



NHS Foundation Trust Governors

Governors: An Asset to be Developed

Introduction

Foundation Trusts have a duty to ensure that their governors are effective in their role. This effectiveness relies on the right local combination of governance infrastructure and the collective competence and confidence of the council of governors. The quality and strength of the business relationships that inform and support the governors will also have a significant impact on how they operate and the impact they make.

The purpose of this briefing is to help board members and company secretaries of both existing and aspirant NHS foundation trusts to meet their current and future responsibilities in relation to the governors and to fully exploit and value the council of governors as a key asset of the organisation.

Background to the NHS governor role

In the NHS in England the role of governor was legally established by the Health and Social Care Act 2003

which brought NHS Foundation Trusts (FTs) into being. FTs were designed to shift responsibility and ownership towards local communities. Governors were intended to be “the voice of local people, staff and partners, to hold the trust board to account”. The role was enhanced by statute in 2006.

A Developing Role

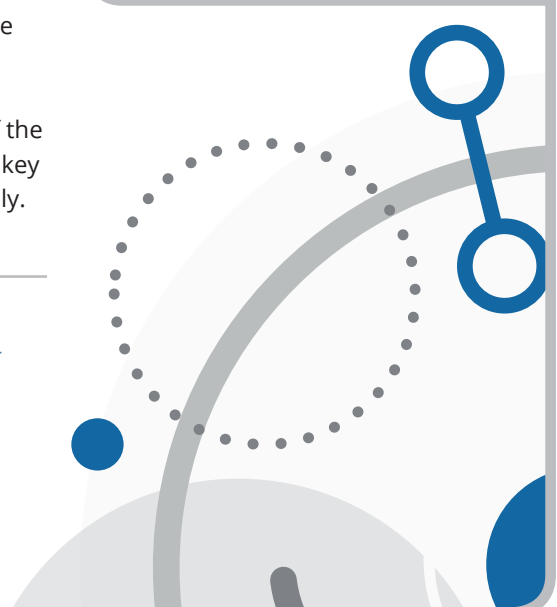
The 2012 Health and Social Care Act developed the role by setting out and building on the statutory responsibilities of NHS governors. This has required a change in emphasis, focus and expectation of the governor role. The Council of Governors (COG) must take account of public concerns and a re-setting of the public mood toward the NHS particularly relating to patient experience and clinical quality. Being able to effectively hold the non-executive directors (NEDs) individually and collectively to account for the performance of the board and to seek assurance is key to delivering the role successfully.

The Francis Report

In his report on the Mid Staffordshire NHS Foundation Trust, Robert Francis QC was critical of the deficiencies in the practice and capability of the governors in holding the Board to account for its actions and representing the interests of the public. He recommended several actions that would improve and enhance the governors’ role and which have since been addressed through legislation, the regulatory framework and professional guidance.

“NHS foundation trust governors are the individuals that bind a trust to its patients, staff and local stakeholders. They are the direct representatives of local interests within the governance structure of the trust. The functions they perform go beyond community liaison: they have statutory responsibilities with the potential to have a significant effect on the management of the trust.”

Developing the role of NHS foundation trust governors, Monitor, June 2008



The 2012 Act also prescribed additional responsibilities for FTs – in particular the trust must take steps to ensure that governors have the skills and knowledge they require to undertake their role.

FT Boards must ask themselves some searching questions to confirm that they are meeting their responsibilities towards the governors.

Key Question

- *Do you routinely assess your trust against these responsibilities?*

Foundation Trust Governors – the local framework

Each FT will define the expectations and requirements of governors within their constitution and code of governance as required by the FT licence. They will define the parameters and responsibilities of the role and identify what it means to be a “fit and proper person” to be a governor.

NHS governors are drawn from three specific groups – the public membership, staff and other stakeholders. All are “volunteers” with a variety of experiences, capabilities and motivations. Each group will bring a different emphasis, experience and perspective to inform and improve the collective knowledge, understanding and debate.

Staff and nominated governors are doing the work as part of their professional role within the FT and stakeholder organisations respectively. Public governors are unpaid for the role. All governors must commit to significant time commitment– e.g. training, meetings, public engagement, personal learning. Monitor’s

research over several years suggests that for public governors this may mean a demographic imbalance towards an older group of retired people who have the necessary combined experience, flexibility, time and interest.

Together all these people are required, under the leadership of the Chair and public scrutiny, to become the council of governors - an effective team with the right mind-set, skills, experience, interest and commitment to meet a wide range of statutory and practical responsibilities.

This includes, in particular, challenging the effectiveness of the Board in running the business of the organisation for the benefit of the public. The COG is required to operate as a cohesive, professional group, making collective decisions in the public interest, within the agreed operating framework, informed by but over-riding the personal views and special interests of individual governors.

Creating the right infrastructure for effective debate and good communication is critical and the COG must take ownership of how they want to operate. The agenda and minutes of the COG meetings and working groups are a key organisational record of significant importance, open to public scrutiny. They should reflect the essence of the business in a way that will accurately, honestly and concisely describe the activity, plans and views of the COG.

There may be a perception that the Chair has a conflict of interest in also being the Chair of the Board. The alternative view is that the Chair is the critical link between the Governors and the Non-Executive Directors (NEDs). Early clarification of the role and the development of a

good working relationship between the Chair and the COG is therefore crucial to the effectiveness of the governors.

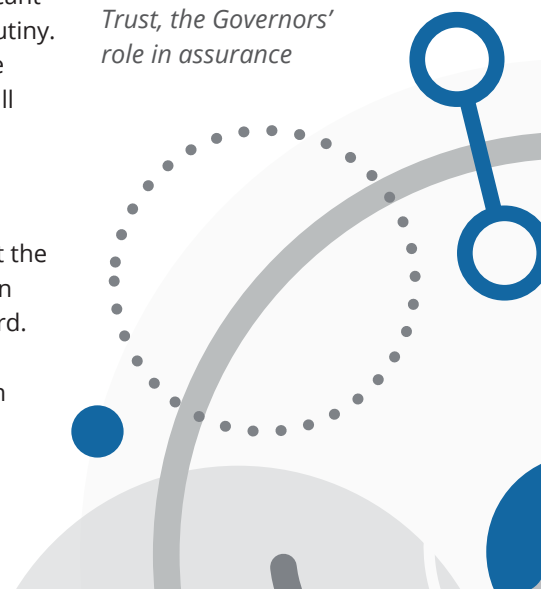
The Board must establish resilient communication channels for and with the COG. The FT must name one of its NEDs as the senior independent director (SID) who will be the point of contact if governors have unresolved concerns. Monitor have also requested FTs to nominate a “lead governor” who will liaise with Monitor in circumstances where the Chair cannot be the point of contact (but has no other leadership role within the COG).

Key Question

- *Have you fully described, updated and evaluated the local framework in collaboration with the COG?*

Duties and Responsibilities of the governors

“It is the duty of the Council of Governors to hold non-executive directors individually and collectively to account for the performance of the board of directors. While the board is a unitary body which takes collective responsibility for the performance of the Trust, the Governors’ role in assurance



BRIEFING NOTE: NHS Foundation Trust Governors

should take place primarily through the non-executive directors. It is also the duty of the council of governors to represent the interests of NHS Foundation Trust members and the public."

Health and Social Care Act 2012

These two key duties are supported by additional governor responsibilities and powers outlined in the 2006 and 2012 Acts. The meaning of "holding to account" is not prescribed in detail and so is open to local interpretation. The lack of a clear definition can cause a variety of concerns for both governors and NEDs which can be significant and need to be addressed overtly. The practicalities and parameters of representing the public interest will also vary depending on local context and need attention and agreement within the organisation.

Both duties require an appropriate blend of approach and evidence to be effective. Observation of board meetings, public engagement opportunities, debate at COG sub groups and governor networks, publications and media coverage all add to the rich mix of intelligence available to the COG and the NEDS. The use of social media, the right to question and organisational research are equally important.

When addressing these duties, governors must be clear that the board of directors bear ultimate responsibility for the trust's strategic planning and performance. The "holding to account" is designed to demonstrate to stakeholders that appropriate and effective decision making is taking place to meet the legal and moral duties of the Trust. Governors cannot be part of the process, other than by representing the public view. They may not always agree with the decisions taken by directors but they do not

have the power to veto them.

Directors do not have to adhere to the preference of the governors but they must take them into account during the decision making process, especially in relation to matters which concern the interests of the members and the public. They should give reasons when the views expressed by the governors, in relation to strategic planning for example, are not adopted by the Board and this should be fully noted in the meeting records.

Key Question

- *Have you discussed and agreed between the board and the COG how the two core duties will be supported and achieved?*

Creating an effective Council of Governors

Clarity of purpose is essential. Creating a comprehensive understanding of the concepts and implications of "holding to account by gaining assurance" and "representing the public" from the beginning will have significant impact on how the governors operate, individually and collectively. This in turn will impact on the effectiveness of the COG and also of the Board.

Overt mutual respect and agreement of the basic operating model for the COG is critical to the success of this key element of the governance framework. The process of developing a full picture of how the organisation is operating relies on the sense-making combination of what can be seen, heard, discussed and experienced by the governors. The right mix of access to the activity of the organisation, targeted conversations with service users, stakeholders

and staff, and a routine and regular supply of honest and meaningful information from the Board will create a valuable resource and effective environment in which the COG can operate.

The concept of transparency is critical to good governance but can also be misunderstood. Inexperienced or poorly informed governors may feel they need to ask questions of operational detail - not the domain of the COG. If the directors will not or cannot answer such questions, governors may feel that there is a lack of honesty and candour. Establishing a route for ongoing dialogue outside the formal COG meetings is an important element in developing the governor relationships. The Chair, working in collaboration with the Board secretary has a substantial and valuable role to play in building those relationships and providing a bridge from the COG, to the Board, to the staff and to the stakeholders

Key Question

- *Have NEDs and Governors jointly evaluated the effectiveness of the council of governors against a mutually agreed framework of KPIs?*



Competent and confident governors – supporting continuous learning and development

Self-analysis and reflective practice are important elements of the COG agenda and should be built in to the routine processes. In recent months MIAA have worked with clients to survey the views of the governors and to identify gaps in their learning and development that need to be addressed.

Examples of key positive signals from the governors in evaluating the duties of “holding to account” and “representing the public”:

1. Governors believe their role adds value to the Trust and that they

have a clear understanding of the organisation’s core business and strategic direction

2. Governors can all competently describe the duty of “holding to account” and how it can be achieved in practice

3. Meetings of the COG are encouraging debate with probing discussion in a professional, productive and supportive manner

4. There is good attendance at COG and related meetings and there are plenty of opportunities for the council to meet physically or virtually for discussion both formally and informally

5. The COG works together effectively as a team

6. There is effective engagement with members and the public to ascertain views on significant issues and changes at the Trust

7. Governors receive appropriate, timely and relevant information on Trust performance

8. Training and development is clearly reflected in the performance of the COG

Key Question

- *Have you created a reflective learning culture that will enable the COG to identify and meet its learning needs and so be able to evolve quickly and effectively to fulfil its role?*

Further Resources

www.gov.uk/monitor

- Survey of NHS foundation trust governors 2014/15 March 2015
- NHS foundation trust governors: your legal obligations August 2013
- Your statutory duties—a reference guide for NHS foundation trust governors March 2014
- NHS Foundation trusts: recruiting and engaging new members July 2011
- NHS foundation trust governors: representing the interests of members and the public March 2015
- NHS foundation trust governors and members: documents and guidance May 2014
- NHS foundation trust governors: guide to Monitor October 2009
- Director-governor interaction in NHS foundation trusts – a best practice guide for boards of directors June 2012
- NHS foundation trusts: Code of Governance July 2014
- The membership organisation for NHS provider trusts offering training for NEDs & Governors
- Working Together - the Care Quality Commission & foundation trust councils of governors
- Kings fund – various related updates, publications and discussions
- The NHS Constitution

www.nhsproviders.org

www.cqc.org.uk/FTgovernors

www.kingsfund.org.uk

www.nhs.uk/constitution

Contact Us

Please contact us if you would like to discuss how we may be able to

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