

Board of Directors (Public) Item 6.3

Subject: Review of Compliance with NHS Foundation Trust Code of Governance **board report**
Date of meeting: 31st March 2015
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Data Quality Rating	BAF Ref	Impact on BAF
Silver	All	None

1. Introduction

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

The latest revisions to the Code came into effect from 1st January 2014 with some minor corrections and amendments published by Monitor in July 2014. 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 has previously been circulated to all Board Directors and Governors and can be accessed via Monitor'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.

2. 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 2014/15 (Appendix 2).

During the course of the last review in March 2014, the following recommendations were made to enhance the Trust's existing governance arrangements:

- i) Refine Terms of Reference of Nominations Committee (NEDs) such that when the Chair is being appointed, the Committee is chaired by the Senior Independent Director (not the Deputy Chair)
- ii) Give consideration to establishing a formal process to deal with the removal of a Governor from the Council of Governors

Action i) will be addressed in the next review of the Corporate Governance Manual (July 2015) – the current Chair's tenure does not expire until October 2016.

A time limited Governance Task Group met in 2014 and considered Recommendation ii) but concluded that an additional process could be too prescriptive. It was agreed that the process set out within the constitution would suffice at the present time.

Two further actions were agreed by the Board:

- Strengthen the Executive Director appraisal process by ensuring input from the Trust Chair on each Executive Director's performance in relation to the Board of Directors – this is now in place
- Formalise the Board Development Plan 2014/15 – completed for 2014/15 but there is a requirement for the Board to set a Board Development plan for 2015/16

These actions are being taken forward by the Chair and Chief Executive.

In the 2013/14 annual report, the Trust made a disclosure in relation to Provision B.6.2, explaining that as this provision was new to the Code, it had not yet been implemented. The Trust's intention is to commission an external review of governance in 2016/17 which is within 3 years of the provision being introduced. It is considered that this complies with the intent of the Code and of Monitor, the independent regulator, and therefore it is proposed that the Trust deems itself compliant with this provision in 2014/15.

3. Recommendations

The Board of Directors is asked to:

- i) Receive the compliance review (Appendix 1) and confirm the Trust's compliance with all provisions,
- ii) Support the developmental actions being progressed as described in 2 above

- iii) Approve the disclosure statement for inclusion in the 2014/15 Annual Report (Appendix 2)