

Are Governors on top of their brief?

May 2023

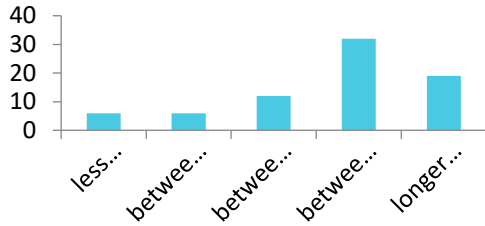
Background

- Changing NHS landscape
- Responding to numerous challenges in a post covid world.
- MIAA wanted to check in with governors to assess their understanding and preparedness for the governor role and responsibilities now and in the future.

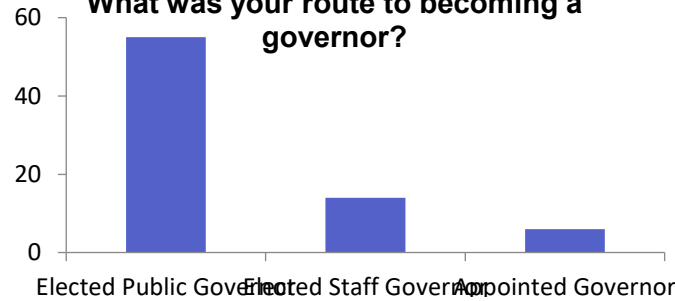
**MIAA conducted a survey of Governors
across our client base during 2022**

Survey Headlines

How long have you been a governor?



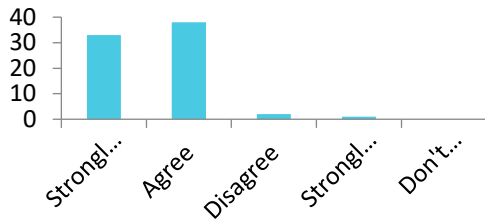
What was your route to becoming a governor?



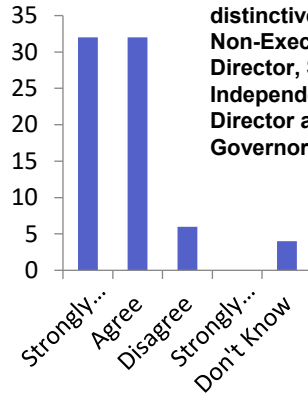
Key findings

- Responding governors have been in post a range of time, with 84% in post over a year
- Survey results represent views of a range of different types of governors
- 96% of governors felt clear about their roles and responsibilities overall
- Most governors were clear on the distinction between the roles of NEDs, Lead Governor and Senior Independent Director and what holding to account means.

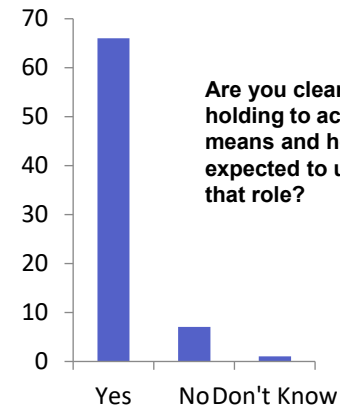
Overall I am clear about my role and responsibilities as a governor



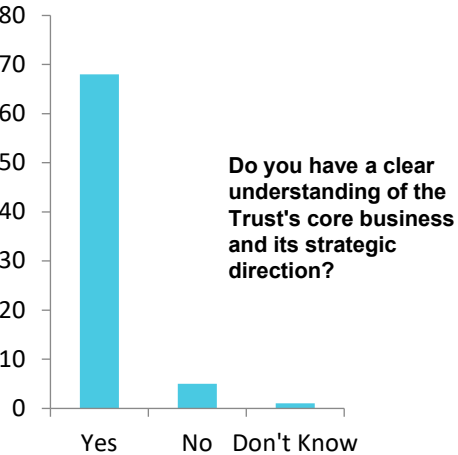
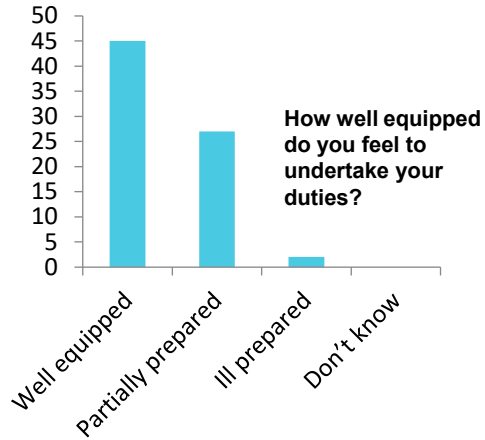
I understand the distinctive roles of Non-Executive Director, Senior Independent Director and Lead Governor



Are you clear on what holding to account means and how you are expected to undertake that role?

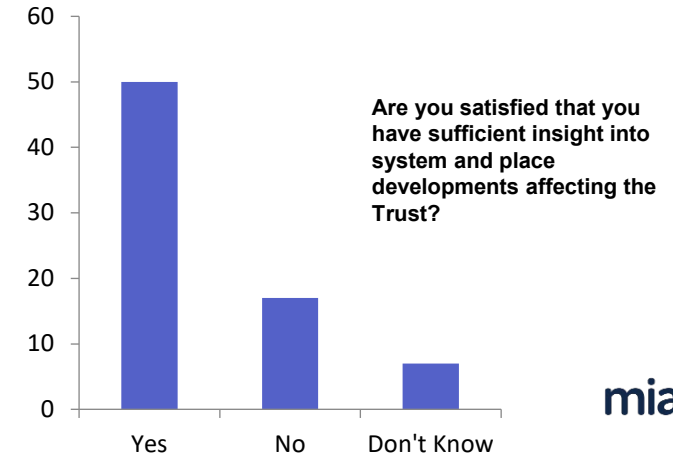
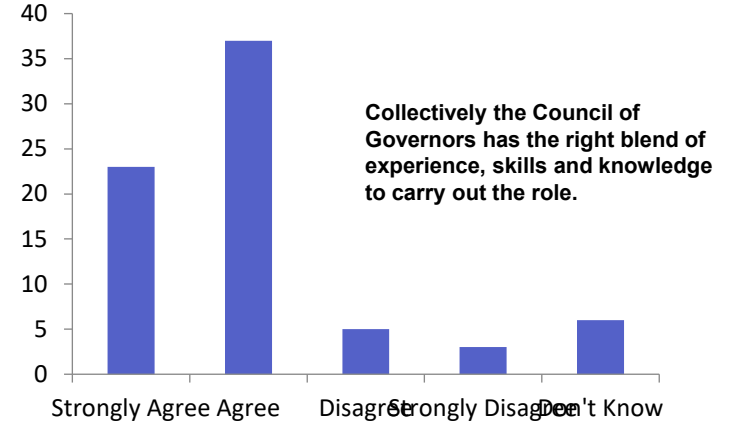


Survey Headlines

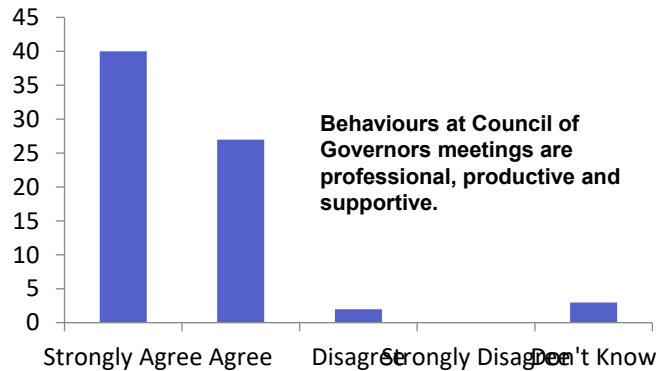
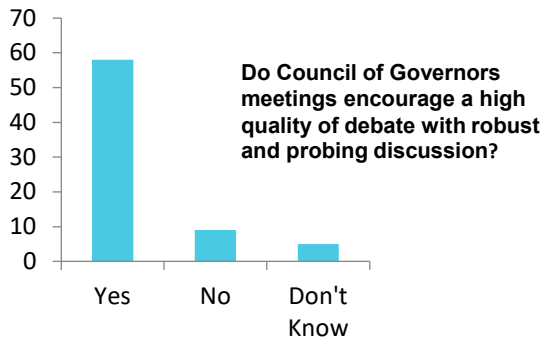
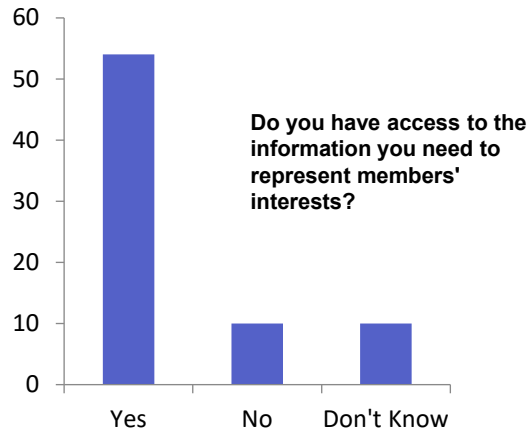
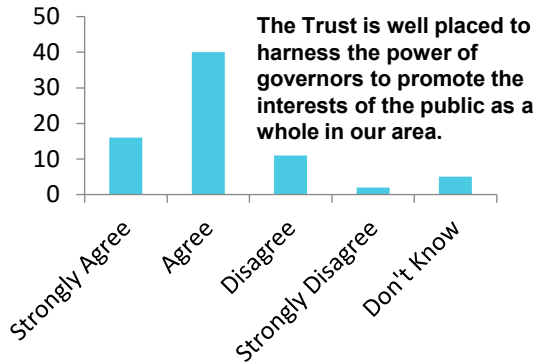


Key findings

- 60% of governors felt well equipped to undertake their duties with a number feeling they needed some kind of further support
- Around 81% of governors believe the Council of Governors has the right skills to carry out their role
- 92% of governors reported they understood their Trust's core business and strategic direction.
- The majority of governors felt they did have the right level of insight.



Survey Headlines



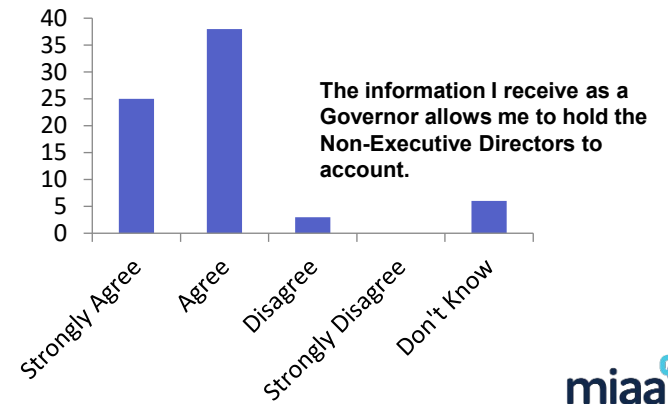
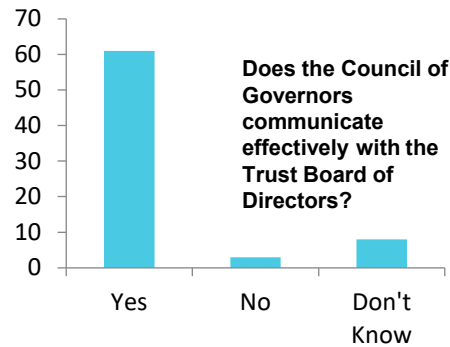
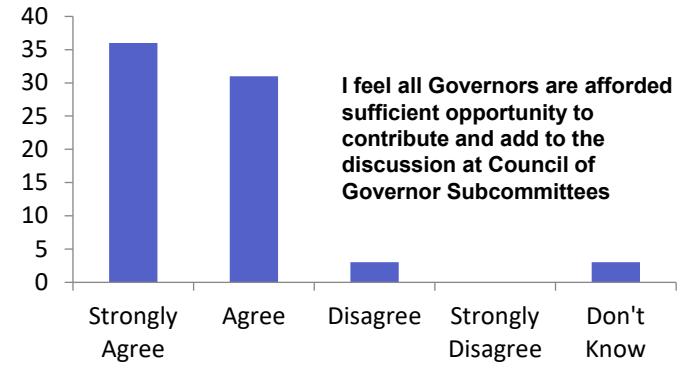
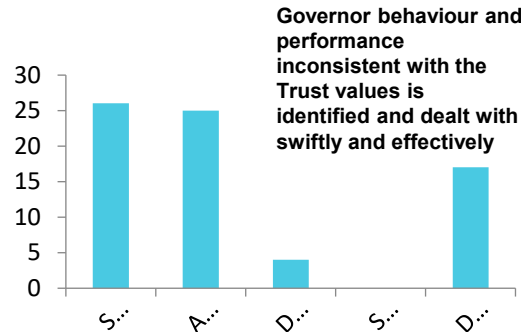
Key findings

- 76% of governors agree they are well placed to promote the interests of the public in their role
- 73% of governors feel they have access to information needed to represent members' interests
- 81% of governors felt there was high quality debate
- 93% of governors say that behaviours at meetings are professional, productive and supportive

Survey Headlines

Key findings


- 71% said that governor behaviours inconsistent with Trust values were swiftly managed
- 92% of governors felt that there was sufficient opportunity to contribute at Council of Governor subcommittees
- The majority of respondents felt there was effective communication between Council and the Board of Directors
- 88% of governors reported they receive the information needed to hold NEDs to account



Summary

Overall, the survey results are positive with mostly favorable responses being provided across all survey question categories relating to :

- Understanding of roles and responsibilities
- Collective skills and experience of the Council of Governors
- Understanding of the Trusts' core business and strategic direction
- Provision/access to information required and communication with the Board
- Behaviors demonstrated by governors and the quality of debate and discussion at Council of Governors meetings
- Opportunities to contribute and add to discussions at Council of Governors Subcommittees.



Whilst the overriding picture was positive **there were some feedback and responses that highlighted areas of potential focus going forward**

Future Focus / Questions to consider :

1) Does the organisation provide sufficient information to potential governors to ensure they are clear on expectations and commitment required?

2) Does the organisation provide sufficient support to new governors to assist them in understanding their role and increase their knowledge of the Trust?

3) How are you keeping governors updated of developments at Place and System level and how these developments will impact the Trust?

4) What mechanisms has the Trust put in place to harness the power of governors to promote the interest of the public as a whole in your area?

5) Are the roles and responsibilities of all types of governor well defined in your organisation and has this been communicated to governors?

6) Is your Council of Governors representative of your community in terms of diversity?

7) How do you ensure the breadth of governor knowledge of place/other areas is utilised effectively?



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A presentation by

HILL DICKINSON

Integrated care systems, system working and implications for governors

24 May 2023

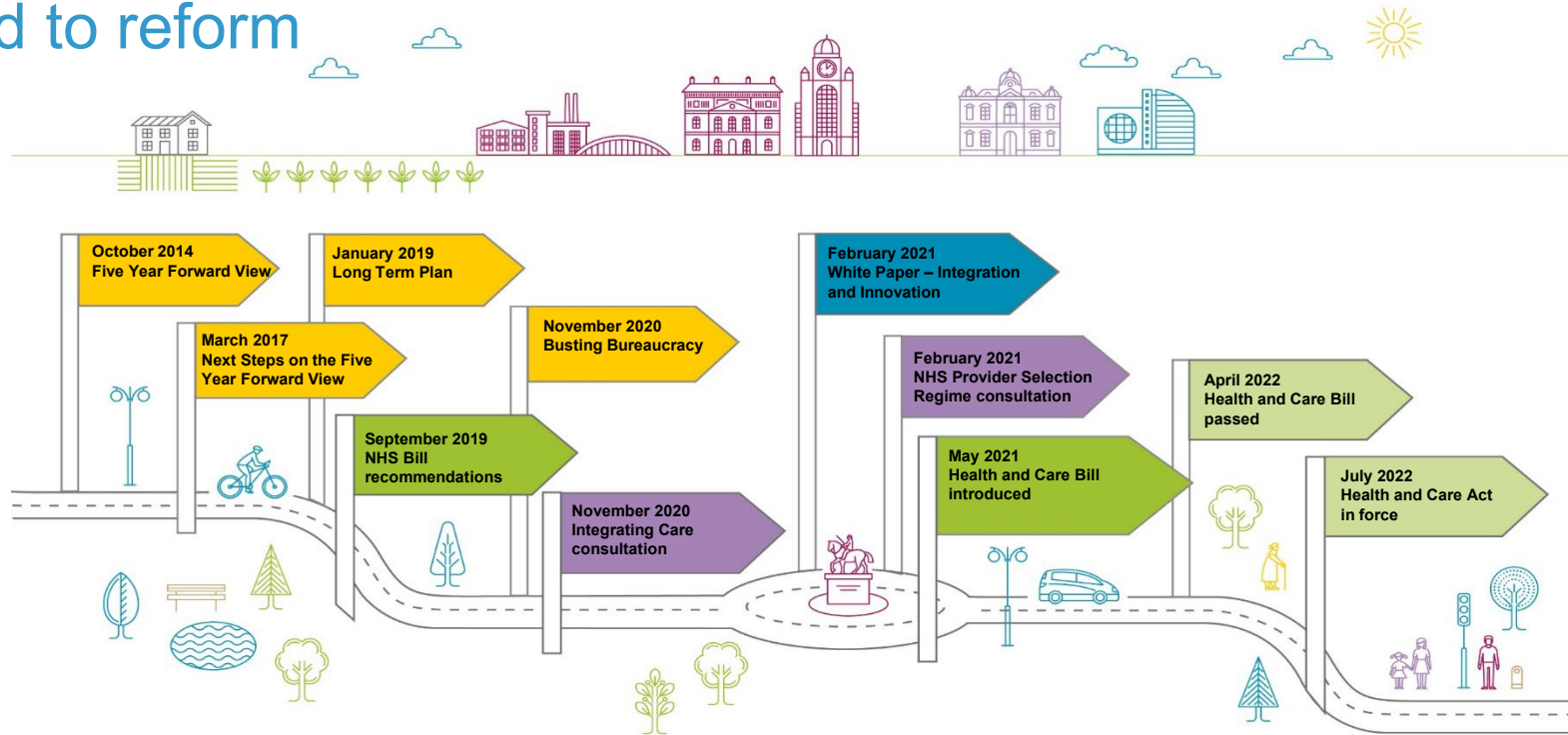
Emma Stockwell, Partner, Hill Dickinson LLP

Trust governors in the new NHS system

- Statutory role of governors unchanged:
 - to hold the NEDs individually and collectively to account for the performance of the Board of Directors; and
 - to represent the interests of the members of the corporation as a whole and the interests of the public

...but role to be discharged in context of system working – enhanced role - and governors to support compliance with the new triple aim
- Trust will continue to operate as and be accountable as an individual statutory body...but..
 - New duties with regards to system working – duty to collaborate, achieve system financial control
 - Will be part of place-based partnerships/committees
 - Will be part of provider collaboratives
 - Decisions may be taken at/within various committees/forums
- Governors and Trust to consider how governors' duties may be more effectively discharged across the ICS footprint

Road to reform



Backdrop...



Feb 2021

Integration White Paper
Integration and innovation: working together to improve health and social care for all

Jun 2021

ICS Design Framework

Feb 2022

White paper -
Health and social care integration: joining up care for people, places and populations

Jun 2022

Provider governance consultations
were open until 8 July 2022

July 2022

Health and Care Act
CCG dissolution
ICB establishment

July 2022

All acute and mental health trusts to be part of a provider collaborative

The integrated care system – structure and bodies

Integrated Care System – component parts

Provider Collaborative

“key component of system working, bringing together NHS providers together across one or more ICSs, working with clinical networks and alliances and other partners, to secure the benefits of working at scale”

Integrated Care Board

“To arrange for the provision of services for the purposes of the health service in England”

Integrated Care Partnership

“to align the ambitions, purpose and strategies of partners across each system”

Place based Partnership

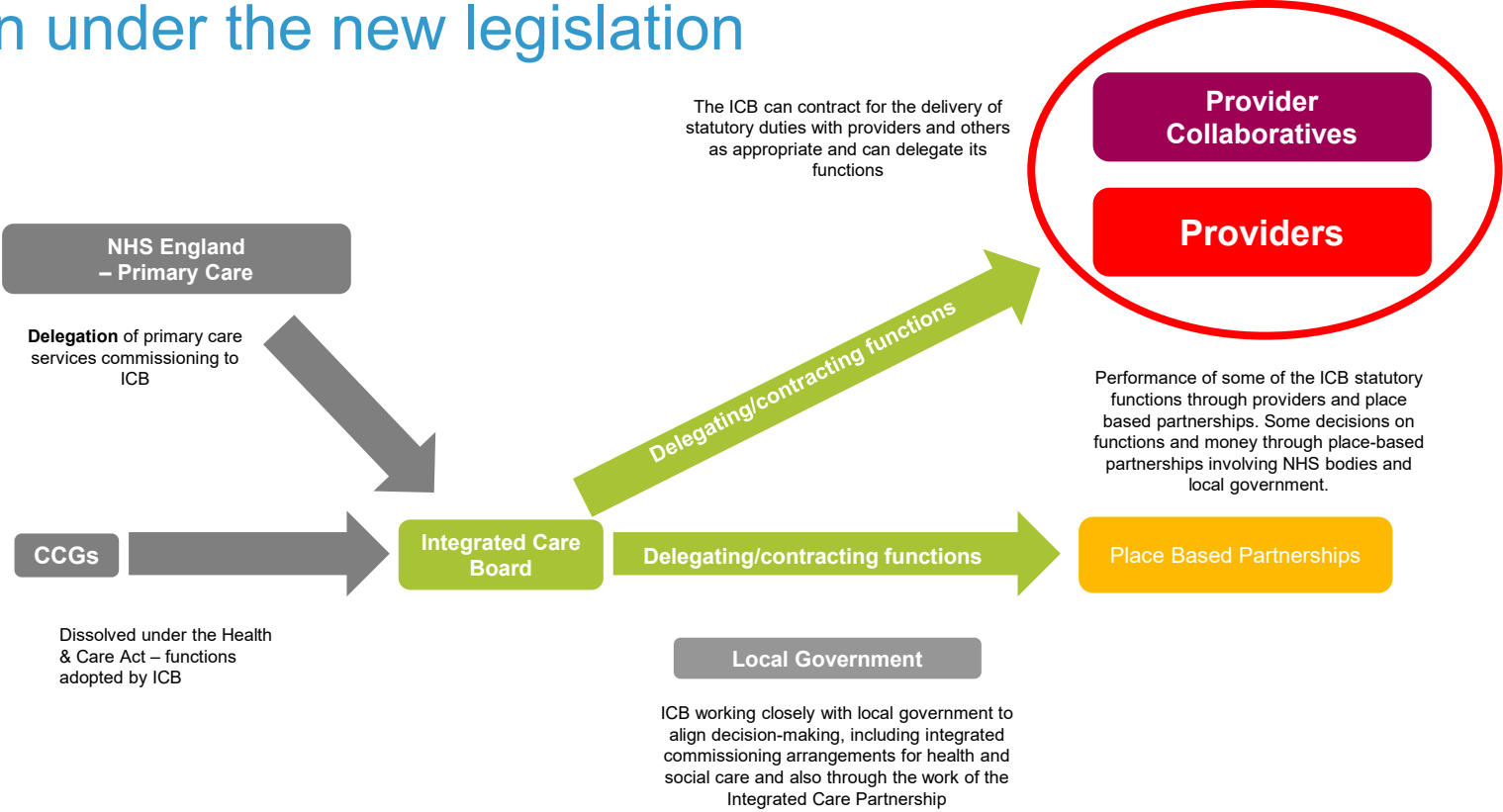
“collaborative arrangements formed by the organisations responsible for arranging and delivering health and care services in a locality or community”

Local
Authorities

Health &
Wellbeing
Board

Trusts /
Foundation
Trusts

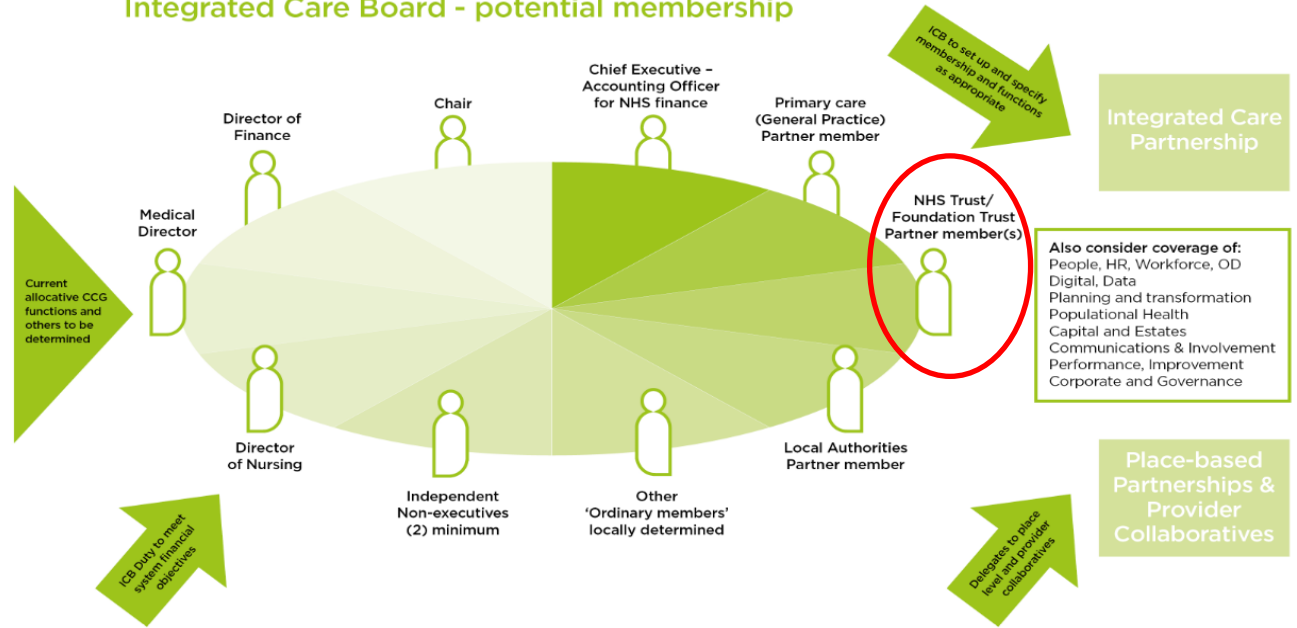
The position under the new legislation



Integrated Care Board (ICB)

- Diagram describes key membership of the ICB and its relationship with other parts of the system
- Includes 'partner members', for example from providers, who are jointly nominated by their sector to bring their '*perspective*' to the ICB – not delegates of sector

Integrated Care Board - potential membership

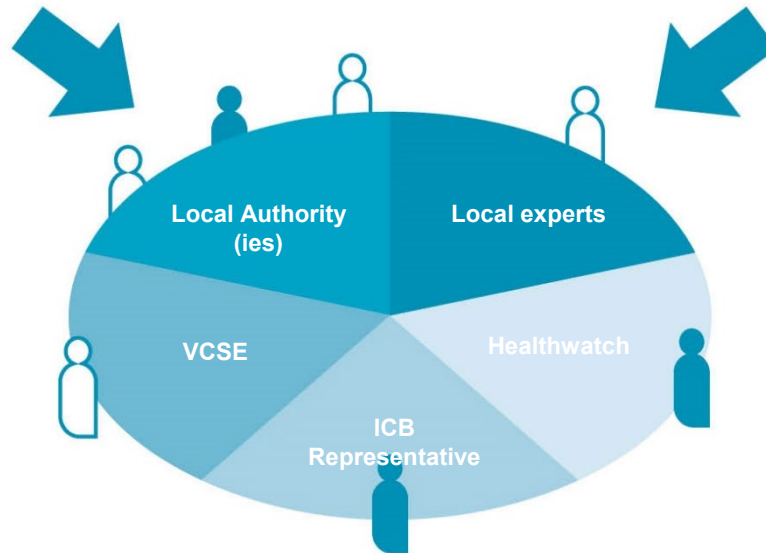


Integrated Care Partnership (ICP)

- **System level**
- **Joint committee of Local Authority(ies) and ICB**

Input from:

- Directors of Public Health
- Representatives of adult and children's social services – at least one Director of Adult Social Services or Director of Children's Services
- Local social care providers



Illustrative list for ICP membership & engagement:

- Voices for children / young people
- Patients, service users, public voices
- Voices from Children's Board
- Women's organisations
- Black and minoritised voices
- Healthwatch
- Social care providers / workforce
- Unpaid carers
- Disability voices
- Mental health providers / service users
- Primary care (GP / dental / eye / pharmacy)
- **NHS Trusts / Foundation Trusts**
- Community care
- Public health voices
- Local authority officers
- Acute care
- Housing voices
- Criminal Justice - including Probation
- Offenders health and care voices
- Alcohol / addiction services
- Homeless services
- Social prescribing services
- Learning disabilities / autism providers / users
- Businesses
- Local Enterprise Partnerships
- Armed forces
- Police and crime commissioners
- Employment services (e.g. Jobcentre Plus)

Key implications for NHS providers

Triple Aim - overview

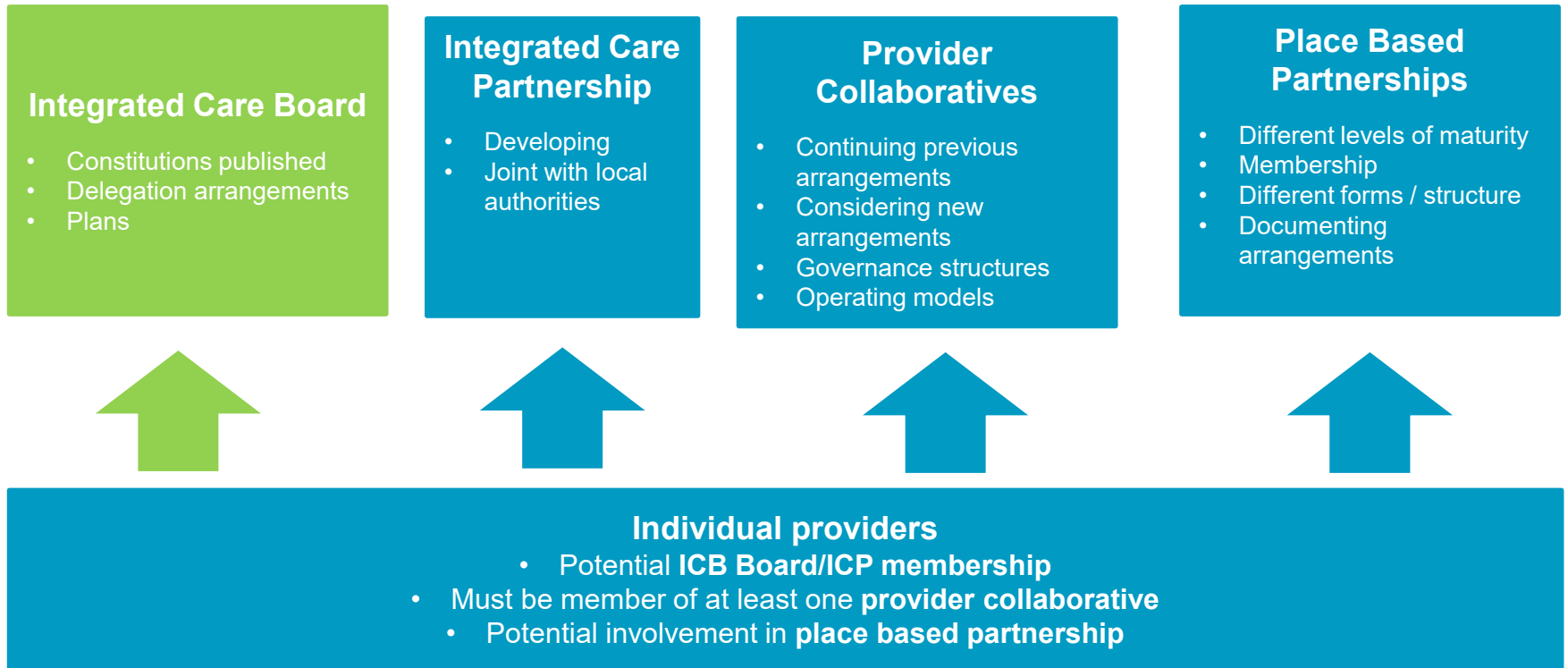
Trust duty to have regard to wider effect of its decisions on:

Health and wellbeing of the people of England

Quality of services

Sustainable and efficient use of resources

Input into various bodies...



Provider roles – many hats!

Trusts will remain as sovereign NHS organisations with statutory powers, duties and functions, **BUT.....**

*“The success of individual trusts and foundation trusts will **increasingly be judged against their contribution to the objectives of the ICS, in addition to their existing duties to deliver safe and effective care. This will include delivering their agreed contribution to system financial balance, improving quality and outcomes and reducing unwarranted variation and inequalities across the system as a whole, in the context of the new ‘triple aim’ duty to promote better health for everyone, better care for all and efficient use of NHS resources.**” (ICS Design Framework)*



Providers expected to **take on “commissioning”** functions for certain populations



ICB able to establish **joint committees** with Trusts with delegated decision-making responsibilities



ICB Board - **“at least one member drawn from NHS trusts and foundation trusts** who provide services within the ICS’s area” - not act as a “delegate” of its sector, but in the interests of the ICB and the wider system

Individual provider obligations
VS
System role

Provider collaboratives

“key component of system working, bringing together NHS providers together across one or more ICSs, working with clinical networks and alliances and other partners, to secure the benefits of working at scale”

By July 2022 all acute and mental health trusts to be part of a provider collaborative

Other providers - community services, ambulance trusts, and non-NHS providers - should be part of a provider collaborative where this would benefit patients and would make sense for the providers and systems involved

No prescribed model – members to determine what works best – working in areas of need for local system(s)

Many provider collaboratives already in existence in response to need

Provider collaboratives – ambitions from the guidance

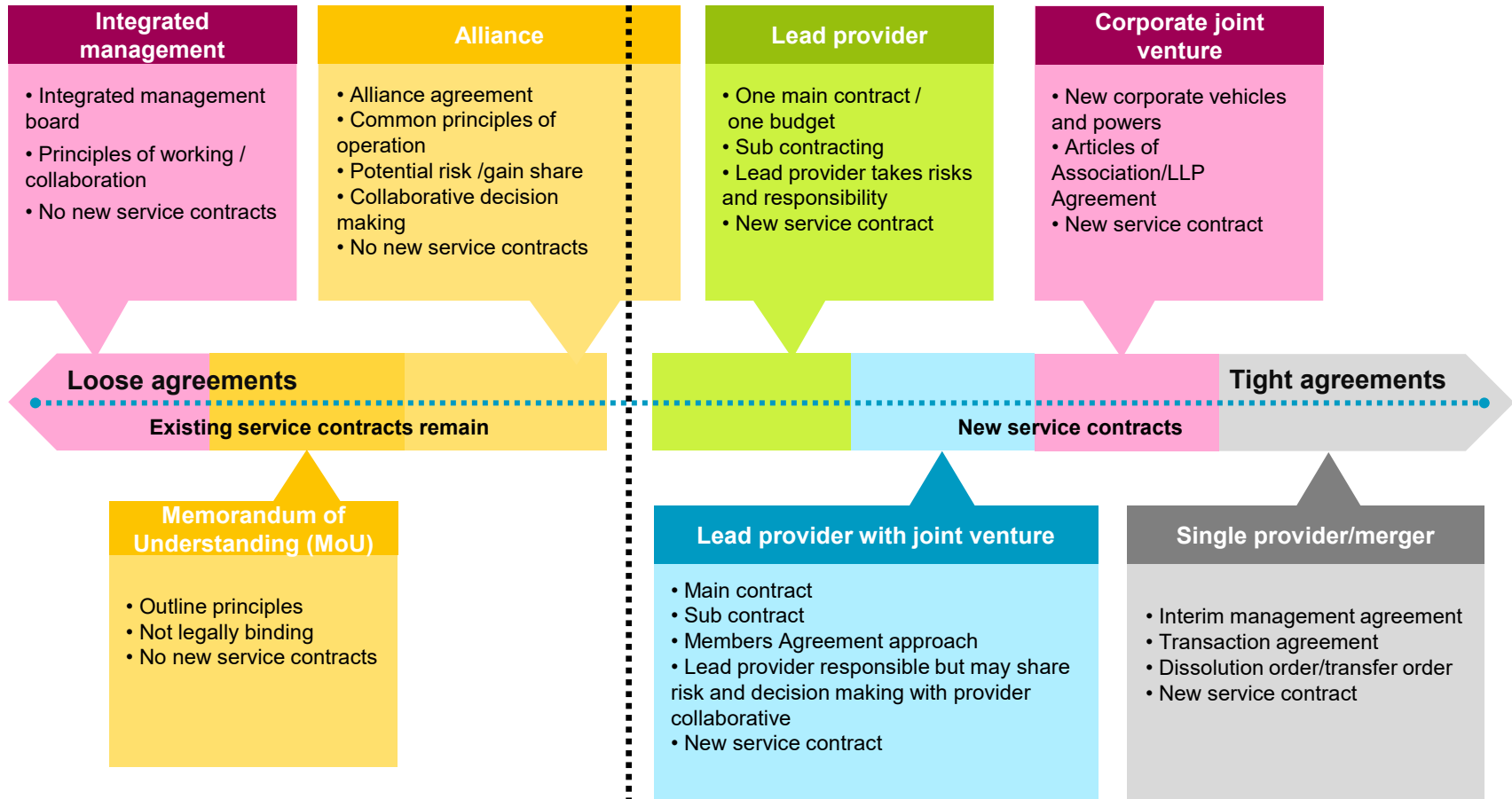
Reducing unwarranted variations in care, including inequalities in health outcomes, services, and patient experience

Improving resilience via arrangements such as mutual aid

Better recruitment, retention and development of staff and leadership talent

Enabling increased specialisation and consolidation to provide better outcomes and value

Collaborative models for providers – contrasting structures



Provider Collaborative guidance – example forms

Provider Leadership Board

- Directors / Chief Executives with common delegated responsibilities
- Deliver shared agenda on behalf of collaborative / system partners
- Committees in common to take aligned decisions
- Providers to involve non-executive directors for scrutiny and challenge

Lead Provider

- Single Trust / Foundation Trust with contractual responsibility for commissioning on behalf of collaborative
- Subcontracts to other providers
- Also partnership agreement between lead provider and other collaborative members

Shared Leadership

- Shared defined leadership structure
- At least one joint Chief Executive
- Achieved by appointing same person / people to leadership posts
- Each provider board remains accountable for decisions
- Shared governance e.g. committees in common to support aligned decision-making

Joint working, joint committees, delegation, pooled funds

Section **65Z5, NHS Act 2006** allows a relevant body (which includes an NHS Trust / Foundation Trust) to arrange for any of its **functions to be exercised by or jointly with:**

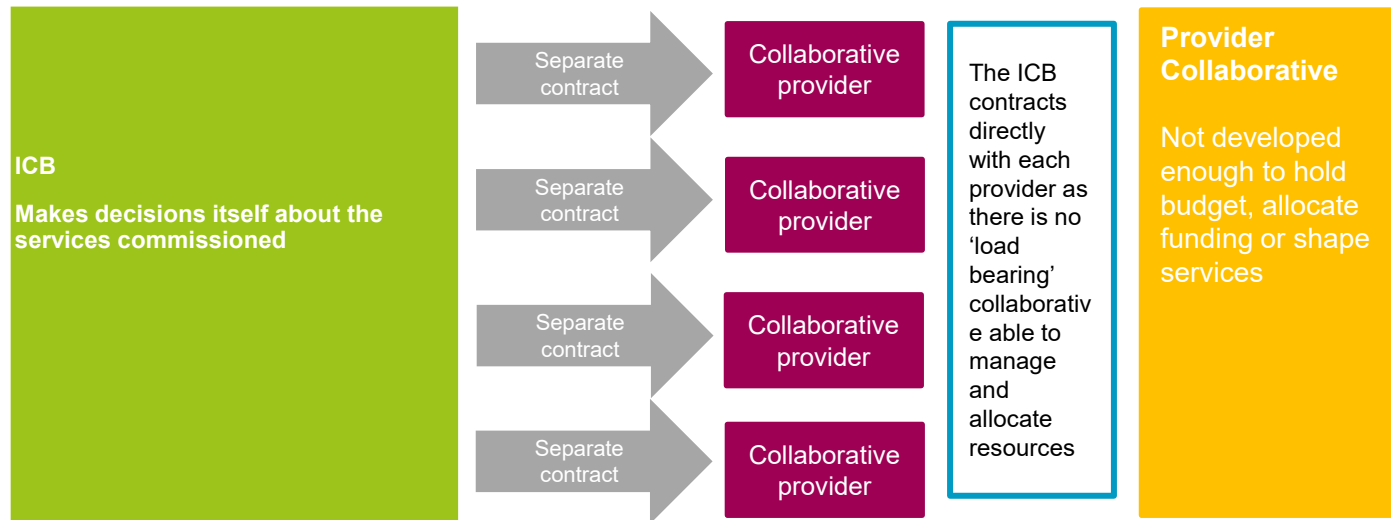
- NHS England
- An ICB
- Another NHS Trust
- Another NHS Foundation Trust
- A local authority
- A combined authority

Section **65Z6, NHS Act 2006** applies where a function is exercisable jointly to enable:

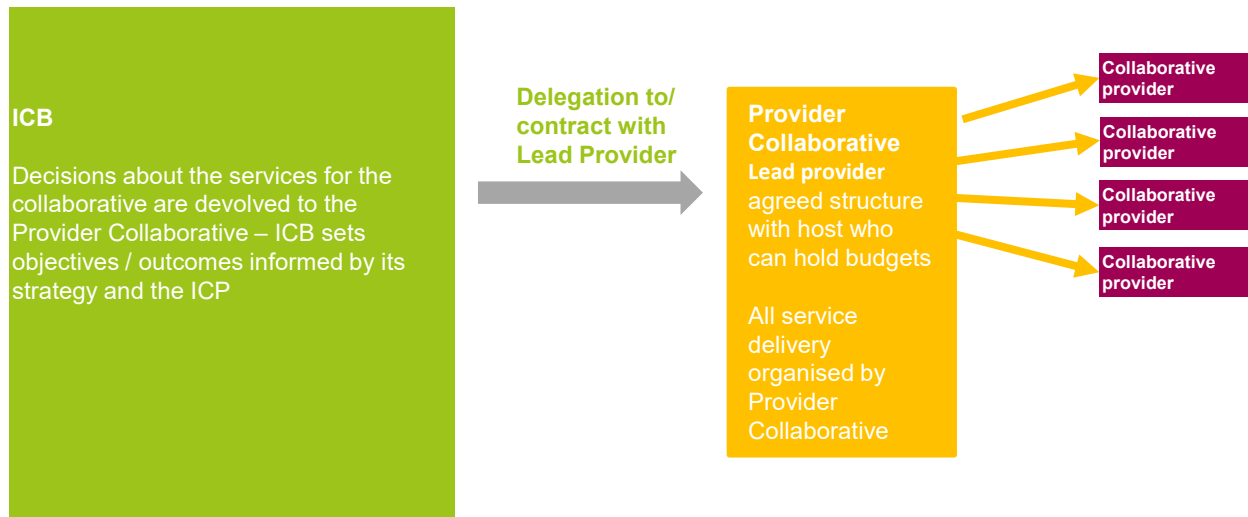
- Functions to be exercised by a **joint committee**
- One or more of the bodies, or a joint committee of them, to **establish and maintain a pooled fund**

Section 47A, NHS Act 2006: An NHS Foundation Trust may enter into arrangements for the carrying out, on such terms as the NHS foundation trust considers appropriate, of any of its functions jointly with any other person

Possible ICB approaches to Provider Collaboratives – emerging



Possible ICB approaches to Provider Collaboratives – maturing



Place Based Partnerships – potential structures

As a minimum should include primary care provider leadership, LA including DPH, acute, community and MH providers and representatives of people who access care

An ICB could establish **any combination of** the following five place-based governance arrangements with partners:

Consultative forum
informing decisions
by the ICB, local authorities and other partners

Committee of the ICB
with delegated authority to take decisions about the use of ICB resources

Joint committee of the ICB
one or more statutory bodies delegate decision making on specific functions /services/populations to the joint committee

Individual directors of the ICB
having delegated authority to take decisions about use of ICB resources, which they may choose to exercise through a committee

Lead provider
managing resources and delivery at place level under a contract with the ICB

NHS providers - issues to consider...(1)

Input across the system

- Involvement prescribed in some areas, more flexible in others
 - Understanding, mapping, implementing involvement
- Some providers straddle multiple systems – added complexity
 - Understanding involvement at Place
- Reporting on/communicating involvement – particularly to governors

Potential for conflict

- Trusts still sovereign organisations but have duty to act with regard to the wider system
 - Many roles across system – actual / potential for conflict
 - Working out ways to manage will evolve over time

NHS providers - issues to consider...(2)

Commissioning

- Uncertainty around operation of future commissioning and delegations
- What will ICBs commission directly, and what might they delegate and to who?
 - Will contracts go to individual providers, or to provider collaboratives?
- Providers / provider collaboratives also expected to take on some commissioning

Regulation

- NHS Oversight Framework – NHSE approach to overseeing providers and systems, and ICB role
 - CQC role in regulating ICB / system
 - System working approach by providers will be assessed
- Trusts must look to balance obligations under individual provider licence with system commitments

Trust governors in the new system

- Statutory role of governors unchanged:
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New governance documents...published October 2022



Code of Governance for NHS Provider Trusts

To set out a common overarching framework for the corporate governance of NHS provider trusts in the context of ICSs, system working, and collaboration

Guidance on good governance and collaboration under the NHS provider licence

To set clear expectations of collaboration by trusts and links effective collaboration to a governance licence condition under the provider licence

Addendum to the guide to the duties of NHS foundation trust governors


To supplement the existing guide - *Your statutory duties – reference guide for NHS foundation trust governors* - and explain how councils of governors support system working and the duties of collaboration



A presentation by

HILL DICKINSON

Governors' responsibilities in the new Health and Care landscape



Karan Wheatcroft, Director of Risk
and Improvement, LHCH

Daniel Scheffer, Director of
Corporate Affairs, LUFT

Today's Agenda

- What are the new governance and regulatory requirements?
- What are the key themes?
- What does this mean for Governors?
- How are organisations implementing this?
- Breakout Discussions



New Governance Documents for

2022/24

Date published: 27 October, 2022
Date last updated: 23 February, 2023

Code of governance for NHS provider trusts

[Publication \(\(publication\)\)](#)

Content

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Sets out an overarching framework for the corporate governance of trusts

Classification: Official
Publication reference: PR2075



Guidance on good governance and collaboration

27 October 2022

Links effective collaboration to a governance licence condition under the Provider Licence

Classification: Official
Publication reference: PR2077



Addendum to Your statutory duties – reference guide for NHS foundation trust governors

System working and collaboration: role of foundation trust councils of governors

27 October 2022

Covers the impact of system working on councils of governors

New Regulatory Requirements for 2023/24



Sets out the conditions that providers of healthcare services for the NHS in England must meet

Other:

- **NHS oversight Framework and metrics and operational planning guidance**
- **NEW CQC Single Assessment Framework coming soon....**

A great deal has changed since the early versions of the code of governance and addendum:

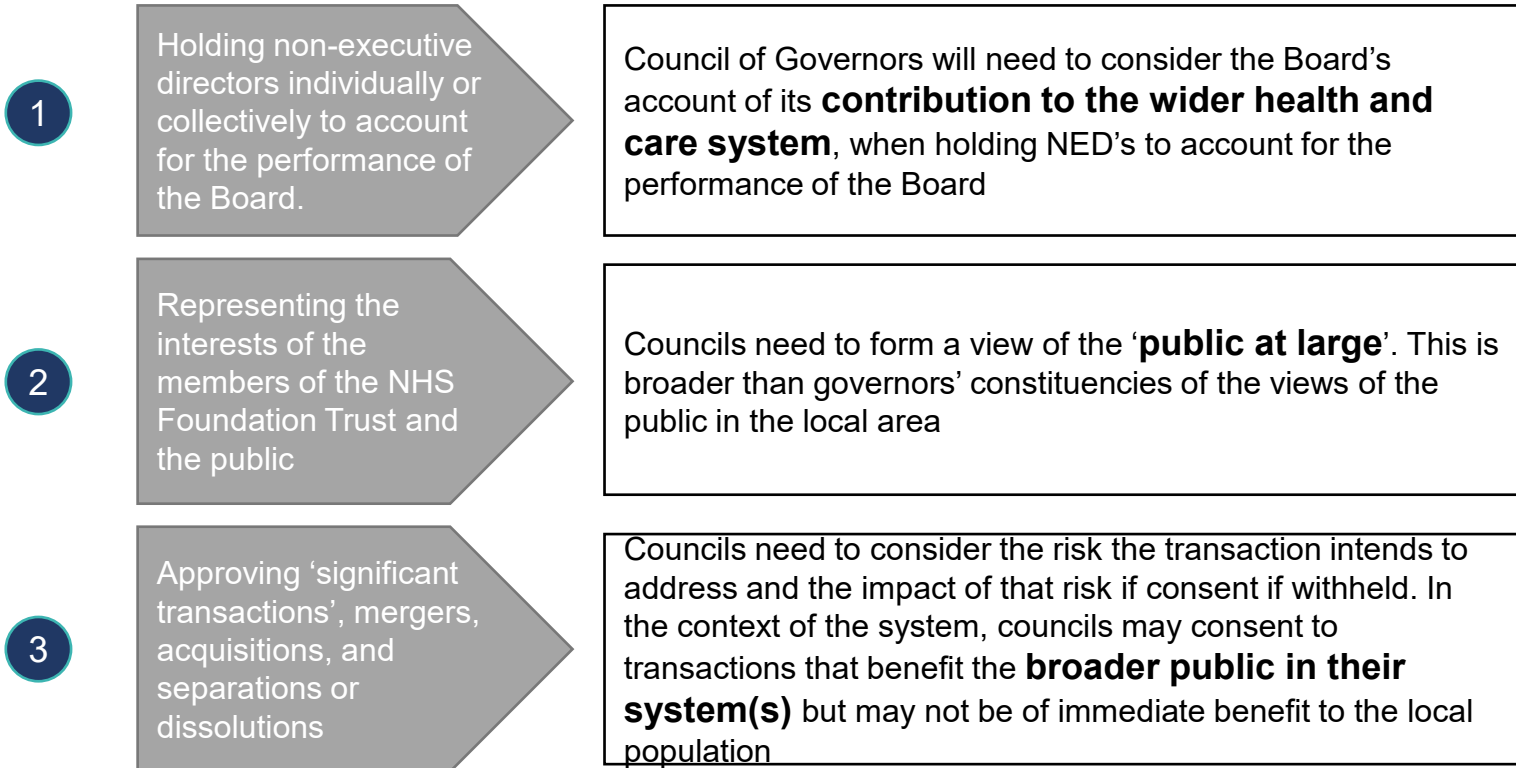
- Publication of the NHS Long Term Plan
- Introduction of Health and Care Act 2022
- Establishment of Integrated Care Systems

The addendum supplements existing guidance for NHS foundation trust governors and explains how the legal duties of foundation trust councils of governors support working system and collaboration.

- It is based on the **existing statutory duties** in the 2006 Act
- Incorporates the **principles of the ICS Design Framework**
- **Supports collaboration** between organisations and the delivery of better joined up care
- Councils are required to form a rounded **view of the interests of the ‘public at large’**
- Updated considerations are set out in respect of governors’ legal duties
- Only applies to a council of governors’ statutory role **within its own foundation trust’s governance**



Key features of the updated addendum



Key themes across the new guidance

• Collaboration, collaboration, collaboration....

- Alignment of strategies with the ICS
- Contribution to the ICS
- Triple aim duty (better health and wellbeing; better quality of services; and sustainable use of resources)
- Reducing health inequalities in access, experience and outcomes
- Engagement with stakeholders and system partners
- Culture and wellbeing
- Digital transformation
- Climate change and net zero responsibilities

The statutory duties of the COG have not changed and the COG relationships remain with their own Board, the ICB or other part of the system(s) within which they operate



Questions for Governors?

What role is your Trust playing in the ICS?

How will you hold NEDs to account in terms of wider collaboration and system?

How has the Trust assessed and implemented the new guidance?

How well is the COG sighted on system developments and collaboration?

Does the emphasis on 'public at large' change how you discharge your role?

Are Trust strategies aligned to ICS and how are Governors involved?

Do COG objectives need to be updated to reflect the new requirements?

How can the COG support collaboration and decision making in the future?



Discussion...

Reflections on:

- What you have heard today
- What you are already doing and what else is needed
- What needs to change and what doesn't need to change?
- What we can do to help?