

Board of Directors (in Public)

Item 5.5

Subject: Review of Compliance with NHS Foundation Trust Code of Governance
Date of Meeting: Tuesday 29th March 2022
Prepared by: Karan Wheatcroft, Interim Chief Governance Officer
Presented by: Karan Wheatcroft, Interim Chief Governance Officer
Purpose of Report: For Approval

BAF Ref	Impact on BAF
BAF 1, BAF 7	This paper provides assurance that a comprehensive evaluation of the FT Code of Governance has been undertaken – there are two provisions for which the Trust is not fully compliant and explanations will be disclosed in the annual report 2021/22.

1. Executive Summary

The Code of Governance operates on a 'comply or explain' basis. The purpose of the paper is to ask the Board to review and confirm compliance with the Code of Governance. (Appendix 1). The review highlights two exceptions to the Code:

(i) Provision B. 6.2 which relates to carrying out an independent evaluation of Board leadership and governance at least every 3 years

'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. 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 commissioned an independent evaluation against the Monitor (now NHSEI) Well Led Framework in March 2017, and therefore a further review was due in March 2020. At this time, the Board gave careful consideration to this requirement and decided that commissioning an external review in 2019/20 did not offer best use of Trust resources given the assurance received following the CQC's assessment of the Well led criteria as 'outstanding' in the summer of 2019. The Board determined that it would consider the timing of a second comprehensive independent review in Quarter 4 of 2020/21, however this was further deferred due to escalation of the coronavirus pandemic which has continued throughout 2021/22. The Board continues to undertake an annual self-assessment and can demonstrate that its Board development work has been reprioritised to balance pandemic response with strategic development.

(ii) Provision B.7.1 which relates to the term served by non-executive directors (including the Chair):

'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.'

Neil Large has now served 12 years of office as Chair having served two 3 year terms and then re-appointed by the Council of Governors on an annual basis up until 13th October 2018, followed by a further two year re-appointment up until 13th October 2020; and then a final term of office linked to a clear succession plan, ending 31st March 2022. A particularly rigorous process was applied in respect of the two most recent re-appointments which was approved by the Council of Governors in June 2018 and September 2019 respectively.

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.

The Code requires Foundation Trusts to disclose their governance arrangements for the financial year (2021/22) in the annual report. The Code also requires the Board to explain how the main principles and supporting principles of the Code have been applied; and to provide a statement either confirming compliance with the provisions of the Code, or where appropriate, an explanation in each case as to why the Trust has departed from the Code. A proposed disclosure statement has been prepared for consideration and approval by the Board (Appendix 2).

2. Background

The *NHS Foundation Trust Code of Governance* ('the Code') brings together good practices of the public and private sectors in order to help NHS foundation trust boards maintain good quality corporate governance.

The Code was last updated in July 2014 (NHS Improvement). Foundation Trusts are required to report on how they have applied the principles of the Code and to provide an explanation regarding any provisions that have not been complied with in the annual report.

The Code sets out 5 key principles which NHS foundation trust boards should adopt:

1. **Leadership** - As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy. Non-executive directors should also promote the functioning of the board as a unitary board
2. **Effectiveness** - The board of directors is responsible for ensuring ongoing compliance by the NHS foundation trust with its licence, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations.
3. **Accountability** - The board of directors should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles.
4. **Director remuneration** - There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors.

5. **Relations with Stakeholders** - The board of directors is responsible for ensuring that the NHS foundation trust co-operates with other NHS bodies, local authorities and other relevant organisations with an interest in the local health economy.

The full Code can be accessed via NHSI's website at

<https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>

The Code is best practice advice and operates on a 'comply or explain' basis and therefore non-compliance is not in itself a breach of Condition 4 of the Provider Licence (the Governance condition). However, there are some statutory requirements that are highlighted in the Code and these must be adhered to.

3. Review of Compliance

A review of compliance with each provision of the Code is attached at Appendix 1. A draft disclosure has been prepared for inclusion in the Annual Report 2021/22 (Appendix 2).

4. Recommendations

The Board of Directors is asked to:

- i) receive the compliance review (Appendix 1), note the actions and confirm the Trust's compliance position ('comply' or 'explain') in respect of all provisions; and
- ii) approve the disclosure statement for inclusion in the 2021/22 Annual Report (Appendix 2).