

## Council of Governors (Public)

### Item 11.1

**Subject:** Addendum on system working and collaboration: The role of foundation trust councils of governors  
**Date of meeting:** 6<sup>th</sup> December 2022  
**Presented by:** Karan Wheatcroft, Director of Risk and Improvement  
**Purpose:** To discuss

BAF Ref	Impact on BAF
BAF 10	The report provides an overview of new Addendum along with assurance of the arrangements in place and actions required. Assurance is as expected due to national guidance being recently published and the implementation timeframe.

#### Level of assurance (please tick one)

*To be used when the content of the report provides evidence of assurance*

<input type="checkbox"/>	<b>Acceptable assurance</b> Controls are suitably designed, with evidence of them being consistently applied and effective in practice	<input checked="" type="checkbox"/>	<b>Partial assurance</b> Controls are still maturing – evidence shows that further action is required to improve their effectiveness	<input type="checkbox"/>	<b>Low assurance</b> Evidence indicates poor effectiveness of controls
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### 1. Introduction

A revised Addendum on system working and collaboration: The role of foundation trust councils of governors was published by NHS England (NHSE) in October 2022 following consultation in June 2022.

The Council of Governors received a briefing on the Draft Addendum to your statutory duties- reference guide for NHS foundation trust governors at the Chairs Lunch on the 19<sup>th</sup> July 2022 and a further paper at the Council of Governors meeting in Public on 26<sup>th</sup> September 2022. Aspects of the addendum were also considered within the preparation for the strategy session on the 8<sup>th</sup> November 2022.

There is no change to the statutory duties for council of governors. NHSE expects councils of governors to act in line with the principles in the addendum.

This paper provides the Council of Governors with an overview of the addendum, and implications for LHCH along with an assessment of our arrangements against the requirements, with actions identified for those assessed as amber (see section 3) including clarification of how these will be implemented (see section 4).

The Council of Governors is asked to review and discuss the paper.

## 2. Background

The previous addendum for councils of governors had been in place since 2013. 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 Design Framework
- Supports 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'
- 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

The guidance states that there is no change to the statutory duties for council of governors. The full addendum for governors and the COG statutory duties documents are provided in Appendix A.

This addendum along with the other governance requirements placed on NHS Foundation Trusts are incorporated within the LHCH Constitution and supporting governance documents within our Corporate Governance Manual.

Alongside this there is a new Code of Governance and guidance on good governance and collaboration. Together 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 1<sup>st</sup> July 2022, and as expected there is a significant focus on 'system' within the draft documents.

It was agreed that once the final documents were published we would 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. Work is ongoing to complete this for the revised Code of Governance and the good governance and collaboration guidance.

In November 2022, a consultation on revisions to the Provider Licence has commenced, with consultation response due by the 9<sup>th</sup> December. It is expected that the implementation of this will align with the above from April 2023.

## 3. Addendum requirements and assessment

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.

The table below sets out the key requirements in the Addendum, the implications and an initial assessment against these.

Updated considerations	Potential implications for LHCH	Assessment	RAG
<b>1. The council of governors has a duty to hold the non executive directors individually and collectively to account for the performance of the Board of Directors.</b>			
(i) The success of an individual foundation trust will increasingly be judged against contribution to the Integrated Care System and therefore performance must be seen in the context of openness to collaboration.	Adherence to these principles will be largely demonstrated through the papers received, and the challenge posed by governors.	<ul style="list-style-type: none"> <li>• The COG receive regular updates on LHCH involvement in collaborative working.</li> <li>• Governors should continue to hold NEDs to account in the context of the system as a whole and the 'public at large'.</li> <li>• Observation of Board meetings by Governors is a good opportunity to see this in practice.</li> <li>• The joint Board and COG strategy day (November 2022) included a strong element of focus on collaboration.</li> <li>• Opportunity to review the COG workplan to ensure information of the System strategy and plans, as well as performance alongside the Trust performance.</li> </ul>	GREEN
(ii) Consideration should be given to how the Board decision making complies with the triple aim duty (better health and wellbeing; better quality of services; and sustainable use of resources) as well as reducing health inequalities in access, experience and outcomes.	Consideration of the triple aim duty needs to be built into the reporting to the COG and within the COG objectives.	<ul style="list-style-type: none"> <li>• The COG receive some reports demonstrating the triple aim duty.</li> <li>• Further work is planned in respect of health inequalities, population health and the impact of Trust activities.</li> <li>• The COG Objectives will need to be updated to reflect this requirement more specifically.</li> </ul>	AMBER
(iii) 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.	The role of the COG in terms of the ICB and system relationship requires further clarity.	<ul style="list-style-type: none"> <li>• The COG is well established and continues to perform well against its' objectives (effectiveness discussed at the recent strategy day).</li> <li>• Whilst the guidance states that the statutory duties have not changed, the role of COGs within systems is not yet clear and the Trust continues to work with the ICB and CMAST to understand the emerging roles within the new system architecture.</li> </ul>	AMBER

Updated considerations	Potential implications for LHCH	Assessment	RAG
<b>2. Representing the interests of Trust members and the public</b>			
(i) Each ICB will build a range of engagement approaches. The continuation of existing foundation trust governors relating to patient and public involvement, including the governors is expected.	Current role to continue.	<ul style="list-style-type: none"> <li>The COG is well established and effectiveness of the COG along with performance against COG objectives was discussed at the COG strategy day (November 2022).</li> <li>Current activity includes members events and governor attendance at external events.</li> <li>The involvement and challenges within the wider population was discussed as part of the COG strategy day (November 2022)</li> </ul>	GREEN
(ii) Governors are not restricted to representing a narrow section of the public served by the foundation trust, and are required to take into account the interests of the 'public at large' (including population of the local systems).	The COG already has a wide reach to reflect the nature of the services of a specialist trust, however the concept of 'public at large' needs to be further explored.	<ul style="list-style-type: none"> <li>Governors need to consider the implications of this to their individual roles and collectively as a COG. This needs further clarity and will be built into the 2023 COG objectives.</li> </ul>	AMBER
(iii) There is no expectation that the way governors undertake this duty should materially change, but they should be assured they and their Trust is engaging widely.	The COG should consider how it is assured about the engagement of the Trust, including other bodies and organisations.	<ul style="list-style-type: none"> <li>The COG is well established and effectiveness of the COG along with performance against COG objectives was discussed at the COG strategy day (November 2022).</li> <li>There is a standing agenda item at COG meetings for governors to feedback on involvement and engagement at events.</li> <li>The COG receives the Quality Report which includes stakeholder feedback from commissioners and Healthwatch.</li> </ul>	GREEN
(iv) Governors will need to consider interests beyond their own ICS, working with their Board to consider how to represent the interest across other ICSs.	The COG already has a wide reach to reflect the nature of the services of a specialist trust.	<ul style="list-style-type: none"> <li>Governors need to consider the implications of this to their individual roles and collectively as a COG. This needs to be built into the 2023 COG objectives.</li> <li>The Board through the Chair will need to work with the COG to understand how the other ICSs are considered, as well as the Welsh system.</li> </ul>	AMBER
<b>3. Taking decisions on significant transactions, mergers, acquisitions, separations and dissolutions</b>			
(i) Governors need to be assured that the process undertaken by the Board in reaching its decision was appropriate, and that interests of the 'public at large' were considered.	The concept of 'public at large' needs to be further explored.	<ul style="list-style-type: none"> <li>Whilst not significant transactions, the COG receives regular updates on system developments as well as the Trust's role in service and pathway developments.</li> </ul>	GREEN

Updated considerations	Potential implications for LHCH	Assessment	RAG
		<ul style="list-style-type: none"> <li>The joint Board and COG strategy day (November 2022) included discussion on the strategic priorities.</li> </ul>	
(ii) Transaction proposals need to demonstrate a clear case for change, and in the new NHS ways of working this may mean that COGs may need to consent to decisions that benefit broader public interest while not having immediate benefit for the Trust and/or potentially creating a risk. Consent for decision should have regard to the effect on other organisations and the overall wider footprint (e.g. ICS).	The COG will need to understanding the broader system implications in decision making.	<ul style="list-style-type: none"> <li>The COG receives regular updates on the emerging system architecture and roles.</li> <li>The system architecture, roles and decision making are still developing.</li> </ul>	AMBER
<b>4. Working with the Board</b>			
(i) Building relationships and understanding roles.	The addendum sets out a range of relationships including Trust secretary, governor liaison, Chair, NEDs, Chief Executive, Board, Executive Directors and Members. It also references induction and key documentation.	<ul style="list-style-type: none"> <li>These aspects are already fully in place.</li> </ul>	GREEN
(ii) Supporting governors to fulfil the duties of the COG.	This refers to the key relationships (As above) and also ensuring a range of meetings and engagement including informal meetings with the Chair, workshops with NEDs, regular briefings and NED updates at the COG.	<ul style="list-style-type: none"> <li>These aspects are already fully in place and were discussed as part of the workshops at the COG Strategy Day (November 2022).</li> </ul>	GREEN
(iii) Supporting governors to understand their duties in the context of ICS and system working.	The addendum references the role of the Chair in facilitating governor engagement with the ICB, and regular system updates to the COG.	<ul style="list-style-type: none"> <li>The COG has been kept informed of the system working and governance implications, including but not limited to Chairs updates, Chairs lunch (e.g. Draft Addendum), papers to COG meetings, governor observation of Board meetings and cascade of system briefings via the Chair.</li> </ul>	AMBER

Updated considerations	Potential implications for LHCH	Assessment	RAG
		<ul style="list-style-type: none"> <li>The system architecture and roles continue to develop, and the Chair continues to voice the importance of engagement from the ICB with governors.</li> <li>The 2023 objectives need to reflect this requirement.</li> </ul>	

#### 4. Next Steps

The planned next steps are set out in the action plan below. These will be monitored through regular updates to the COG meetings.

Action	Responsibility	Timeframe
1. COG Objectives to be updated to reflect Addendum requirements including <ul style="list-style-type: none"> <li>the triple aim and health inequalities</li> <li>public at large including population of the local systems</li> <li>interests beyond their own ICS</li> <li>duties in the context of ICS and system working</li> </ul>	KWh	Dec 2022
2. COG workplan to be reviewed to include information of the System strategy and plans, as well as performance alongside the Trust performance.	KWh	Jan 2023
3. The role of COGs within systems is not yet clear and the Trust continues to work with the ICB and CMAST to understand the emerging roles and decision making within the new system architecture.	VD	Ongoing
4. A workshop for Governors will be planned in due course to further discuss the addendum, implications and developments.	VD	TBC

#### 5. Recommendations

The Council of Governors are asked to **note** the update and discuss the paper.

## Appendix A – Addendum for governors and statutory duties

The full addendum for governors and statutory duties are embedded below.



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-your-statutory-duties



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