

Item 5.5b

Annual Report 2020/21 - 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 2020/21, 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 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 2020/21.

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. 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 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 not addressed due to escalation of the coronavirus pandemic.

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. As a result of the global pandemic, the Board reprioritised its 2020/21 Board development plan and brought in external expertise to advise on matters such as staff resilience, equality and inclusion, the positioning of the Trust in relation to Integrated Care Systems Development and a review of strategic risk and risk appetite in the context of the changing external environment.

Therefore, 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 will convene 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.

The tenure of one of the Non-Executive Directors also expired during 2020/21 and after careful consideration Mark Jones was appointed for a further 12 months to 1.12.21. At the same time as reviewing Mark Jones' appointment, the Council of Governors took the decision to re-appoint Julian Farmer for 6 months to 30.11.21 (he will have served six years at the end of May 2021). This was to create stability for the Board during the pandemic response and in recognition of the fact that a recruitment process and subsequent induction programme, would be significantly restricted due to the requirement for remote working of the Chair, Non-Executive Directors and Governors during the pandemic. It was decided that aligning the end of tenure dates for both NEDs would allow opportunity to begin a search and recruitment process in summer 2021 and the appointment and induction of two new Board members together. The succession plan and recruitment timetable will be reviewed in May 2021 in the context of the pandemic and any prevailing restrictions.