

Council of Governors (Public)

Item 10.2

Subject: Governance Developments Update
Date of meeting: 26th September 2022
Presented by: Karan Wheatcroft, Director of Risk and Improvement
Purpose: To note

BAF Ref	Impact on BAF
BAF 10	The report provides an overview of emerging guidance and assurance of the actions being taken to ensure the Trust continues to have robust governance as systems and collaborative arrangements are established. Assurance is as expected due to national guidance being finalised and wider systems arrangements maturing.

Level of assurance (please tick one) <i>To be used when the content of the report provides evidence of assurance</i>					
<input type="checkbox"/>	Acceptable assurance Controls are suitably designed, with evidence of them being consistently applied and effective in practice	<input checked="" type="checkbox"/>	Partial assurance Controls are still maturing – evidence shows that further action is required to improve their effectiveness	<input type="checkbox"/>	Low assurance Evidence indicates poor effectiveness of controls

1. Introduction

A revised draft Code of Governance was published NHS England (NHSE) for consultation on 27th May 22 (closing date 8th July 22). Alongside this were two further draft guidance documents on good governance and collaboration; and an addendum on the role of foundation trust councils of governors (COG). These documents set out the proposed changes to governance requirements for NHS Foundation Trusts (and Trusts) following the Health and Social Care Act 2022, with the establishment of Integrated Care Boards from 1st July 2022. As expected there is a significant focus on 'system' within the draft documents.

In addition, the Cheshire and Merseyside Acute and Specialist Trust provider alliance has made significant progress in developing the governance arrangements that will underpin its operation and we have contributed to these developments. The 'Liverpool' company secretaries have also had some early conversations to explore the opportunity to work more collaboratively.

This paper provides a briefing on the current Governance developments, which will change the way NHS Foundations Trusts (and Trusts) operate in the future. Some of the key requirements and implications/actions are described. The paper also provides an update on CMAST governance and some of the early discussions between 'Liverpool' company secretaries to explore opportunities to work more collaboratively.

We will continue to ensure an oversight of national developments and implications for LHCH, as well as engagement and involvement in local developments. Once the final documents are published we will develop a detailed implementation plan to ensure that our governance arrangements are aligned with the requirements of the code, local system developments and best practice.

2. Background

The current Code of Governance has been in place since 2014. This sets out the governance requirements placed on NHS Foundation Trusts (incorporated within the LHCH Constitution and supporting governance documents within our Corporate Governance Manual).

System governance arrangements, in particular provider collaboratives are also now moving at pace to ensure these are in place with lots of examples emerging across the country.

Whilst company secretary networks exist, the role has traditionally been inwardly focussed due to the nature of governance and the requirements placed on statutory bodies. With the new expectations placed on collaboration and system working, there is both a need and an opportunity to build wider relationships and bring about the benefits of potential joint working.

A briefing on the Draft Addendum to your statutory duties- reference guide for NHS foundation trust governors was presented to Governors at the Chairs Lunch on the 19th July 2022.

3. NHSE Consultation documents

A brief summary of the draft documents is provided below. We are still awaiting the final publications. The notes below are not an extensive list of the requirements but some reflections for us to be aware of.

3.1 Code of Governance

The Code of Governance sets out an overarching framework for the corporate governance of trusts. The current Code of Governance has been in place since 2014. This sets out the governance requirements placed on NHS Foundation Trusts (incorporated within the LHCH Constitution and supporting governance documents within our Corporate Governance Manual), including:

- Board leadership and purpose
- Division of responsibilities
- Composition, succession and evaluation
- Audit, risk and internal control
- Remuneration

This is the first significant update of the code of governance for some time, and for the first time will also apply to NHS Trusts as well as Foundation Trusts.

Some of the key requirements include:

- The code continues to be on a basis of comply or explain.
- The success of NHS individual trusts and NHS foundation trusts will increasingly be judged against their contribution to the objectives of the ICS, in addition to their existing duties to deliver safe, effective care, and effective use of resources.
- The code references the provider licence and it is envisaged that this will be updated but at a later date.
- Vision and values should reference the ICP's (Integrated Care Providers) integrated care strategy and the trust's role within system and place-based partnerships, and provider collaboratives.
- Trusts to ensure performance reports are disaggregated by ethnicity and deprivation where relevant.

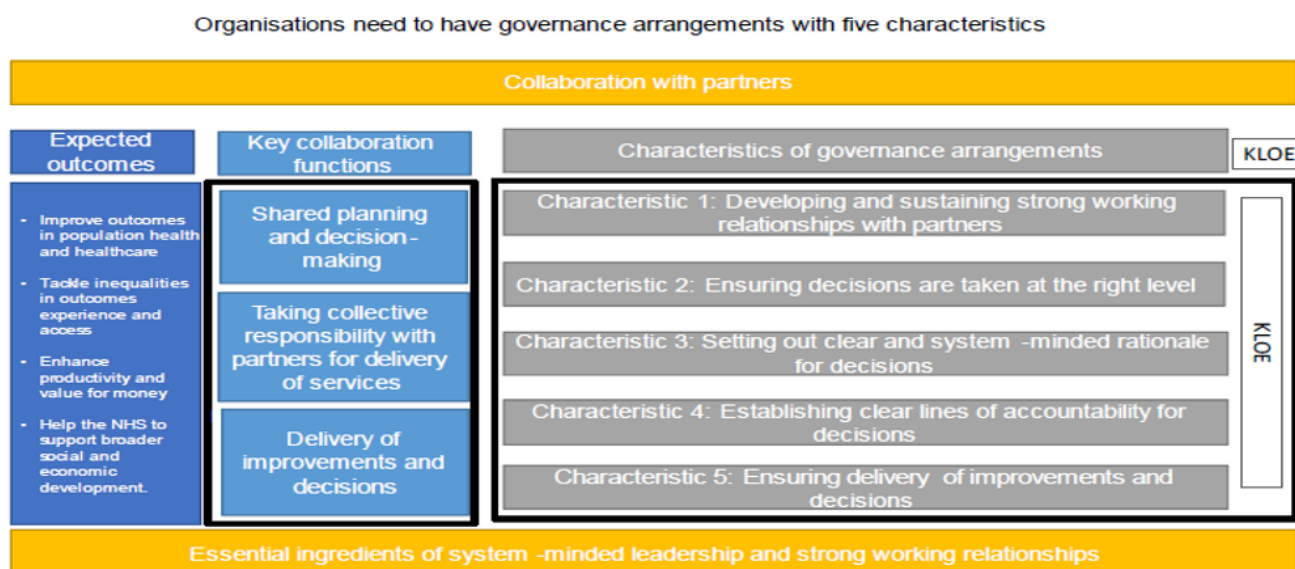
- The chair should ensure that the board of directors as a whole has a clear understanding of the views of the stakeholders including system partners.
- The board should have published plans for how the board and senior managers will in percentage terms at least match the overall black and minority composition of its overall workforce, or its local community, whichever is the higher.
- NED significant commitments should be disclosed to the council of governors before appointment, with a broad indication of the time involved, and the council of governors should be informed of subsequent changes.
- Best practice is that governors do not serve more than three consecutive terms to ensure that they retain the objectivity and independence required to fulfil their roles.
- The chair of the board of directors should not be a member and the vice chair or senior independent director should not chair the audit committee.

A comprehensive action plan including update of the Trust Constitution and supporting governance documentation will be developed once the final guidance is published.

3.2 Draft guidance on good governance and collaboration

This guidance links effective collaboration to a governance licence condition under the Provider Licence. This being that NHS trust and foundation trust boards must ensure that their organisations have in place the governance arrangements to support effective collaboration.

The key characteristics described in the guidance are set out below.



(Extract from guidance)

The Trust's arrangements will be assessed against these once the final guidance is published.

3.3 Addendum on system working and collaboration: The role of foundation trust councils of governors

A great deal has changed since the guide for governors was updated in August 2013, notably:

- 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. The key points are:

- It is based on the existing statutory duties in the 2006 Act

- Incorporates the principles of the ICS (Integrated Care System) 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

This addendum only applies to a council of governors' statutory role within its own foundation trust's governance. Councils of governors will need to be assured their foundation trust board has considered the consequences of decisions on other partners within their system, and the impact on the public at large.

In terms of COG requirements the guidance sets out the following roles:

- **Holding NEDs to account** - recognising Trust performance will be increasingly reliant on contribution to ICS achievement
- **Representing the interests of Trust member and the public** - To support collaboration between organisations and the delivery of better, joined up care, councils of governors are required to form a rounded view of the interests of the 'public at large'. This includes the population of the local system of which the NHS foundation trust is part. No organisation can operate in isolation, and each is dependent on the efforts of others.
- **Approval of Significant transactions** in context of due process including consideration of 'public at large' and ICS.

The document also provides example development and communications for Boards and COGs to be considered.

We provided a response to the NHSE consultation with the following key points raised for further consideration:

- **'Public at large'** clearly has scope for different interpretation and there is a need to understand practicalities.
- Guidance states it relates to COG role within own Trust but lots of system references. There is an opportunity to be clearer about the **potential ICB (Integrated Care Board) role/connection** to Governors.
- The guidance requires **NED Significant commitments** to be notified to COG on appointment and subsequent changes. It would be helpful to clarify the role and purpose.
- **Holding NEDs to account** for system roles and engagement but system involvement isn't yet clear.
- In the context of future COG working in the system: Does the guidance goes far enough in terms of significant transactions/ decision making and **collaboration/ joint working** with Governors across multiple organisations.
- Understanding of **different types of Governors**, elected and nominated, representations etc isn't referenced yet there is a real focus on Governor competencies, skills and diversity.
- Roles of NEDs could expand exponentially in terms of system. Updated guidance of the role of NEDs and expected commitment would be welcomed. This is equally applicable to **expectations of Governors roles**.

We await the final publication of the document and will use this to review our arrangements and agree any actions in-conjunction with the Council of Governors.

4. CMAST Governance Developments

The Chief Executives have been working together for some time to shape CMAST (Cheshire & Merseyside Acute Specialist Trusts), and there have now been a number of sessions for Chief Executives and Chairs. CMAST has also established a number of 'Director' groups to bring together peers from each Trust. In May 2022 there was recognition that it would be useful to engage with Governance Directors/ company secretaries to support the development of CMAST governance, alongside commissioning support from Hill Dickinson. LHCH have been fully represented within these groups and have contributed to the development of the governance arrangements.

The Trusts (see Appendix A) have agreed to pursue a committees-in-common approach (as enabled by the Health and Social Care Act 2022). In the first instance this will comprise of the Chief Executives from each of the Trust members each having delegated authority from their Trust Boards to take decisions together at the CMAST Leadership Board. The leadership Board will operate as a Committee in Common, with Terms of Reference approved by each Trust Board. A CMAST joint working agreement will also be approved by Boards, and this will set out the vision, functions, rules of working, processes (including dispute resolution), and termination/ exit plan.

The final draft of the CMAST joint working agreement and the committee in common terms of reference have been circulated to Board members and will be formally presented for review and approval at the September 2022 Board meeting. These will subsequently be shared with the Council of Governors.

CMAST held an initial session for Non Executive Directors in August 2022, with the intention that future sessions for NEDS and also Governors will also need to be considered.

5. 'Liverpool' Company Secretaries

The Liverpool company secretaries have been in conversation for a number of months, to explore potential areas of support and opportunities to work together.

As part of this a joint Governors workshop on the Addendum on the role of Foundation Trust COG was held in July 2022 during the consultation period. We are looking to establish future joint sessions.

There may also opportunities to work together to grow membership to reflect the diversity of our communities and to provide a wider range of membership events, albeit within the context that the specialist trusts have a wider reach than just Liverpool.

In terms of operational areas, we have shared intelligence around a wide range of governance related areas including Board diversity, reintroduction of walkabouts, COG arrangements, membership and events, well led, and Covid Inquiry preparation.

6. Next Steps

The planned next steps are:

- i. To develop a comprehensive action plan including:
 - a. reviewing our Constitution and supporting governance documents once the Code of Governance and supporting guidance are published.
 - b. assessing our arrangements against the 5 characteristics for good governance and collaboration.
 - c. to review the COG 'working with board' suggestions and approaches within the addendum against our current arrangements.
 - d. updating and aligning our Governance arrangements and key documents (e.g. Scheme of Reservation and Delegation; Committee structures etc) to reflect CMAST developments
- ii. The CMAST joint working Agreement and Committee in Common Terms of Reference will be formally presented for review and approval at the September 2022 Trust Board and subsequently shared with the Council of Governors.
- iii. We will continue to build relationships, share intelligence and support collaborative working through the Liverpool company secretaries group.

7. Recommendations

The Council of Governors are asked to **note** the update and next steps.

Appendix A – CMAST members

1. Countess of Chester Hospital NHS FT
2. Liverpool University Hospitals NHS FT
3. Southport and Ormskirk Hospital NHS Trust
4. Warrington and Halton Teaching Hospitals NHS FT
5. Wirral University Teaching Hospital NHS FT
6. The Clatterbridge Cancer Centre NHS FT
7. Liverpool Heart and Chest Hospital NHS FT
8. The Walton Centre NHS FT
9. Liverpool Women's NHS FT
10. Alder Hey Children's Hospital NHS FT
11. East Cheshire NHS Trust
12. St Helens and Knowsley Teaching Hospitals NHS Trust
13. Mid Cheshire Hospitals NHS FT
14. North West Ambulance Service NHS Trust*

**In attendance rather than a full member of CMAST*