

Item 5.5b

Annual Report 2021/22 - Compliance with the Code of Governance

Liverpool Heart and Chest Hospital NHS Foundation Trust has applied the principles of the NHS Foundation Trust Code of Governance ('The Code') on a 'comply or explain basis'. The NHS Foundation Trust Code of Governance, most recently revised in July 2014 is based upon the principles of the UK Corporate Governance Code issued in 2012.

During 2021/22, the Board of Directors has maintained governance policies and processes that reflect the principles of the Code, including:

- A clear vision, underpinned by strategic objectives and operational plan
- A Corporate Governance Manual which includes the constitution and procedures by which the Board of Directors and Council of Governors operate; the Scheme of Reservation and Delegation, the Board Committee structure and associated Terms of Reference, Standing Financial Instructions and key corporate policies.
- At least half the Board of Directors, excluding the Chair, comprises independent non-executive directors;
- The appointment of a Senior Independent Director;
- Regular private meetings between the Chair and non-executive directors;
- Robust annual appraisal process for the Chair and non-executive directors that has been developed and approved by the Council of Governors;
- Robust recruitment process for the appointment of Non-executive and Executive Directors;
- Induction process for Non-executive and Executive Directors;
- Comprehensive induction programme and ongoing training programme for Governors;
- Annual review of non-executive director independence;
- Annual review of compliance with Fit and Proper Persons' criteria for all Directors;
- Publicly accessible Register of Interests for Directors, Governors and senior staff;
- Senior Governor appointed;
- Provision of Board minutes and summaries of the Board's private business to governors;
- Effective infrastructure to support the Council of Governors including sub committees, interest groups and informal meetings with the Chair;
- Process for annual evaluation of the Council of Governors and for setting key objectives / priority areas for the following year;
- Membership Strategy with KPIs and engagement plan reported to the Council of Governors;
- Two Nominations and Remuneration Committees for executive and non-executive appointments / remuneration respectively – in the case of non-executive appointments / remuneration recommendations are made to the Council of Governors for approval;
- High quality reports to the Board of Directors and Council of Governors;
- Board evaluation and development plan;
- Codes of Conduct for Governors and for Directors;
- Going concern report;

- Robust Audit Committee arrangements;
- Governor-led appointment process for external auditor
- Freedom to Speak Up (Raising Concerns) Policy;
- Anti-fraud policy and plan

The Board of Directors conducts an annual review of the Code of Governance to monitor compliance and identify areas for further development.

The Board has confirmed that, with the exception of the following two provisions, the Trust has complied with the provisions of the Code in 2021/22.

Liverpool Heart and Chest Hospital departed from:

- i) Provision B6.2 which states:

‘BoD evaluation should be externally facilitated at least every 3 years. The evaluation needs to be carried out against the board leadership and governance framework set out by Monitor (now NHSEI). The external facilitator should be identified in the annual report and a statement made as to whether they have any other connection to the trust’

The Board last commissioned an independent evaluation against the Monitor Well Led Framework in March 2017, and therefore compliance with this provision, required a further review in March 2020. After giving careful consideration to this requirement, the Board determined that commissioning a further comprehensive external review did not offer best value; it deferred further consideration of a second review until Quarter 4 of 2020/21, but this was further deferred due to escalation of the coronavirus pandemic which has continued throughout 2021/22. The NHS reforms and development of Integrated Care Systems place a new emphasis on the Well Led Framework. The Board will review the options for an independent well led review, whilst also awaiting further clarity on legislative change and the development of new local systems and governance structures.

Since publication of the Code, the regulatory approach has changed and in two successive CQC inspections (2016 and 2019), the Trust was rated ‘outstanding’, ‘overall’ and specifically for ‘well led’. The Board has undertaken its own annual self-assessment based upon the acceptability of external assurances received; review of the Board development plan driven by the Trust’s objectives, vision and values; and Board Director appraisals. The Board has continued to reprioritise the Board development plan during 2021/22 including the positioning of the Trust and collaboration in relation to Integrated Care Systems Development. In the context of the leadership and governance framework, the Board has carefully considered the composition of the Directors and skill-set needed for the future as it implements its NED succession plan with the Council of Governors and through the recruitment of Executive Directors.

In summary, whilst the Board has not comprehensively re-evaluated against Monitor’s leadership and governance framework, it has made use of external assurances and commissioned independent advice where it has deemed this to offer most value in delivering improvement for the benefit of patients and staff in line with the Trust’s Vision, values, strategy and to support it in leading its emergency response to the pandemic.

ii) Provision B.7.1 which states:

'Any term beyond six years (e.g. two three year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the Board. Non-executive directors may, in exceptional circumstances, serve longer than six years (e.g. two three year terms following authorisation of the NHS Foundation trust) but this should be subject to annual re-appointment. Serving more than six years could be relevant to the determination of a non-executive's independence.'

The Chair was re-appointed by the Council of Governors (September 2019) for a final term ending 31st March 2022, at which point he will have served on the Board of the Foundation Trust for almost thirteen years.

The Board has determined that the Chair continues to be independent and there is clear evidence of continued challenge. The Chair has no material conflicts of interest and maintains a clear boundary between personal and professional relationships. There has been a consistent turnover of non-executive directors, bringing collective challenge and fresh perspective to the Board. There was a change of Senior Independent Director in 2019 and focus on the Board succession plan. Specifically, there is a robust succession plan in place to support the appointment of a new chair with effect from 1st April 2022 and the Nominations and Remuneration Committee convened in May 2021 to review the succession plan in light of the changing external environment, including NHS reform.

The Council of Governor's decision to continue the Chair's tenure took account of the Chairman's outstanding contribution and performance; and as the Board has seen a refresh of non-executive directors, the re-appointment of the Chair would provide ongoing stability during a challenging operational period within a rapidly changing external environment.

The Council of Governors also recognised the Chair's specific experience and personal networks in the context of the Trust's wider systems leadership role within Cheshire and Merseyside and the Liverpool system, including the Specialist Trust Alliance. The extended appointment was discussed with both the external auditor and NHSE/I Regional Office prior to approval by the Council of Governors.

Julian Farmer, Non-executive Director has been re-appointed by the Council of Governors until 30th November 2022, at which point he will have served on the Board of the foundation trust for 7.5 years. A review of Julian Farmer's independence and other criteria including the importance of continuity in light of other NED changes was undertaken by the Council of Governors to support his extended period of office. The Board has reviewed and confirmed continued independence.

With a new Chair appointed from 1st April 2022, the succession plan and recruitment timetable will be further reviewed following the conclusion of the current NED recruitment process.