

Board of Directors (in Public) Item 5.5

Subject: Review of Compliance with the Code of Governance 2023/24
Date of Meeting: 9th April 2024
Presented by: Karan Wheatcroft, Director of Risk and Improvement
Purpose of Report: For Approval

BAF Ref	Impact on BAF
BAF 1, BAF 7	This paper provides assurance that a comprehensive evaluation of compliance with the Code of Governance has been undertaken – there are two provisions for which the Trust is not fully compliant and explanations will be disclosed in the annual report 2023/24.

1. Executive Summary

A revised Code of Governance came into place for 2023/24. The Code of Governance continues to operate on a 'comply or explain' basis.

The Trust has undertaken an extensive review of compliance with the Code of Governance, as reviewed by the Audit Committee in March 2024. This paper provides confirmation of compliance, highlighting two exceptions of compliance with the Code:

Provision C.4.7, which recommends an externally facilitated developmental review using the Well Led Framework every three to five years.

The Trust's last independent evaluation against the Well Led Framework was in 2017. A further review has been considered but decisions to defer during the CQC assessment in 2019 and subsequently during the Covid-19 pandemic. Following the well led self-assessment in 2023/24, the Trust intends to commission an external review in Q3 2024/25 aligned to the new CQC assessment framework.

Provision B.2.6, refers to the independence of Non-Executive Directors (including potential impairment due to serving on the Trust Board for more than six years)

As noted in previous years, Julian Farmer (Non Executive Director) was re-appointed by the Council of Governors until 31st May 2024, at which point he will have served on the Board of the Foundation Trust for 3 terms (9 years). In addition, Nicholas Brooks has been re-appointed for a third and final term to the 10th June 2026. A review of independence and performance including the importance of continuity in light of other NED changes was undertaken by the Council of Governors to support his extended period of office. The Senior Independent Director role was re-assigned to Bob Burgoyne (NED) as part of this process.

The Code requires Foundation Trusts to disclose their governance arrangements for the financial year in the annual report. The Code also requires the Board to explain how the main

principles and supporting principles of the Code have been applied; and to provide a statement either confirming compliance with the provisions of the Code, or where appropriate, an explanation in each case as to why the Trust has departed from the Code. A proposed disclosure statement has been prepared for consideration and approval by the Board (Appendix 1).

The Board of Directors is asked to note compliance and approve the disclosure statement.

2. Background

The new Code of Governance came into place from 1st April 2023 replacing the previous Code of Governance, which has been in place since 2014. This was the first significant update of the code of governance for some time, and for the first time also applied to NHS Trusts as well as Foundation Trusts.

The code sets out the governance requirements placed on NHS Foundation Trusts (incorporated within the LHCH Constitution and supporting governance documents within our Corporate Governance Manual). The code includes:

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

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 the Provider Licence. However, there are some statutory requirements that are highlighted in the Code and these must be adhered to.

3. Review of Compliance

A baseline review against the code of governance was reported to the Audit committee in March 2023 confirming a good level of compliance with the code. An action plan was developed including requirements in the new code relating to health inequalities, the addendum for governors and the wider system developments. The Audit Committee received the full review of compliance against the code of governance in March 2024, with the following exceptions noted:

- *C.4.7 - All Trusts are strongly encouraged to carry out externally facilitated developmental reviews of their leadership and governance using the Well Led Framework every three to five years, according to their circumstances. The external reviewer should be identified in the annual report and a statement made about any connection it has with the Trust or individual Directors or Governors*

The Trust's last independent evaluation against the Well Led Framework was in 2017, and therefore a further review was due in March 2020. At this time, the Board gave careful consideration to this requirement and decided that commissioning an external review in 2019/20 did not offer best use of Trust resources given the assurance received following the CQC's assessment of the Well led criteria as 'outstanding' in the summer of 2019. The Board has considered this requirement annually and a decision made to defer this during the Covid-19 pandemic. In 2023/24 the Trust undertook an extensive well led self-assessment. The intention is to commission an external review in Q3 2024/25 aligned to the new CQC assessment framework.

- *B.2.6 - The Board of Directors should identify in the Annual Report each Non-Executive Director it considers to be independent.*

The Code of Governance includes circumstances that are likely to impair, or could appear to impair, a Non-Executive Director's independence. One of these is serving on the Trust Board for more than six years from the date of their first appointment. As noted in previous years, Julian Farmer (Non Executive Director) was re-appointed by the Council of Governors until 31st May 2024, at which point he will have served on the Board of the Foundation Trust for 3 terms (9 years). A review of independence and performance including the importance of continuity in light of other NED changes was undertaken by the Council of Governors to support his extended period of office. The Senior Independent Director role was re-assigned to Bob Burgoyne (NED) as part of this process.

Whilst declaring compliance, the review also noted the following areas where further work continues to ensure the strengthening of evidence to support compliance:

Code ref.	Action	Responsibility	Timeframe	Progress Update
A2.5	Further work progressing on health inequalities analysis, disaggregation of data, interventions and actions to be developed alongside performance report (updates to Board of Directors).	Director of Strategy/ Chief Operating Officer	Sept 23	ONGOING – Initial baseline data analysis complete, update on CIPHA provided to Board and further work planned.
C4.13	To ensure the annual report includes all the nomination and remuneration committee details described in this requirement.	Director of Risk and Improvement	June 23	ONGOING - The 2022/23 annual report was compliant with previous requirements. The 2023/24 annual report will need to include all the nomination and remuneration committee details described in this requirement.

A draft disclosure has been prepared for inclusion in the Annual Report 2023/24 (Appendix 1).

4. Recommendations

The Board of Directors is asked to:

- note the compliance with the Code of Governance (full detail reviewed by the Audit Committee); and
- approve the disclosure statement for inclusion in the 2023/24 Annual Report.

Appendix 1 - Annual Report 2023/24 - *Compliance with the Code of Governance*

Liverpool Heart and Chest Hospital NHS Foundation Trust has applied the principles of the Code of Governance ('The Code') on a 'comply or explain basis'. A revised Code of Governance came into place for 2023/24.

During 2023/24, the Board of Directors has maintained governance policies and processes that reflect the principles and provisions within the Code, including:

- A clear vision, underpinned by strategic objectives and operational plan
- A Corporate Governance Manual which includes the constitution and procedures by which the Board of Directors and Council of Governors operate; the Scheme of Reservation and Delegation, the Board Committee structure and associated Terms of Reference, Standing Financial Instructions and key corporate policies.
- A Constitution which was updated in 2023/24 to reflect the new Code of Governance, and Addendum for Governors.
- At least half the Board of Directors, excluding the Chair, comprises independent non-executive directors;
- The appointment of a Senior Independent Director;
- Regular private meetings between the Chair and non-executive directors;
- Robust annual appraisal process for the Chair and non-executive directors that has been developed and approved by the Council of Governors;
- Robust recruitment process for the appointment of non-executive and executive directors;
- Induction process for non-executive and executive Directors;
- Comprehensive induction programme and ongoing training programme for Governors;
- Annual review of non-executive director independence;
- Annual review of compliance with Fit and Proper Persons' criteria for all Directors;
- Publicly accessible Register of Interests for Directors, Governors and senior staff;
- New Lead Governor appointed in 2023/24;
- Provision of Board minutes and summaries of the Board's private business to governors;
- Effective infrastructure to support the Council of Governors including sub committees, interest groups and informal meetings with the Chair;
- Process for annual evaluation of the Council of Governors and for setting key objectives / priority areas for the following year;
- Membership Strategy with KPIs and engagement plan reported to the Council of Governors;
- Two Nominations and Remuneration Committees for executive and non-executive appointments / remuneration respectively. In the case of non-executive appointments / remuneration recommendations are made to the Council of Governors for approval;
- High quality reports to the Board of Directors and Council of Governors;
- Board evaluation and development plan;
- Codes of Conduct for Governors and for Directors;
- Going concern report;
- Robust Audit Committee arrangements;
- Governor-led appointment process for external auditor;
- Freedom to Speak Up (Raising Concerns) Policy; and
- Internal audit and anti-fraud arrangements, policies and plans.

The Board of Directors conducts an annual review of the Code of Governance to monitor compliance and identify areas for further development. The Board has confirmed that, with the exception of the following two provisions, the Trust has complied with the provisions of the Code in 2023/24.

Liverpool Heart and Chest Hospital departed from:

- *Provision C.4.7 - All Trusts are strongly encouraged to carry out externally facilitated developmental reviews of their leadership and governance using the Well Led Framework every three to five years, according to their circumstances. The external reviewer should be identified in the annual report and a statement made about any connection it has with the Trust or individual Directors or Governors*

The Trust's last independent evaluation against the Well Led Framework was in 2017, and therefore a further review was due in March 2020. At this time, the Board gave careful consideration to this requirement and decided that commissioning an external review in 2019/20 did not offer best use of Trust resources given the assurance received following the CQC's assessment of the Well led criteria as 'outstanding' in the summer of 2019. The Board has considered this requirement annually and a decision made to defer this during the Covid-19 pandemic.

The Board continues to ensure a focus on well led through acceptability of external assurances received; review of the Board development plan driven by the Trust's objectives, vision and values; and Board Director appraisals. The Board has continued to reprioritise the Board development plan, and continued to work collaboratively as part of the Cheshire and Merseyside Integrated Care System. In 2023/24 the Trust undertook an extensive well led self-assessment.

In summary, whilst the Board has not commissioned an external review against the well led framework, it has made use of external assurances and commissioned independent advice where it has deemed this to offer most value in delivering improvement for the benefit of patients and staff in line with the Trust's Vision, values, and strategy.

The intention is to commission an external review in Q3 2024/25 aligned to the new CQC assessment framework.

- *Provision B.2.6 - The Board of Directors should identify in the Annual Report each Non-Executive Director it considers to be independent.*

The Code of Governance includes circumstances that are likely to impair, or could appear to impair, a Non-Executive Director's independence. One of these is serving on the Trust Board for more than six years from the date of their first appointment. As noted in previous years, Julian Farmer (Non Executive Director) was re-appointed by the Council of Governors until 31st May 2024, at which point he will have served on the Board of the Foundation Trust for 3 terms (9 years). In addition, Nicholas Brooks has been re-appointed for a third and final term to the 10th June 2026. A review of independence and performance including the importance of continuity in light of other NED changes was undertaken by the Council of Governors. The Senior Independent Director role was re-assigned to Bob Burgoyne (NED) as part of this process. The NED succession plan has been subject to regular review and two new NEDs have been appointed and commenced in post in March 2024.

The compliance with the Code of Governance is extensive, and the Trust is also continuing to focus on developments in respect of the provision and use of data to support its work on health inequalities.