidence was not well-founded.

THE IMPORTANCE OF CHALLENGE

A lack of challenge in the boardroom is often the precursor to failures of governance. On an NHS foundation trust board, all directors are equal and therefore under an equal obligation to satisfy themselves fully about matters before the board. If they cannot satisfy themselves they are obliged to act by asking appropriate questions.

Monitor's code of governance for NHS foundation trusts states: '...within the board of directors the non-executive directors and the executive directors share the same liability. All directors, executive and non-executive, have responsibility to constructively challenge the decisions of the board and help develop proposals on priorities, risk mitigation, values, standards and strategy. As part of their role as members of a unitary board, non-executive directors have a particular duty to ensure appropriate challenge is made.'

However, Monitor has observed when reviewing the minutes of foundation trusts that have failed to fulfil their obligations, that there typically is very little evidence of challenge from any quarter of the board. For example the Monitor board minutes about a particular 'failing' trust reported: '...the board showed no evidence of non-executive challenge or of holding the executive team to account for delivery.'

In its publication on the reasons why applicants fail to be authorised as foundation trusts Monitor concludes: 'Without evidence of sufficient board challenge in areas of key risk, we have been concerned about the applicant's ability to operate as an autonomous organisation.'

Outside the NHS, the value of challenge has long been recognised, for example the Financial Reporting Council's (FRC) current corporate governance code states: '…as part of their role as members of a unitary board, non-executive directors should constructively challenge…'

In its *Guidance on board effectiveness* the FRC states that '...flawed decisions can be made with the best of intentions, with competent individuals believing passionately that they are making a sound judgement, when they are not.' The role of challenge is to minimise the possibility of unsound judgements and decisions.

ENCOURAGING CHALLENGE

Challenge ought to be made and received in a constructive, non-confrontational and respectful way. Creating the environment in which this can be the case is a significant part of the chair's responsibility. Establishing an atmosphere of mutual trust and respect is also the product of effort invested in board development.

A situation in which constructive challenge from both non-executive directors and executive directors is a routine and welcome feature of board meetings is as much due to work done outside meetings as during the meetings themselves. It is the task of the chair to coach non-executive directors, to improve their judgement as to when and how to challenge correctly. It is equally important for the chief executive to encourage the executive directors to constructively challenge each other where necessary, and give positive feedback to executive directors who have been the source of valuable challenge.

Over time a healthy board will establish a situation of mutual trust. This does not mean that all board directors' assertions should be taken on trust and never challenged; rather it means that it becomes the norm to be challenged and that relationships are robust enough to sustain it.

OVERCOMING BARRIERS TO CHALLENGE

Foundations trusts are obliged to hold their board meetings in public (except items excluded for 'special reasons' as per the National Health Service Act 2006). Board meetings held in public are sometimes said to inhibit challenge. There is a natural human reluctance to embarrass another, and by implication the foundation trust, in the presence of a public audience. On the other hand, if a position of mutual trust and respect has been established, such challenge can have a very material effect in impressing onlookers with the candour and confidence of directors and enhancing the level of confidence in the board and its members.

There will however be subjects where the board concludes rightly that to create an environment in which particular subjects can be fully tested; in a 'safe' environment which will not suppress challenge, such discussion should take place in private. Where this cannot be legitimately done in the closed part of a board meeting, alternative arrangements need to be made, for example through briefings or informal meetings. Board committees, which meet in closed session, can also provide suitable vehicles for in depth reviews and robust challenge.

Challenge can also be inhibited by a feeling that the subject matter is beyond the competence of the questioner and should be left to 'the experts'. Equally challenge can be difficult if the culture of the board is such that it is felt that the more general knowledge of the non-executive director does not entitle them to ask a question about something (often clinical) which is beyond their personal area of expertise or knowledge. Mature boards do not feel this inhibition. They realise that every matter on which a board has to make a determination can and must be understood by every member of the board, to the extent necessary for them to be able to make an informed decision.

The dangers of 'group think' have long been recognised. This leads to a situation where the board becomes collegiate and complacent, placing all those served by the trust at risk. In such situations, all board members think and behave in the same way. It is only by encouraging challenge from those members who are from diverse backgrounds and independent of vested interests that this dangerous situation can be avoided.

Non-executive directors are sometimes reluctant to raise concerns because they mistakenly believe that all issues requiring challenge are confidence issues and that to express a reservation is but a short step from resigning on principle, and that challenge is therefore almost a weapon of last resort. In fact challenge needs to be routine and recorded as such in the minutes of the meeting.

Personality is an issue, as identified in the FRC's *Guidance on board effectiveness*. Some non-executive directors are reflective and not inclined to interrupt and assert themselves. Some executive directors and chief executives are of quite the opposite disposition and can be quite intimidating. Non-executive directors in such circumstances can be supported by being tutored in the subtle ways in which issues can be raised effectively and painlessly. For example, a non-executive director can ask for more information in the meeting, or for a follow-up meeting to improve their understanding, or for an issue to be remitted to a committee, or for an opportunity to visit an area or meet staff. All are questions which can be asked non-confrontationally and which, coming from a non-executive director, are extremely hard to refuse.

CONCLUSIONS

Returning to an earlier theme, there is sometimes too little evidence of challenge having taken place. It is important to record that questions have been asked but this does not require verbatim, narrative style minutes. It is the art of the skilled minute taker to recognise and record the critical issues, their source and the response.

Such recording enables directors to ask one of the most valuable questions that can be posed at a board meeting namely, to challenge 'what happened' as a result of issues previously raised.

APPENDIX 30

BOARD MEETINGS, CONFIDENTIALITY AND PRIVACY

NHS foundation trusts and trusts are publicly-funded organisations so it is incumbent upon trust boards, as leaders of these organisations, to be as open and transparent as possible in their discussions about the way in which their organisations spend those funds. In addition to this driver for making public as much of their business as possible, there is a requirement for trust boards to meet in public, subject to some matters being considered in private where this is necessary. This raises a number of issues for trusts.

Trusts need to decide what will and will not be discussed in public and, therefore, which papers and minutes will be placed into the public domain.

Trusts also need to publicise their boards' meetings and they will need to make arrangements for the public in attendance. It is important that those attending understand that the trust board's meetings are meetings held in public, not public meetings. The meetings are for the board to conduct its business, not where the board is held to account by governors or other stakeholders. It follows from this that trusts may need to put into place and publicise some clear, concise procedures for the conduct of the meetings. Any such procedures will need to be consistent with the standing orders, emphasising, for example, that the chairman determines the conduct of the meeting and that his/her decisions on matters of conduct are final. This should extend to the arrangements for any questions which are permitted during meetings.

CONFIDENTIALITY

The National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) (the Act) requires trust board meetings to be open to members of the public (with the public able to be excluded for 'special reasons')[1]. Managing the division of business between private and open parts of board meetings requires skill from both report writers and those responsible for the smooth operation of board business. This process may be supported by the publication of information on why the foundation trust considers some business in private session and the categories of information regarded as confidential together with any underlying policies.

Reflecting their accountability for public funds, boards should strive to deal with as much business as possible in the public part of the meeting, but will usually class as confidential discussions about the award of contracts, disciplinary matters, and matters concerning staff or any identifiable patient. Other issues are harder to classify and boards of directors might find it useful to look to the Freedom of Information Act 2000 for points of reference. The logic to this being that it is easier to justify private consideration of information considered exempt under the Act.

Connected to this is the requirement for foundation trusts for boards to send a copy of the agenda to the council of governors before a board meeting, and to provide the minutes afterwards[2]. The Act does not distinguish between the open and private part of board meetings and it is notable that the foundation trust code of governance states that there is no legal basis for the agenda and minutes of private board meetings to be withheld from the governors. This openness supports a constructive, trust-based relationship between the directors and the governors, which is essential for good governance in a foundation trust, but the sharing of such information should be on the basis that governors are trained to understand their obligations in respect of confidentiality. This could be underpinned by a confidentiality agreement, possibly as part of a code of conduct for governors.

GOVERNORS AND ACCOUNTABILITY

A second issue is one of expectation. The proceedings at board meetings do not readily lend themselves to interaction with stakeholders, so members of the public attending a board meeting may not have their expectations met. Indeed, unmanaged public intervention can seriously compromise the effectiveness of the meeting. Some trusts manage any interaction well by having a specific slot on the agenda or intervals during the meeting when questions and comments from the public and governors are taken, but not allowing interventions during the rest of the meeting. Any such arrangements should be defined in a simple, publicly-available document so that members of the public understand in advance (of attending) the arrangements and expectations can be managed.

In foundation trusts the meetings of the council of governors is the forum where the public can see the non-executive directors being held to account (for the performance of the board) and foundation trusts will need to continue to make this clear to stakeholders. It should be noted, however, that there might be occasions when the council of governors needs to meet in private, subject to the provisions of standing orders (or similar).

In respect of accountability more generally, foundation trusts can highlight the annual members meeting which they are required to hold in each calendar year; although these meetings are for members, they are normally held in public and are used as an opportunity to present the annual report (for the preceding financial year) and generally to explain to members and the public the progress which the organisation is making. Trusts might also have other opportunities which can be used to promote accountability – for example, stakeholder events to discuss particular topics.

PRIVACY AND DECISION MAKING

A third issue is that of privacy and effective decision making. In the Financial Reporting Council's (FRC) review of the *Combined code*, as it was known at the time (2009), the FRC commented 'the quality of corporate governance depends ultimately on the behaviour of individuals, not on procedures and rules.' Commenting on the international banking crisis of 2008/9 the FRC said '…the sequence in board discussion on major issues should be: presentation by the executive, a disciplined process of challenge, decision on the policy or strategy to be adopted…' The question for boards is, can they maintain the right sort of board behaviours whether the meeting is in open session or closed, so that disciplined challenge is followed by the right decision? Clearly this is a far easier question to ask than it is to answer.

The FRC's *Guidance on board effectiveness* makes the point that: 'Flawed decisions can be made with the best of intentions, with competent individuals believing passionately that they are making a sound judgment, when they are not.' Among the factors with a negative impact on decision making as listed by the FRC are: a dominant personality or group of directors on the board which can inhibit contribution from other directors; a reluctance to involve non-executive directors, and matters being brought to the board for sign-off rather than debate. Some foundation trust chairs have suggested that directors focusing on the public gallery during meetings could be added to this list.

To eliminate as far as is possible the scope for flawed decision making, some chairs in the private sector favour separate discussions for the most important decisions taken by the board. So for example, the most important items are proposed as a concept for discussion rather than for decision, so that the board of directors has a chance to explore all of the issues and scenarios and to challenge assumptions in advance of the decision-making process. Furthermore executive directors need to have the scope to bring ideas to the board before they are fully developed and therefore require the provision of a safe, and private, space for initial discussions. Such an approach is essential if the board is to be properly engaged in setting strategy, during which process a number of options will need to be considered by the board so that a final position can be reached. Separating the consideration of important items into discussion and decision-making phases could work in public and in private sessions at foundation trust board meetings allowing general discussion in the public section of the meeting with challenge taking place in the private session.

Another technique used by the private sector to improve the effectiveness of decision making is to allow the board to understand more about the background to proposals by describing in board papers the process that has been used to arrive

at and challenge a particular proposal prior to it being presented to the board. This could also be helpful to foundation trusts in giving account to their councils of governors. Taking independent advice on particularly complex issues which require decision is a further safeguard and can also be a source of assurance for the board of directors.

REVIEW

Finally the FRC suggests that boards of directors should periodically review their decisions and the process by which they were made and that particular attention should be paid to those decisions with poor outcomes. Some boards of directors may be reluctant to carry out such an exercise in public however there would be potential benefit in involving governors in a review longer-term of decision making processes. Boards of directors may also wish to publish the outcome of any review to inform members more generally of the proactive steps they have taken to improve decision making.

FOOTNOTES

1 Schedule 7, 18E

2 Schedule 7, 18D

APPENDIX 31

GOVERNANCE BETWEEN ORGANISATIONS

INTRODUCTION

The relevance of good governance between organisations has of course come further into focus since the Health and Social Care Act 2012, and particularly since the publication of the *Five year forward view*, as we increasingly see the NHS embrace the concept of integrated care. These drivers for integration are reflected in the NHS provider licence (for foundation trusts and some other providers, though not NHS trusts), which contains requirements to promote integrated service provision. Commissioners are looking at ways to improve quality or efficiency, or reduce inequality between patients by the adoption of integrated pathways and these collaborations will need to be underpinned by a robust governance framework.

This note deals with corporate governance where two or more separate organisations collaborate in some way (for example in partnerships or supplier relationships) or where a single pathway of patient care transits through two or more organisations. It is debateable whether governance between organisations is a separate governance subject as such, but it does offer valuable disciplines for thinking and working which recognise that there are real corporate governance dangers at the interface between organisations, and there are proven ways in which organisations can identify, prevent and address them.

Before embarking on a venture that may require governance between organisations there are three fundamental points to consider:

- are there real advantages to be gained from joint action that the individual trusts could not achieve on their own?
- is the proposed new organisation, whether a new corporate entity or some other form of collaboration, likely to be viable in the context of competition law?
- is the proposed new arrangement compliant with regulators' requirements or guidance – particularly guidance from Monitor on integration or requirements from the Care Quality Commission?

Problems of governance between organisations sometimes manifest themselves when one organisation is being held to account for a service failure (or an incidence of non-compliance with legal or regulatory requirements) which is due entirely to the actions or inactions of another partner organisation not under its direct control.

In other situations, clinical service failures have resulted from a lack of attention to the transfers of responsibility and accountability when a service user moves along a care pathway and switches from one organisation to another.

This note draws on actual examples where NHS organisations have encountered these issues and discusses how they have been identified and resolved.

THE FUNDAMENTAL ROLE OF THE BOARD

Before getting to grips with the additional complexities and challenges of governance between organisations, a trust board must first ensure that its own internal corporate governance arrangements are robust and fit for purpose. Organisations which have not done so and which have then sought to stretch their governance structure either by working in partnership with other organisations, by merging or by taking on substantial additional services, have found out the hard way that their core corporate governance services are not sufficiently robust to form a basis for such expansion.

Boards should therefore review their position against relevant measures of good governance health (such as the *Well-led framework for governance reviews*, published

by Monitor in April 2015) and make sure that their 'governance house' is in order by satisfying themselves that their board assurance processes are working and by re-examining the trust accountability framework.

Having examined those structural issues, the board should then look at its own strengths as a team. The mature board, where the expertise of non-executives is fully utilised; where all directors understand that reassurance does not constitute assurance and where mutual challenge and support are normal practice, will be in a much better position to tackle the additional challenges of governance between organisations.

ASSURANCE REVIEW

One trust was inspired by a combination of external and internal issues to conduct an assurance review to thoroughly examine policies, practices, structures, accountabilities and sources of assurance.

This particular exercise was led by an executive director supported by a project team with administrative support and was conducted by means of desktop review and interviews. The eventual report to the board was accompanied by an action plan and rigorously followed through.

ACCOUNTABILITY FRAMEWORK

Another trust recognised the need to ensure that its accountability framework was fit for purpose. It reviewed committees and meetings to ensure that they were fulfilling their governance role or a management purpose.

It implemented a management structure consisting of divisions and service delivery units to ensure clinicians were fully in charge and fully responsible with no 'dotted lines' and no bypasses around the fundamental lines of personal accountability.

The concept of personal accountability and authority was further developed to the extent that the maximum number of individual members of staff had both the responsibility and the authority to tackle issues as they arose.

RATIONALE AND RISK ASSESSMENT

As well as assuring itself of the robustness of its own governance arrangements, the trust board should ensure that it considers a robust business case for the new venture, whatever the form of collaboration which is under consideration. The trust board should also ensure that the relevant regulator, normally Monitor or the NHS Trust Development Authority, is aware of the proposed new venture or arrangement.

At a minimum the business case should include a clear rationale for the venture, with advantages and disadvantages. The latter should be linked to a detailed assessment of the risks associated with the venture, with proposed arrangements for mitigation and proposals for oversight of risk management. Foundation trusts should ensure that their risk appraisal takes account of Monitor guidance in that respect. The business case should preferably follow consideration by the board of the options for the venture – for example, the various corporate structures through which it could be achieved.

COMPANY FORMATION

A trust considered whether its governance of extended services would be improved by extending the governance structure beyond the organisation through setting up separate corporate bodies and entities.

This trust proceeded logically and carefully worked through a process of determining the need for separate organisations, then the nature of those organisations and finally the configuration and linkages within a group structure.

The trust was careful at all times to make choices against a list of the advantages which it hoped to derive (protection from risk, easier dealings with commercial third parties and separate identity) and a second list of the potential pitfalls which it wanted to avoid (loss of control, inadvertent acquisition of liability and exposure to corporate legislation.)

As a result of this process this particular trust established a structure headed by the trust board which retained approval powers for reserved matters. Next in line was a holding company 100% owned by the trust board with responsibility for strategic control and oversight and again with clearly defined matters reserved for its

decision. Finally a number of operating companies were established which were 100% owned by the holding company to fulfil operational control and oversight and to own the trust's share of joint ventures.

OBLIGATIONS EXTENDING BEYOND INDIVIDUAL INSTITUTIONS

The imposition by contract or regulation of responsibilities and targets upon NHS trusts has brought with it the need for them to behave in new and different ways as they relate to other organisations.

The introduction of standards has forced new behaviours including intervention with other providers driven in part by shared penalties and has forced the discipline of problems either being resolved or escalated without delay.

Successful organisations have learned the skill of tracking the pathways of service users, money and liability.

Organisations have also come to realise that subcontractor assurances are not in themselves sufficient and some means of independent verification must be demonstrated.

CROSSING EUROPEAN BORDERS

One foundation trust has gained extensive experience of tackling some of the most challenging manifestations of governance between organisations by managing care of patients on the continent of Europe.

This trust put in place arrangements for hospitals in another EU state to provide secondary health care to a large British community.

In order to do so, a virtual organisation comprising all the service providers in the territory was constructed to ensure that they worked together and thorough attention paid to pathways, referral and reporting mechanisms.

The arrangements for the virtual organisation also paid extremely careful attention to the appropriate local clinical standards and arrangements for complaints and litigation.

The same trust was subsequently asked to make arrangements on behalf of the Department of Health for English waiting-list patients to travel to the continent for treatment.

Previous experience was brought to bear in the construction of safe and reliable arrangements for referrals and acceptance, transport responsibility and handovers, follow-up and after care and complaints and litigation.

WORKING WITH THE PRIVATE SECTOR

The relationship between the NHS and private sector has not always been easy and has been affected by misconceptions on the part of each of the parties about the other. There is no doubt that the NHS can be complicated to deal with from the perspective of a private company because of differences in structure, culture, resources, contractual arrangements, and speed of action.

Trusts have learned through experience that it is not sufficient to rely totally on contractual obligations entered into by third parties. So without diminishing the ultimate contractual responsibility of contractors providing services, it is the purchasing trust board's responsibility to satisfy itself that contractors can actually deliver rather than simply relying on supplier assurances.

Joint ventures throw up the additional challenges of complex and multiple relationships which need to be mapped and structured very carefully.

CLINICAL TRIALS

One example of how governance issues have been resolved successfully is in the area of clinical trials conducted by investigators working in NHS hospitals on behalf of pharmaceutical companies.

A standard contract between trusts, universities and pharmaceutical companies has been introduced and has simplified and rationalised issues including liability.

Successful hospital and university partnerships have established joint trials offices to manage the process across the interfaces between the various organisations and the different legal relationships.

JOINT VENTURES

A trust has undertaken a joint venture for the provision of diagnostic services with a large PLC. Each of the organisations is part owner of a limited liability partnership which in turn provides the services and each organisation provides supporting services to the LLP.

The trust involved recognised early on that the key to success is an understanding that in any situation there are three separate relationships between the trust and the service providing entity. The trust is a provider as set out in a trust service agreement. The trust is a customer as set out in the purchase of services agreement and finally the trust is a partner as set out in the membership agreement. Absolute clarity about the differences between these three relationships and the different lines of communication in each case has been fundamental to success.

This successful arrangement has also been notable for the establishment of parallel but separate formal and informal relationships which allow these arrangements to work effectively and deal with potential conflicts of interest such as demand management and interlocking board memberships.

NHS AND SOCIAL CARE

The interface between the NHS and the social services needs special attention if pitfalls about lack of clarity on areas of responsibility and on communication are to be avoided. One trust and its two partner local authorities have attracted praise for the interagency working they have established. They did so by building relationships and rapport at senior level by opening up meetings and inviting cross representation.

The NHS trust intervened as a mediator to bring together the two local authorities and aligned their working methods.

All three organisations maintain trust by keeping their promises and delivering what they had agreed to do. An overall joint safeguarding children's board reviews the arrangements of each of the organisations without let or hindrance.

CONTRACTUAL AND GOVERNANCE ARRANGEMENTS

The corporate structure and governance arrangements for any venture or collaboration will require careful thought and design to ensure that they promote success for the trust (and others involved). It is important that they are properly defined in writing and agreed by all the parties to the arrangements, often through an over-arching agreement which has governance documentation (for example, terms of reference) appended to it.

The agreement will need to be comprehensive to ensure that it addresses all elements of the relationship between the parties. These are likely to include staffing matters, use and sharing of assets, services provided to any party to others, compliance with legal and regulatory obligations, and governance structures. Such governance structures may well include a joint board or committee, with membership from the participating organisations, which, subject to the types of organisations involved, is likely to have to take into account legislative provisions on collaboration. It will also be important to ensure that participating members' interests are declared and, subject to legal requirements, either avoided or managed.

As important as it is to define these matters in writing, it is equally important that the details of the relationship, particularly the governance arrangements through which the parties oversee it, are understood by all concerned. This will help to mitigate against some risks which are often association with collaborative governance arrangements – for example, when executives or others who are members of a joint board or committee exceed the authority delegated to them by their sponsoring organisation.

ACADEMIC HEALTH SCIENCE CENTRES (AHSCS)

The AHSCs which have been established have done so because they demonstrated to the satisfaction of an independent appraisal panel that they have anticipated and planned for the substantial tests of joint working that these joint enterprises have brought about.

The challenge of building an AHSC exemplifies what is needed to deliver good governance between organisations. It requires being clear about the aim of the exercise (integrating care, teaching and research across organisations) but more particularly being scrupulous about issues which are givens and issues which are subject to decision.

Such organisations have been able to tackle the challenge of sharing but never surrendering sovereignty, merging services without merging organisations and delegating authority but not ultimate board responsibility and accountability.

Clarity around decision-making has required explicit decisions to be taken about ownership, expenditure and employment. The distinction between what is established as a virtual organisation as opposed to the real organisations from which it is composed is essential.

The method adopted by successful AHSC candidates has much to teach other organisations tackling the challenges of governance between organisations.

Sufficient time and resources must be allocated. All choices must be deliberate and justified, with givens, assumptions and conclusions being absolutely explicit.

Scenario testing should be adopted to ensure that so far as possible all conceivable situations have been anticipated.

The governance models must be clear about how they deliver the vision, satisfy accreditation and comply with each of the individual partner's compliance and accountability requirements. They must be equally clear about how they achieve transparency for partners, commissioners, auditors and regulators.

ACADEMIC HEALTH SCIENCE NETWORKS (AHSNS)

A key challenge is for these networks to develop a cross-sector governance model which supports them in their purpose: to successfully improve patient outcomes and population health by adopting and sharing innovations and best practice.

The governance architecture will no doubt continue to develop over time but a key element is ensuring a board composition which enables the board to be accountable to the wider membership of the network. A non-executive presence is also vital to help mediate between competing interests, and a transparent process for disclosure of interests will also be key to ensure that decisions and activities are clearly made for the benefit of the system as whole.

CONCLUSION

Wherever the challenge of governance between organisations has been dealt with successfully, a few critical features are usually to be found.

The organisations concerned:

- build on their previous experience
- reinvest their learning and build internal expertise
- invest time and effort early on to build relationships
- establish trust, share values, build rapport and then record all agreements
- 'fudge' nothing and make everything explicit
- ensure that someone must always be responsible for everything and everything must always be someone's responsibility
- understand the value of always following pathways, observing protocols checking everything and seeking and reacting to feedback.

Most of all they have learned that concerns must be faced and that sometimes the right decision is to intervene and challenge the inner workings of another organisation in order that they can deliver the mission of their own.

APPENDIX 32A

FREEDOM OF INFORMATION BRIEFING: THE ESSENTIALS

WHAT DOES A FREEDOM OF INFORMATION ACT REQUEST LOOK LIKE?

For a request to be a Freedom of Information Act 2000 (FOIA) request it must be made in writing and provide the name and contact address of the person making it. An email address is sufficient as a contact address.

If the request is for information about the environment (for example about buildings or emissions) it will need to be dealt with under the Environmental Information Regulations 2004 (EIRs).

If someone is asking for information about themselves then their request will need to be handled in accordance with the Data Protection Act 1998 (DPA).

Foundation trusts (FTs) are likely to receive many requests for information that are not in writing, in particular requests made by journalists to communication teams. Such requests need not be dealt with under the terms of the FOIA but if it appears that the issue is likely to be contentious it is advisable to ask the requestor to put their request in writing so that it can be dealt with in the framework of the FOIA.

THE MAIN OBLIGATIONS

Under the FOIA FTs have two principal duties when dealing with a request, to:

- confirm whether or not they hold information requested; and
- supply a copy of the information

unless one of the exemptions applies. Normally exemptions apply only to the second duty – to provide a copy of the information – but there are circumstances in which an exemption also means that a public body is not obliged to confirm whether or not it holds the information requested.

FTs also have a duty to advise and assist applicants who ask for information. This includes (where possible) giving guidance on how to ensure that their requests can be complied with, rather than being refused as a result of one of the exemptions applying. This duty always applies, although in practice there are limits to how far FTs must go to help an applicant seeking information.

The time limit for complying with a request is 'promptly, and in any event not later than the twentieth working day from receipt of the request'. There are only very limited circumstances in which this deadline can be extended:

- if an FT has given a fees notice that has not yet been paid;
- if the FT reasonably needs more time to consider the public interest test; or
- if the FT reasonably asks for clarification of the request.

(For more on fees and the public interest test see below.)

EXEMPTIONS AND THE PUBLIC INTEREST TEST

There are two types of exemptions – absolute exemptions and qualified exemptions. In order to rely on an absolute exemption, an FT simply has to show that it applies. To illustrate, there is an absolute exemption that applies if there is legislation that prohibits an FT from releasing the information. As long as the FT can establish such legislation is in place, the exemption applies and the information can be withheld.

In order for an FT to withhold information under a qualified exemption, it has to show both:

- that the exemption applies; and
- that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

To illustrate, one of the qualified exemptions applies to information that would be likely to damage commercial interests if it were to be released. To take advantage of this exemption, an FT has to demonstrate firstly that commercial interests are likely to be harmed by release of the information, and secondly that there is a greater public interest in the information being withheld, than in it being released.

Public interest arguments in favour of information being released typically include a recognition that there is a public interest in public bodies acting transparently, both to increase public understanding of what they do and also to promote accountability. Arguments in favour of information being withheld often centre on the point that if the information is released it will be harder for an FT to do its job properly, or where the prejudice to the person who would be harmed by the release of the information is more serious than the beneficial effects to the public of releasing the information. The weighing up of these competing considerations is called the "public interest test".

Certain considerations will not be relevant when considering the public interest test. The fact that information is complex, incomplete or could be misleading if taken out of context should not, in themselves, be used to justify non-disclosure. Information should be disclosed if the only likely harm would be embarrassment to an FT (though if disclosure might discourage openness in the expression of opinions then that might be a good reason for withholding it).

PREJUDICE

Many of the exemptions apply if 'prejudice' would or would be likely to be caused to an individual or [organisation] if the requested information were to be released. Decisions by the Information Commissioner (the IC) and the First-tier Tribunal (Information Rights) that oversees the IC (formerly the Information Tribunal) have stressed the key importance of being able to demonstrate that prejudice will or is likely to occur when using these exemptions. It is not sufficient to anticipate some difficulty as a result of information entering the public domain. There must be a concrete idea of what would happen and how this would cause prejudice, based on evidence. For example, if an FT relied on the commercial interests exemption to withhold information about one of its suppliers, it would be best practice for the FT to get the supplier to set down in writing precisely how its commercial position would be damaged by the information being released e.g. release of detailed pricing information might mean that it is likely to be undercut in an upcoming tender for the delivery of similar services to another FT.

The IC will often ask whether an FT considers that prejudice 'would' or 'would be likely' to occur. In practice, most FTs will argue that prejudice would be likely to occur as this is an easier test to fulfil. Arguing that prejudice is only 'likely' means that the public interest in withholding the information is less than if the prejudice were certain, but in practice this makes little difference.

APPLYING THE EXEMPTIONS

It is often the case that more than one exemption will apply to the same information. It is advisable to identify all exemptions that may apply. In the event that an FT's decision to withhold information is challenged, the IC can then consider the applicability of all of these exemptions.

REFUSAL OF A REQUEST

When an FT writes to an applicant to explain how their FOIA request has been dealt with there are certain things that must be included in that letter. The letter is often referred to as a 'refusal notice'. A further briefing note in this series includes a template refusal notice that you can adapt.

It is advisable to outline at the beginning of the refusal notice the information that has been requested by the applicant. This ensures that both parties are clear on what information it is that has been requested and is particularly useful if an FT has needed to clarify a request. If you have interpreted a request in a particular way this should also be set out. For example if someone

has asked for details of payments to a cleaning contractor over the last three years you may well have interpreted this to mean the last three financial years and this should be explained.

The refusal notice should then go on to outline exactly what information it is that the FT holds that falls within the scope of the request. If even acknowledging the existence of a certain piece of information is problematic (for example the existence of minutes of a disciplinary meeting with a particular employee) then it may be that you do not need to supply this information. However, this is only the case if one of the exemptions in the FOIA applies to release of the fact that the information exists.

If you are withholding information then you need to explain exactly which exemption you are applying and why you consider that it means the information should not be released. If you are withholding several different pieces of information you need to be clear which exemptions are being applied to which pieces of information. It is sometimes easiest to do this by listing the information that has been withheld in a table. If any of the exemptions you are relying on require 'prejudice' then you need to provide as much detail as possible as to what damage would be done by the information being released. You should also be clear whether you are claiming that prejudice 'would' or 'would be likely to' occur.

If any of the exemptions you are relying on are qualified exemptions then you will need to state that you have considered the public interest test and also outline the factors you have weighed for and against disclosure. As FTs have a duty to advise and assist applicants making FOIA requests, if there is a way in which the applicant could phrase their request differently which would mean that it would not fall foul of one of the exemptions then this should be explained. For example, an applicant may have asked for details of the names, job titles and level of qualification (GCSE, A level, degree, etc) of each officer working in its IT team. An FT might be reluctant to release this information, particularly with regards to the more junior employees. However, in accordance with its duty to advise and assist it would be advisable for the FT to indicate that it could provide an anonymised list detailing the job titles and level of qualification only.

There is a particular requirement to state whether there is any internal appeal available to an applicant if they are dissatisfied with the response to their request. It is advisable to offer such an internal appeal as it gives the FT an opportunity to put right any errors before any complaint is made to the IC. There is no need to have a special process for FOIA complaints – your regular complaints process can be used. However, it is advisable that someone not involved in the original consideration of the request consider the appeal. Note also that the Information Commissioner expects any internal appeal to be resolved within 20 working days with a maximum limit of 40 working days for the most complex of requests.

FTs must inform applicants that if they are dissatisfied with the final decision of the FT they can make a complaint to the Information Commissioner. The FT is required to supply the address to which complaints can be made which is as follows: First Contact Team, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

APPENDIX 32B

FREEDOM OF INFORMATION BRIEFING: THE EXEMPTIONS

INTRODUCTION

In total there are 23 exemptions in the FOIA which allow the withholding of information. There are also two further sections which permit information to be withheld if the costs of doing so would exceed a certain limit, or if the request is vexatious or repeated. This note deals with the exemptions that are most likely to be used on a regular basis by FTs. These exemptions are listed below together with links to guidance from the Information Commissioner (IC) on their application. The remainder of this note provides some further guidance on the key exemptions.

- **Section 12**
  Cost of compliance
- **Section 14**
  Vexatious requests and repeated requests
- **Section 21**
  Information reasonably accessible to the applicant by other means
- **Section 22**
  Information intended for future publication
- **Section 31**
  Law enforcement
- **Section 32**
  Information contained in court records
- **Section 36**
  Free and frank discussion and the effective conduct of public affairs
- **Section 38**
  Health and safety
- **Section 40**
  Personal data
- **Section 41**
  Information provided in confidence
- **Section 42**
  Legal professional privilege
- **Section 43**
  Commercial interests
- **Section 44**
  Prohibitions on disclosure

Please see appendix 33 for an explanation of the difference between absolute and qualified exemptions, the public interest test and demonstrating prejudice.

SECTION 12 – COST OF COMPLIANCE

Section 12 provides an absolute exemption for FTs from complying with an FOIA request if the costs of doing so would exceed £450. This would not exempt an FT from complying with its obligation to confirm whether or not it holds the information requested, unless the costs of finding out that alone would exceed £450.

In calculating the expected costs of complying with a request, an FT may take into account only the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information;
- retrieving the information, or a document containing the information;
- extracting the information from a document containing it.

An FT cannot take into account time spent:

- considering exemptions;
- redacting exempt material.

When calculating how much it would cost to comply with a request an FT must cost the time spent by any member of its staff (whether a junior officer or the chief executive) at £25 per hour. This means that if it will take more than 18 hours of staff time to identify, locate, retrieve and extract the requested information, the request will exceed the cost of compliance limit and the information will therefore be exempt.

The refusal notice must explain in some detail why it is that a request exceeds the cost of compliance. Often this means giving an overview of the volume of information concerned and how it is held. The explanation given should provide enough detail to the applicant to allow them to narrow down the request, if possible, so that it falls beneath the cost of compliance threshold.

SECTION 21 – INFORMATION IS REASONABLY ACCESSIBLE TO THE APPLICANT BY OTHER MEANS

This exemption provides that an FT does not need to provide information if that information is reasonably accessible to the applicant. It is an absolute exemption and therefore is not subject to the public interest test. If the requested information is on an FT's website it will usually be reasonably accessible to the applicant and therefore exempt. If an FT relies on this exemption it should point the applicant in the direction of the place where the information can be found.

The effect of this exemption is that proactive publication of information on an FT's website can greatly reduce the burden of complying with FOIA requests.

SECTION 31 – LAW ENFORCEMENT, INCLUDING INTERNAL INVESTIGATIONS

This exemption is rather misleadingly named and can apply to an FT investigation into whether any of its employees is responsible for conduct that is improper, or carried out to protect patients against risks to their health or safety of arising from the actions of FT personnel. The wording of the section is quite lengthy, but should you wish to refer to it the relevant parts are 31(1)(g) alongside 31(2)(b) and (j). The exemption is a qualified exemption so it is also necessary to consider the public interest test.

SECTION 36 – FREE AND FRANK COMMUNICATIONS AND PREJUDICE TO THE EFFECTIVE CONDUCT OF PUBLIC AFFAIRS

Section 36 is a qualified exemption and is broken down into many parts. It is important to be clear which parts you are relying on. There are three parts that are relevant to FTs:

- **Section 36(2)(b)(i)**
  this applies where release would or would be likely to inhibit the free and frank provision of advice.
- **Section 36(2)(b)(ii)**
  this applies if release would or would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
- **Section 36(2)(c)**
  this applies if release would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of public affairs.

This exemption can only be used if its use has been signed off by the 'qualified person' at an FT. This will be the FT's chief executive. The chief executive must reasonably conclude that release would cause the problem contemplated by the relevant part of section 36 and must also arrive at their decision through following a reasonable process. This means that it is very important to have a paper trail of the documents and arguments considered by the chief executive. It is therefore usually advisable for the information officer to draft the chief executive a note outlining the arguments for and against disclosure.

It is strongly advisable that the chief executive be provided with:

- a copy of the Information Commissioner's guidance on the application of section 36;
- a copy of the request;
- a copy of the requested information.

It is crucial that the chief executive takes their decision at the time when the request is being considered by the FT. It is difficult to rely upon section 36 for the first time once a complaint has gone to the Information Commissioner.

A form has been published by the Information Commissioner that can be used by FTs to record the chief executive's opinion when the FT is relying on the section 36 exemption.

The exemption is a qualified exemption so you will also need to consider the public interest test (this element of the exemption does not have to be signed off by the chief executive).

SECTION 40 – PERSONAL DATA

Section 40 can be applied to withhold information if information that has been requested is 'personal data'. There is significant amount of case law and legal debate on what constitutes 'personal data' but in most cases, where an individual is identifiable and the focus of the information, it will amount to their personal data.

If someone asks for their own personal data, then you must deal with this as a subject access request under the Data Protection Act 1998, instead of FOIA.

If the information requested is the personal data of a third party, you may be able to withhold it under section 40. Section 40 applies if releasing third party personal data would breach one of the Data Protection Principles (DPPs) set out in Schedule 1 of the DPA. In practice an FT need only look at whether the first DPP would be breached. This states that:

- personal data must be processed 'fairly and lawfully';
- one of the conditions in Schedule 2 of the DPA must be met;
- if the information is 'sensitive personal data' (as defined by the DPA) one of the conditions in Schedule 3 must also be met.

PROCESSING PERSONAL DATA 'FAIRLY AND LAWFULLY'

This involves weighing up any reasonable expectation of the individual concerned that the information will remain private against any public interest in its disclosure.

It is normally in line with the first DPP to release more information for senior employees. This is because holding the positions and level of responsibility that they do within the public sector, those individuals do not have a reasonable expectation for that information to remain private. The same cannot be said of junior employees who have little input into policy making and little responsibility for public expenditure. So far as those employees are concerned they have a reasonable expectation that more detailed information about their employment will remain private.

If an FT is satisfied that release of the information would be fair to the individual concerned, it also has to demonstrate that one of the conditions set out in Schedule 2 of the DPA would be fulfilled before the information can be released.

SCHEDULE 2

Condition 6 of Schedule 2 is fulfilled if:

- release of the information is necessary in order for the FT or the requestor to pursue 'legitimate interests'; and
- disclosure does not cause unwarranted prejudice to the person the information is about.

Responding to an FOIA request has been recognised as a legitimate interest. If the FT has concluded release is fair, it is unlikely to cause the individual unwarranted prejudice, in which case condition 6 is fulfilled.

SCHEDULE 3

If the personal data that has been requested is about an individual's:

- race or ethnicity;
- political opinions;
- religious or philosophical beliefs;
- trade union membership;
- physical or mental health;
- sex life;
- commission or alleged commission of any criminal offence, criminal court proceedings or sentence;
- it is sensitive personal data as defined in the DPA.

This means that one of the conditions in Schedule 3 of the DPA must also be fulfilled for release under the FOIA to be permitted. These conditions are narrow. If one cannot be met then the section 40 exemption applies, as release of the information would breach the first DPP.

SECTION 41 – INFORMATION PROVIDED IN CONFIDENCE

Section 41 applies if the requested information was obtained by the FT from another person or organisation and disclosure would result in a breach of confidence over which that person could successfully take legal action. This is an absolute exemption so FTs do not have to consider the public interest test as set out in the FOIA. However, in order to determine whether an action against it for breach of confidence would succeed, an FT will need to consider whether it would have a "public interest defence" to any claim brought against it. In practice this is very similar to considering the public interest test.

This exemption cannot apply to information generated by the FT itself e.g. minutes of internal meetings.

SECTION 42 – LEGAL PROFESSIONAL PRIVILEGE

Section 42 applies if the requested information is protected by legal professional privilege i.e. is information created in order to seek or provide legal advice, or to help prepare for a legal claim (either actual or anticipated). It is a qualified exemption. If the information is covered by legal professional privilege the IC will usually be persuaded that it should be withheld as there is a very strong public interest in favour of maintaining the exemption so FTs can freely take legal advice.

SECTION 43 – COMMERCIAL INTERESTS

Section 43(2) can apply if the information requested would be likely to damage an organisation's commercial interests if disclosed. The commercial interests may be those of the FT, or of a third party (for example a contractor). It is not enough simply to state that a party's commercial interests would be likely to be damaged by disclosure. In order to rely on this exemption, the FT will need to give details of what the consequences of disclosure would be and why these would lead to prejudice. If the FT is relying on prejudice to a third party, it should get written details from that third party of why it believes its commercial interests would be damaged by disclosure (e.g. release of detailed pricing information might mean that it is likely to be undercut in an upcoming tender for the delivery of similar services to another FT). This is a qualified exemption, so you will need to consider the public interest test.

SECTION 44 – PROHIBITIONS ON DISCLOSURE

Section 44 is an absolute exemption and applies if disclosure of the information requested is prohibited by law, or would be a contempt of court (for example if the information is subject to a court order banning its disclosure).

APPENDIX 32C

FREEDOM OF INFORMATION: REFUSAL TEMPLATES

Dear [insert name]

BACKGROUND

I refer to your original request for information under the Freedom of Information Act 2000 (the Act), received by us on [insert date] which reads as follows:

[Insert exact wording of request here, including any later clarifications by the applicant]

[Insert explanation of how the request has been interpreted if this is not clear from the wording of the request itself e.g. if request is for spend on travel over the last year is this taken to mean a year to the date of the request, the latest calendar year or the latest financial year?]

This letter provides the trust's response to your request.

THE TRUST'S RESPONSE

Under the Act, the trust has two duties to individuals requesting information: firstly to confirm whether or not it holds the information requested and secondly to provide a copy of that information. The trust must comply with both of these duties, unless one of the exemptions contained within the Act applies.

I can confirm that the trust does hold information of the type you have requested as follows:

[List the information that has been found that falls within the scope of the request unless acknowledgment of the existence of the requested information alone is so sensitive that one of the FOIA exemptions applies (e.g. minutes of a disciplinary meeting)]

This information is enclosed. [Or]

Under the Act the trust does not have to provide you with a copy of this information if one of the exemptions in the Act applies. In this case the trust considers that the [insert section number and title of exemption] applies, so will not be providing you with a copy of this information.

CONSIDERATION OF EXEMPTIONS

[Complete the following for each of the exemptions relied upon]

Wording for qualified exemption
Section [x] can apply if [give brief summary of exemption]

Section [x] is a qualified exemption. This means that it only applies if the public interest in withholding the information outweighs the public interest in disclosing the information. This balancing exercise is known as the 'public interest test'.

In this instance the trust considers that section [x] is engaged in relation to [insert description of information to which the exemption is being applied] because [insert explanation; the more detail the better – may run to several paragraphs]

As section [x] is a qualified exemption the trust has also considered the public interest test.

In favour of disclosure the trust has noted the general public interest in transparency, accountability and promoting understanding of how the trust operates. It also considers that there is a public interest in [insert further public interest reasons why information should be disclosed].

The trust has considered the following factors in favour of withholding the information. Firstly, [insert detail of public interest factors favouring withholding the information].

The trust has concluded that on balance the greater public interest lies in the information being withheld. We will therefore not be providing you with the information that you have asked for.

Wording for absolute exemption
Section [x] applies if [give brief summary of exemption].

In this instance the trust considers that section [x] applies to [insert description of information to which the exemption is being applied] because [insert explanation; the more detail the better – may run to several paragraphs]

FURTHER QUERIES

[If any information has been withheld: I hope that this explanation to you of why the trust has not disclosed the information you have sought is clear.] Should you have any questions, please contact me by [insert contact details]. If you are unhappy in any way with the way in which your request has been handled, the trust has an internal complaints procedure through which you can raise any concerns you might have. Further details of this procedure can be obtained by contacting [insert name and contact details].

If you are dissatisfied with the outcome of the complaints procedure, you can appeal to the Information Commissioner, who will consider whether the trust has complied with its obligations under the Act, and can require the trust to remedy any problems. You can find out more about how to do this, and about the Act in general, on the Information Commissioner's website at: www.ico.org.uk.

Complaints to the Information Commissioner should be sent to:

First Contact Team,
Information Commissioner's Office
Wycliffe House, Water Lane
Wilmslow, Cheshire
SK9 5AF.

Yours sincerely

DAC Beachcroft is widely recognised as the leading strategic, commercial and regulatory legal adviser to the health and social care sector in the UK. We get to the heart of the issues that matter to you, combining innovation with practicality to help our clients achieve sustainable improvements in patient care.

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NHS Providers has more than 90 per cent of all NHS foundation trusts and aspirant trusts in membership – who collectively account for £65 billion of annual expenditure and employ more than 928,000 staff.

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