

Request for feedback on the revised *Code of Governance for NHS Foundation Trusts*

8 November 2013

Introduction

One of Monitor's key objectives is to make sure that public providers are well led. To this end, the *Code of Governance for NHS Foundation Trusts* (the Code) is our way of providing guidance to NHS foundation trusts to help them deliver effective corporate governance and better outcomes for patients.

A great deal has changed since we last updated the Code in 2010. Many of these changes have implications for how NHS foundation trusts are expected to establish and report on corporate governance arrangements. They result from:

- the Health and Social Care Act 2012;
- the new provider licence;
- the *Risk assessment framework*;
- the Francis Report; and
- a new edition of the UK Corporate Code of Governance.¹

We have chosen to update the existing Code to take account of these developments. However, following initial feedback from the sector, we have also taken the opportunity provided by this update to be clearer about what we mean by corporate governance and to clarify precisely how NHS foundation trusts are expected to use the Code and how Monitor will use the information we receive from the sector in relation to it.

We have put together a draft update to the Code which is attached in full here. However, we are keen to ensure the revised Code is as useful as possible in supporting NHS foundation trusts to deliver effective corporate governance arrangements, and we would like to hear the views of stakeholders on the proposed changes. To this end, in the next section we have provided some specific questions on which we would welcome feedback, followed by a summary of the key changes in the document for your reference.

¹ Formerly known as the Combined Code of Corporate Governance

We are keen to receive feedback from across the sector. **However, we are particularly keen to hear the views of users of the Code, for example trust secretaries, chairs, non-executive directors and governors of NHS foundation trusts.**

The deadline for feedback is **Friday 29 November 2013.**

Please email your views to codeofgovernance@monitor.gov.uk or write to:

Code of Governance Update
Monitor
133-155 Waterloo Road
London
SE1 8UG

Questions for stakeholders

1. New and/or revised principles and provisions

A number of new provisions have been introduced to the Code and a number of existing provisions have been updated to reflect changes introduced by the Health and Social Care Act 2012, the provider licence, the *Risk assessment framework* and other relevant developments. These changes are summarised in Section 3 (below).

Question 1: Do you have any feedback on the specific changes we have made to the principles and provisions of the code?

2. Disclosure requirements

We received feedback anecdotally, and through a workshop hosted by the Foundation Trust Network, that the disclosure requirements for the Code were not as clear as they could be. In response, we have provided a fuller explanation of the disclosure requirements both in the introduction and in Schedule A.

Question 2: Are the disclosure requirements sufficiently clear?

3. Tone and structure of the Code

The current version of the Code is based on the Combined Code of Corporate Governance. This was significantly updated in 2012 (as the UK Corporate Code) and shifted from a focus on institutional structures and process (eg, chapters on directors and governors) to a focus on behaviours and outcomes (eg, chapters on leadership and effectiveness). We have aimed to reflect this shift in the proposed update.

Question 3: Do you have any feedback on the changes we have made to the tone and structure of the Code?

4. Audit committee requirements

The Department of Health is currently consulting on proposals to change the requirements for audit committees of NHS trusts to require the majority of committee members to be independent. These proposals will not apply to NHS foundation trusts, and we have opted to maintain the standard in the UK Corporate Code (a minimum of three independent members).

Question 4: Do you have any feedback on our proposal to retain existing requirements for audit committees?

5. The value of recruiting non-executive directors with clinical experience

The Francis Report suggested that NHS foundation trusts should be encouraged to consider recruiting nurses as non-executive directors. In response to this, we have highlighted that consideration should be given to the value of including non-executive

directors with clinical backgrounds, alongside other considerations regarding the balance of skills, experience, independence and knowledge of the board.

Question 5: Do you have any feedback on this change?

6. How the Code fits alongside other governance reporting requirements

We received further evidence through the workshop held with the Foundation Trust Network that we needed to provide a clearer explanation of how the *Code of Governance for NHS Foundation Trusts* fits with Monitor's other guidance and reporting requirements relating to governance. We have provided an explanation of the relationship between the Code and other requirements in the introduction and in Appendix C.

Question 6: Do you have any feedback on these changes?

7. Other changes

In addition to the specific questions outlined above, we are keen to hear any other feedback on the content, structure or changes in the updated Code.

Question 7: Do you have any other feedback or suggestions for changes?

Major changes

The main changes that you should be aware of and the sources of the changes are summarised below.

Health and Social Care Act 2012

Change	Where is it reflected?
The act creates a duty for the board of directors to promote the success of the NHS foundation trust so as to maximise the benefits for the members of the trust as a whole and for the public.	A new principle has been added to <i>A.1. The role of the board of directors.</i>
The act makes significant changes to the duties and responsibilities of governors including: <ul style="list-style-type: none"> • a duty to hold the non-executive directors individually and collectively account for the performance of the board of directors; • a duty to represent the interests of members and the public; and • new voting rights relating to changes to the constitution and significant transactions. 	These changes are reflected throughout <i>Section A. Leadership</i> and <i>Section E. Relations with Stakeholders.</i>

New provider licence

Change	Where is it reflected?
The licence requires that directors and governors of NHS foundation trusts meet the “fit and proper persons” test.	The principles and provisions of <i>B.2 Appointments to the board</i> have been updated to reflect the requirements for the board and the council to meet the fit and proper persons test.
The licence includes a requirement for regular governance and capability reviews. (The updated UK Corporate Code also introduces a need for tri-annual external governance reviews.)	A new provision has been added to <i>B.6 Evaluation</i> requiring externally facilitated evaluation of the boards of NHS foundation trusts every three years.

UK Corporate Code

Change	Where is it reflected?
The updated UK Corporate Code explicitly states that <i>the roles of chairman and chief executive should not be exercised by the same individual</i> .	This is reflected in A.2.1.
The updated UK Corporate Code provides a new principle specifically for non-executive directors.	We have included this principle in A.4 <i>Non-executive directors</i> : As part of their role as members of a unitary board, non executive directors should constructively challenge and help develop proposals on strategy.
The updated UK Corporate Code includes a new section on “Commitment” and a new principle.	A new section (<i>B.3 Commitment</i>) has been included with the addition of the new main principle: <i>All directors should be able to allocate sufficient time to the NHS foundation trust to discharge their responsibilities effectively</i> .
The updated UK Corporate Code provides an expanded provision regarding the directors’ statement in the annual report and what this should contain.	We have updated Section C. <i>Accountability</i> to include these expanded requirements.
The updated UK Corporate Code provides a new principle focused on risk, in addition to the previous principle focused on internal control:	We have updated C.2 <i>Risk management and internal control</i> to include the new principle: <i>The board of directors is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management systems</i> .
The updated UK Corporate Code provides an expanded list of requirements of the report made by the audit committee as part of the annual report.	We have added a new provision in C.3.9. which lists these new requirements.

Francis Report

Change	Where is it reflected?
The Francis Report suggested that NHS foundation trusts should be encouraged to consider recruiting nurses as non-executive directors.	A new principle has been added to A.3 <i>Composition of the Board</i> to suggest that the value of clinicians as non-executive directors is taken into account.

Other

Change	Where is it reflected?
The previous version of the Code referenced professional standards only in the case of external (and not internal) auditors.	We have updated provision C.3.2. to reflect the requirement to also adhere to professional standards for internal audit.

Code of Governance for NHS foundation trusts

Proposed update November 2013

Contents

Introduction	4
1.1 Why is there a <i>Code of Governance</i> for NHS foundation trusts?	4
1.2 What is corporate governance?	5
1.3 About the Code	5
1.4 Application of the Code	6
The main principles of the Code.....	10
Section A: Leadership	13
A.1 The role of the board of directors.....	13
A.2 Division of responsibilities.....	16
A.3 The chairman.....	16
A.4 Non-executive directors	17
A.5 Governors.....	17
Section B: Effectiveness.....	22
B.1 The composition of the board	22
B.2 Appointments to the board.....	23
B.3 Commitment	25
B.4 Development	26
B.5 Information and support.....	27
B.6 Evaluation.....	28
B.7 Re-appointment of directors and re-election of governors	30
B.8 Resignation of directors	31
Section C. Accountability.....	32
C.1 Financial, quality and operational reporting	32
C.2 Risk management and internal control	33
C.3 Audit committee and auditors	34
Section D. Remuneration	37
D.1 The level and components of remuneration	37
D.2 Procedure.....	38
Section E. Relations with stakeholders	40
E.1 Dialogue with members, patients and the local community	40

E.2 Co-operation with third parties with roles in relation to NHS foundation trusts	41
Schedule A: Disclosure of corporate governance arrangements	43
Appendix A: The role of the NHS foundation trust secretary	51
Appendix B: The role of the nominated lead governor	52
Appendix C: The <i>Code of Governance</i> and other regulatory requirements.....	54

Introduction

1.1 Why is there a *Code of Governance* for NHS foundation trusts?

The principal purpose of NHS foundation trusts is to provide health care services in England. Together, they deliver care to a huge number of patients each year. In order to make sure that the care which NHS foundation trusts provide is safe, effective, caring and responsive for patients, trust boards must be founded on and supported by a strong governance structure. Monitor, as sector regulator, seeks to protect patients and promote their interests, and ultimately good governance enables the kind of decision-making and processes that are essential to achieving these goals.

NHS foundation trusts are created as legal entities in the form of public benefit corporations by the National Health Service Act 2006 (the 2006 Act). This legislation provided NHS foundation trusts with a governance regime that is fundamentally different from NHS trusts and so requires its own guidance. The boards of directors of NHS foundation trusts have more autonomy to make financial and strategic decisions than NHS trusts; these are to be taken with the goal of maximising the benefit to patients. The Health and Social Care Act 2012 (the 2012 Act) provided further changes to the governance regime for NHS foundation trusts.

The board of directors is a unitary board. This means that within the board of directors, the non-executive directors and the executive directors share the same liability. All directors, executive and non-executive have responsibility to constructively challenge the decisions of the board and help develop proposals on priorities, risk mitigation, values, standards and strategy.

The board of directors also has a framework of local accountability through members and a council of governors, which has replaced central control from the Secretary of State for Health. NHS foundation trust governors are responsible as a council for holding the non-executive directors, individually and collectively, responsible for the performance of this unitary board. In turn, NHS foundation trust governors are accountable to the members who elect or appoint them, including patients and carers, and must represent their interests and those of the public.

In this *Code of Governance* we bring together the best practices of the public and private sector in order to help NHS foundation trust boards maintain good quality corporate governance. We believe this is necessary if the needs of patients are to be met. In this document, we set out a common overarching framework for the corporate governance of NHS foundation trusts that complements the statutory and regulatory obligations on them (which are referenced throughout this document).

1.2 What is corporate governance?

An NHS foundation trust's board has a duty to promote the success of the organisation so as to maximise the benefits for the members of the trust as a whole and for the public who will be treated by the trust. Therefore, a board needs to be able to deliver prudent and effective leadership and effective oversight of the trust's operations to ensure it is operating in the best interests of patients.

Corporate governance is the means by which boards lead and direct their organisations so that decision-making is effective and the right outcomes are delivered. In the NHS this means delivering safe, effective services in a caring and compassionate environment in a way that is responsive to the changing needs of patients and service users. Robust governance structures that encourage proper engagement with stakeholders and strong local accountability will help NHS foundation trusts to maintain the trust and confidence of the people and communities that they service.

Good corporate governance is the means by which quality governance is overseen. Robust corporate and quality governance arrangements complement and reinforce one another. Individuals working in clinical teams providing NHS services are at the front line of ensuring quality of care to patients. However it is the board of directors that takes final and definitive responsibility for improvements, successful delivery, and equally failures, in the quality of care. Effective governance therefore requires that boards pay as much attention to quality and quality governance as they do to the financial health of their organisation. More information on the role of boards in quality governance can be found in [Quality Governance in the NHS – a guide for provider boards](#) from the National Quality Board.

1.3 About the Code

The Code of Governance for NHS Foundation Trusts (the Code) was first published in 2006 and was revised in 2010. Following significant regulatory change as a result of the 2012 Act and taking account of developments in our regulatory toolkit since then, we have updated the code. **This updated version will apply from 1 April 2014.**

As with the 2010 version of the Code, our approach has been to bring best practice from the private sector to the NHS foundation trust sector, with the ultimate goal of ensuring a strong governance structure is in place to enable high quality patient care. The Code therefore builds on the significant update to the *UK Corporate Code of Governance* which was issued in 2012.

1.4 Application of the Code

1.4.1 What do NHS foundation trusts need to do to fulfil the Code's requirements?

This code is best practice advice. It is not our role to prescribe in detail what governance systems and processes should look like or set rigid rules; instead we seek to support good governance by offering sound guidance. We are keen that NHS foundation trusts should have the autonomy and flexibility to ensure their structures and processes work well for their individual organisations now and in the future, while making sure they meet our overall requirements which are dictated by patient interest.

There are a number of advantages to the “comply or explain” approach that underpins this code, which is explained more fully below. Its inherent flexibility means that it is possible for us to set more demanding standards than can be done through hard rules. Experience has shown that the vast majority of private companies are able to meet these standards, which can easily be translated to suit the NHS foundation trust model. In addition, requiring NHS foundation trusts to report to members and patients, rather than regulators, means that the decision on whether a trust's governance is adequate is taken by those in whose interest the board is meant to act.

Comply or explain

The Code, as best practice advice, is not mandatory guidance and accordingly non-compliance is not in itself a breach of NHS Foundation Trust Condition 4 of the NHS provider licence (also known as the Governance condition).

However, good governance is an important tool for ensuring the quality of care. Some trusts may decide that the provisions are disproportionate or less relevant in their case. Such trusts may nonetheless consider that it would be appropriate to adopt the approach in the Code, and it is recognised that departure from the provisions of the Code may be justified in particular circumstances. All NHS foundation trusts are strongly encouraged to take account of the best practice provisions described in this code.

Reasons for non-compliance with the Code should be explained. This “comply or explain” approach has been in successful operation for at least the last 15 years in the private sector and is not new to the NHS foundation trust sector. In providing an explanation for non-compliance the NHS foundation trust should aim to illustrate how its actual practices are consistent with the principle to which the particular provision relates. It should set out the background, provide a clear rationale, and describe any mitigating actions it is taking to address any risks and maintain conformity with the relevant principle. Where deviation from a particular provision is intended to be

limited in time, the explanation should indicate when the NHS foundation trust expects to conform to the provision.

Satisfactory engagement between the board of directors, the council of governors, members and patients is crucial to the effectiveness of NHS foundation trusts' corporate governance approach. Directors and governors both have a responsibility for ensuring that "comply or explain" remains an effective alternative to a rules-based system and a key aspect of this is ensuring improved interaction between directors, governors, members and – crucially – patients.

Behaviours

In this *Code of Governance*, we set out best practice principles and structures and processes (through the Code's provisions), but ultimately only directors and governors can demonstrate and promote the effective board *behaviour* that is needed to guarantee good corporate governance in practice. The achievement of good governance requires continuing and determined effort and boards have opportunities within the framework of the Code to decide themselves how they should act. It is therefore incumbent on boards to think deeply, thoroughly and on an ongoing basis about their overall tasks and the implications of this for the roles of their individual members.

NHS foundation trust governors should also be mindful of the principles of the Code and the disclosures that the board is making as part of their role in holding the non-executives to account.

Disclosure requirements

To meet the requirements of "comply or explain" each trust must provide a statement either confirming compliance with each of the provisions of the Code, or, where appropriate, explaining in each case why the trust has departed from the Code.

In addition, to help us verify that the right behaviours and approach are in place as well as the right structures and processes, the trust must explain how it applies the principles of the Code listed below under "The main principles of the Code". The form and content of this part of the statement are not prescribed, the intention being that trusts should have a free hand to explain their governance policies in the light of the principles, including any special circumstances applying to them which have led to a particular approach.

It is important to note that:

- a comprehensive list of the provisions to which "comply or explain" applies, are clearly stated in Schedule A to this document;

- we have also emphasised the requirement for trusts to provide a specific explanation regarding how the principles of the Code are applied, within Schedule A;
- we have clearly noted in Schedule A where a provision may be statutory as a result of other legislation and therefore where compliance is mandatory;
- although in some cases disclosures may be contained elsewhere in the annual reporting documentation, a separate set of disclosures for the *Code of Governance* is required which includes everything listed in Schedule A; and
- a completed set of disclosures as per Schedule A should be included within a trust's annual report.

1.4.2 How does the Code fit with other Monitor requirements?

Although compliance with the provisions in this Code is not always required, some of the provisions in this document **are** statutory requirements because they are enshrined elsewhere in legislation. In the first instance, boards, directors and governors should ensure they are meeting the specific governance requirements described in the Health and Social Care Act 2012 and subsequently set out in [The new NHS provider licence](#) and [Risk assessment framework](#). These are concerned with issues such as continuity of services, which is vital for effective patient care. In the list of disclosure requirements in Schedule A, we have clearly highlighted any provisions which are required as a result of legislation or other regulatory obligations.

It is important to note that as a result of NHS Foundation Trust Condition 4 of the NHS provider licence, trusts must also now provide a “forward looking governance statement” in the form of the corporate governance statement found within the Annual Plan. Any issues that are raised at this forward plan stage can then be discussed to identify how they can be mitigated in advance of any breach taking place. However any issues not identified and subsequently arising can be used as evidence of self-certification failure.

In addition to the corporate governance statement mentioned above, this *Code of Governance* sits alongside a number of other Monitor reporting requirements which relate to governance but do not conflict or connect with the Code. The Code also includes references to other Monitor publications, which focus on audit and on internal control:

- [NHS Foundation Trust Annual Reporting Manual](#);¹
- [NHS Foundation Trust Accounting Officer Memorandum \(revised\)](#); and
- [Audit Code for NHS Foundation Trusts](#).

¹ This is updated on a yearly basis and made available on [our website](#).

For clarity, we have provided a detailed explanation of how the different requirements sit together and the purpose of each in Appendix C.

1.4.3 How will Monitor use the Code?

We will continue to oversee the effectiveness and applicability of the Code and develop it, in consultation with NHS foundation trusts where appropriate, as best practice both in the sector and outside of the sector evolves. We will also continue to ensure that any relevant changes or recommendations in the wider regulatory framework are reflected in updates to the *Code of Governance* and vice versa. Regarding disclosures made by trusts in respect of the *Code of Governance*, we will monitor widespread areas of non-compliance in more detail to assess whether there is evidence of systemic variation from the Code so that we can understand the reasons for that variation. In all cases, our activity will be dictated by our primary duty to patients.

As we noted above, NHS foundation trusts should also take note of the new [Risk assessment framework](#) (which came into effect on 1 October 2013), which sets out in detail our approach to overseeing NHS foundation trusts' compliance with the governance requirement of their provider licence. This includes important information regarding the board leadership and governance framework (which are also referenced in B.6.2. of this document).

The main principles of the Code

Section A: Leadership

Every NHS foundation trust should be headed by an effective board of directors, since the board is collectively responsible for the performance of the NHS foundation trust.

The board of directors has a duty to promote the success of the organisation so as to maximise the benefits for the members of the trust as a whole and for the public.

There should be a clear division of responsibilities at the head of the NHS foundation trust between the chairing of the boards of directors and the council of governors, and the executive responsibility for the running of the NHS foundation trust's business. No one individual should have unfettered powers of decision.

The chairman is responsible for leadership of the board of directors and the council of governors, ensuring their effectiveness on all aspects of their role and setting their agenda.

As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.

The council of governors has a statutory duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors, including ensuring the board acts so that the NHS foundation trust does not breach the conditions of its licence. It remains the responsibility of the board of directors to design and then implement agreed priorities, objectives and the overall strategy of the NHS foundation trust.

The council of governors is responsible for representing the interests of NHS foundation trust members, the public and partner organisations in the local health economy in the governance of the NHS foundation trust. Governors must act in the best interests of the NHS foundation trust and should adhere to its values and code of conduct.

Section B: Effectiveness

The board of directors and its committees and the council of governors should have the appropriate balance of skills, experience, independence and knowledge of the NHS foundation trust to enable them to discharge their respective duties and responsibilities effectively.

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. Directors of NHS foundation trusts must be "fit and proper" to meet the requirements of the provider licence's general conditions.

All directors and governors should be able to allocate sufficient time to the NHS foundation trust to discharge their responsibilities effectively.

All directors and governors should receive induction on joining the board of directors or the council of governors and should regularly update and refresh their skills and knowledge.

The board of directors and the council of governors should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance.

Section C: Accountability

The board of directors should present a fair, balanced and understandable assessment of the NHS foundation trust's position and prospects.

The board of directors is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management and internal control systems.

The board of directors should establish formal and transparent arrangements for considering how it should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the NHS foundation trusts' auditors.

Section D: Director remuneration

Levels of remuneration should be sufficient to attract, retain and motivate directors of quality, with the skills and experience required to lead the NHS foundation trust successfully. However, a trust should avoid paying more than is necessary for this purpose.

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

Section E: Relations with stakeholders

The board of directors should appropriately consult and involve members, patients and the local community.

The council of governors should represent the interests of trust members and the public.

NHS foundation trusts should use an open annual meeting and open board meetings to encourage stakeholder engagement.

Aside from the complementary role of the governors in this consultation, the board of directors as a whole has responsibility for ensuring that regular and open dialogue with its stakeholders takes place.

Section A: Leadership

A.1 The role of the board of directors

Main principles

Every NHS foundation trust should be headed by an effective board of directors, since the board is collectively responsible for the exercise of the powers and the performance of the NHS foundation trust.

The board of directors has a duty to promote the success of the NHS foundation trust so as to maximise the benefits for the members of the trust as a whole and for the public.

Supporting principles

The role of the board of directors is to provide entrepreneurial leadership of the NHS foundation trust within a framework of prudent and effective controls, which enables risk to be assessed and managed.

The board of directors is responsible for ensuring compliance by the NHS foundation trust with its licence, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations.

The board of directors should set the NHS foundation trust's strategic aims at least annually taking into consideration the views of the council of governors, ensuring that the necessary financial and human resources are in place for the NHS foundation trust to meet its priorities and objectives and, then, periodically reviewing progress and management performance.

The board of directors as a whole is responsible for ensuring the quality and safety of health care services, education, training and research delivered by the NHS foundation trust and applying the principles and standards of clinical governance set out by the Department of Health (DH), NHS England, the Care Quality Commission (CQC) and other relevant NHS bodies.

The board of directors should also ensure that the NHS foundation trust functions effectively, efficiently and economically.

The board of directors should set the NHS foundation trust's vision, values and standards of conduct and ensure that its obligations to its members are understood, clearly communicated and met.

All directors must take decisions objectively in the interests of the NHS foundation trust.

All members of the board of directors have joint responsibility for every decision of the board regardless of their individual skills or status. This does not impact upon the particular responsibilities of the chief executive as the accounting officer. The chief executive should refer to the latest guidance from Monitor on the responsibilities and obligations of the accounting officer (*NHS Foundation Trust Accounting Officer Memorandum*).

The concept of the unitary board refers to the fact that within the board of directors, the non-executive directors and the executive directors share the same liability. All directors, executive and non-executive, have responsibility to constructively challenge the decisions of the board and help develop proposals on priorities, risk mitigation, values, standards and strategy.

As part of their role as members of a unitary board, non-executive directors have a particular duty to ensure appropriate challenge is made. Non-executive directors should scrutinise the performance of the executive management in meeting agreed goals and objectives, receive adequate information and monitor the reporting of performance. They should satisfy themselves as to the integrity of financial, clinical and other information, and make sure that financial and clinical quality controls, and systems of risk management and governance, are robust and implemented. Non-executive directors are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning.

Code provisions

A.1.1. The board of directors should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The schedule of matters reserved for the board of directors should be complemented with a clear statement detailing the roles and responsibilities of the council of governors (as described in Section B). There should also be a statement explaining how any disagreements between the council of governors and the board of directors will be resolved. The annual report should include a statement of how the board of directors and the council of governors operate, including a high-level statement of which types of decisions are to be taken by each of the boards and which are delegated to the executive management of the board of directors. These arrangements should be kept under review.

A.1.2. The annual report should identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent directors (see A.4.1) and the chairman and members of the nominations, audit and remuneration committees. It should also set out the number of meetings of the board and those committees and individual attendance by directors. It should be supplied to the council of governors on request.

A.1.3. The board of directors should make available a statement of the objectives of the NHS foundation trust showing how it intends to balance the interests of patients, the local community and other stakeholders, and use this as the basis for its decision-making and forward planning.

A.1.4. The board of directors should ensure that adequate systems and processes are maintained to measure and monitor the NHS foundation trust's effectiveness, efficiency and economy as well as the quality of its health care delivery. The board should regularly review the performance of the NHS foundation trust in these areas against regulatory and contractual obligations, and approved plans and objectives.

The board of directors should ensure that relevant metrics, measures, milestones and accountabilities are developed and agreed so as to understand and assess progress and delivery of performance. Where appropriate and, in particular, in high risk or complex areas, independent advice should be commissioned by the board of directors to provide an adequate and reliable level of assurance.

A.1.5. The board of directors should report on its approach to clinical governance and its plan for the improvement of clinical quality in accordance with guidance set out by the DH, NHS England, the CQC and Monitor.

A.1.6. The chief executive as the accounting officer should follow the procedure set out by Monitor (*NHS Foundation Trust Accounting Officer Memorandum*) for advising the board of directors and the council of governors and for recording and submitting objections to decisions considered or taken by the board of directors in matters of propriety or regularity, and on issues relating to the wider responsibilities of the accounting officer for economy, efficiency and effectiveness.

A.1.7. The board of directors should establish the values and standards of conduct for the NHS foundation trust and its staff in accordance with NHS values and accepted standards of behaviour in public life, which includes the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership (*The Nolan Principles*).

A.1.8. The board of directors should operate a code of conduct that builds on the values of the NHS foundation trust and reflect high standards of probity and responsibility. The board of directors should follow a policy of openness and transparency in its proceedings and decision-making unless this is in conflict with a need to protect the wider interests of the public or the NHS foundation trust (including commercial-in-confidence matters) and make clear how potential conflicts of interest are dealt with.

A.1.9. The NHS foundation trust should arrange appropriate insurance to cover the risk of legal action against its directors.

A.2 Division of responsibilities

Main principle

There should be a clear division of responsibilities at the head of the NHS foundation trust between the chairing of the boards of directors and the council of governors, and the executive responsibility for the running of the NHS foundation trust's business. No one individual should have unfettered powers of decision.

Code provision

A.2.1. The roles of chairman and chief executive should not be undertaken by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board of directors.

A.3 The chairman

Main principle

The chairman is responsible for leadership of the board of directors and the council of governors, ensuring their effectiveness on all aspects of their role and setting their agenda.

Supporting principles

The chairman is responsible for setting the agenda for the board of directors and the council of governors and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues.

The chairman is responsible for ensuring that the board and council work together effectively.

The chair is also responsible for ensuring that directors and governors receive accurate, timely and clear information that is appropriate for their respective duties.

The chairman should ensure effective and open communication with patients, clients, members, staff and other stakeholders.

The chairman should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors, in particular, and ensuring constructive relations between executive and non-executive directors.

Code provision

A.3.1. The chairman should, on appointment, meet the independence criteria set out in B.1.1. below. A chief executive should not go on to be the chairman of the same NHS foundation trust. If, exceptionally, a board of directors decides that a chief executive should become chairman, the board should consult major stakeholders in

advance and should set out its reasons to stakeholders at the time of the appointment and in the next annual report.

A.4 Non-executive directors

Main principle

As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.

Supporting principles

Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives, and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary, removing executive directors, and in succession planning.

Code provisions

A.4.1. The board should appoint one of the independent non-executive directors to be the senior independent director to provide a sounding board for the chairman and to serve as an intermediary for the other directors when necessary. The senior independent director should be available to governors if they have concerns that contact through the normal channels of chairman, chief executive or finance director has failed to resolve, or for which such contact is inappropriate. The senior independent director could be the deputy chairman.

A.4.2. The chairman should hold meetings with the non-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet without the chairman present, at least annually, to appraise the chairman's performance, and on other such occasions as are deemed appropriate.

A.4.3. Where directors have concerns that cannot be resolved about the running of the NHS foundation trust or a proposed action, they should ensure that their concerns are recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the chairman for circulation to the board, if they have any such concerns.

A.5 Governors

The 2012 Act made significant changes to the powers of, and obligations upon, governors of NHS foundation trusts. Monitor has described in this section of the

Code, those areas of the governors' role that are relevant and which NHS foundation trusts may find helpful.

In addition, in August 2013, Monitor published a separate document which examines how governors can deliver their duties: [*Your statutory duties: A reference guide for NHS foundation trust governors*](#).

Main principle

The council of governors has a statutory duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors. This includes ensuring the board of directors acts so that the foundation trust does not breach the conditions of its licence. It remains the responsibility of the board of directors to design and then implement agreed priorities, objectives and the overall strategy of the NHS foundation trust.

The council of governors is responsible for representing the interests of NHS foundation trust members, the public and partner organisations in the local health economy in the governance of the NHS foundation trust. Governors must act in the best interests of the NHS foundation trust and should adhere to its values and code of conduct.

Governors are responsible for regularly feeding back information about the trust, its vision and its performance to members and the public, and the stakeholder organisations that either elected or appointed them.

Supporting principles

Governors should discuss and agree with the board of directors how they will undertake these and any other additional roles, giving due consideration to the circumstances of the NHS foundation trust and the needs of the local community and emerging best practice.

Governors should work closely with the board of directors and must be presented with, for consideration, the annual report and accounts and the annual plan at a general meeting. The governors must be consulted on the development of forward plans for the trust and any significant changes to the delivery of the trust's business plan.

Governors should use the new voting rights established under the 2012 Act to hold the non-executive directors individually and collectively to account and act to in the best interest of patients, members and the public. Governors should also acknowledge the overall responsibility of the board of directors for running the NHS foundation trust and should not use the powers of the council of governors to veto the decisions of the board of directors or otherwise obstruct the implementation of agreed actions and strategies. If the council of governors does withhold approval, it must justify its reasons to the chair and the other non-executive directors, bearing in

mind that its decision is likely to have a range of consequences for the NHS foundation trust. The council of governors should take care to ensure that reasons are legitimate, factual and legally sound.

Code provisions

A.5.1. The council of governors should meet sufficiently regularly to discharge its duties. Typically the council of governors would be expected to meet as a full council at least four times a year. Governors should, where practicable, make every effort to attend the meetings of the council of governors. The NHS foundation trust should take appropriate steps to facilitate attendance.

A.5.2. The council of governors should not be so large as to be unwieldy. The council of governors should be of sufficient size for the requirements of its duties. The roles, structure, composition, and procedures of the council of governors should be reviewed regularly as described in provision B.6.5.

A.5.3. The annual report should identify the members of the council of governors, including a description of the constituency or organisation that they represent, whether they were elected or appointed, and the duration of their appointments. The annual report should also identify the nominated lead governor. A record should be kept of the number of meetings of the board and the attendance of individual governors and it should be made available to members on request.

A.5.4. The roles and responsibilities of the council of governors should be set out in a written document. This statement should include a clear explanation of the responsibilities of the council of governors towards members and other stakeholders and how governors will seek their views and inform them.

A.5.5. The 2006 Act, as amended, gives the council of governors a statutory requirement to receive the following documents. These documents should be provided in the annual report as per the *NHS Foundation Trust Annual Reporting Manual*:

- (a) the annual accounts;
- (b) any report of the auditor on them; and
- (c) the annual report.

In addition the directors must provide governors with an agenda prior to any meeting of the board, and a copy of the minutes as soon as is practicable afterwards.

A.5.6. The council of governors should receive and consider other appropriate information required to enable it to discharge its duties, for example clinical and operational data.

A.5.7. The chairman is responsible for leadership of both the board of directors and the council of governors (see A.3) but the governors also have a responsibility to make the arrangements work and should take the lead in inviting the chief executive to their meetings and inviting attendance by other executives and non-executives, as appropriate. In these meetings other members of the council of governors may raise questions of the chairman or his/her deputy, or any other director present at the meeting about the affairs of the NHS foundation trust.

A.5.8. The council of governors should establish a policy for engagement with the board of directors for those circumstances when they have concerns about the performance of the board of directors, compliance with the *new provider licence* or other matters related to the general wellbeing of the NHS foundation trust. The council of governors should consider the advantages of having a senior independent director on the board of directors (see A.4.1). The council of governors may require one or more of the directors to attend a governors' meeting to obtain information about performance of the trust's functions or the directors' performance of their duties, and to help the council of governors to decide whether to propose a vote on the trust's or directors' performance.

A.5.9. The council of governors should ensure its interaction and relationship with the board of directors is appropriate and effective. In particular, by agreeing the availability and timely communication of relevant information, discussion and the setting in advance of meeting agendas and, where possible, using clear, unambiguous language.

A.5.10. Governors should use their new rights and voting powers from the 2012 Act to protect the interests of patients, members and the public on major decisions taken by the board of directors. These new voting powers require:

- More than 50% of members of the board of directors voting and more than 50% of members of the council of governors voting to approve a change to the constitution of the NHS foundation trust.
- More than half of governors voting to approve a significant transaction.
- More than half of all governors to approve an application by a trust for a merger, acquisition, separation or dissolution.
- More than half of governors who vote, to approve any proposal to increase the proportion of the trust's income earned from non-NHS work by 5% a year or more. For example, governors will be required to vote where an NHS foundation trust plans to increase its non-NHS income from 2% to 7% or more of the trust's total income.

- Governors to determine together whether the trust's private patient work will significantly interfere with the trust's principal purpose, which is to provide goods and services for the health service in England, or its ability to perform its other functions.

A.5.11. The council of governors should only exercise its power to remove the chairman or any non-executive directors after exhausting all other means of engagement with the board of directors.

Section B: Effectiveness

B.1 The composition of the board

Main principle

The board of directors and its committees should have the appropriate balance of skills, experience, independence and knowledge of the NHS foundation trust to enable them to discharge their respective duties and responsibilities effectively.

Supporting principles

The board of directors should be of sufficient size that the requirements of the organisation can be met and that changes to the board's composition and that of its committees can be managed without undue disruption, and should not be so large as to be unwieldy.

The board of directors should include an appropriate combination of executive and non-executive directors (and in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking.

All directors should be able to exercise one full vote, with the chairman having a second casting vote on occasions where a decision is tied.

The value of ensuring that committee membership is refreshed and that undue resilience is not placed on particular individuals should be taken into account in deciding chairmanship and the membership of committees. The value of appointing non-executive directors with a clinical background to the board of directors should be taken into account.

Only the committee chairman and relevant members are entitled to be present at a meeting of the nominations, audit or remuneration committees, but others may attend by invitation of the relevant committee.

Code provisions

B.1.1. The board of directors should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board of directors should state its reasons if it determines that a director is independent despite the existence of relationships or

circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the NHS foundation trust within the last five years;
- has, or has had within the last three years, a material business relationship with the NHS foundation trust either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the NHS foundation trust;
- has received or receives additional remuneration from the NHS foundation trust apart from a director's fee, participates in the NHS foundation trust's performance-related pay scheme, or is a member of the NHS foundation trust's pension scheme;
- has close family ties with any of the NHS foundation trust's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- has served on the board of the NHS foundation trust for more than nine years from the date of their first appointment; or
- is an appointed representative of the NHS foundation trust's university medical or dental school.

B.1.2. At least half the board of directors, excluding the chairman, should comprise non-executive directors determined by the board to be independent.

B.1.3. No individual should hold, at the same time, positions of director and governor of NHS foundation trusts.

B.1.4. The board of directors should include in its annual report a description of each director's skills, expertise and experience. Alongside this, in the annual report, the board should make a clear statement about its own balance, completeness and appropriateness to the requirements of the NHS foundation trust. Both statements should also be available on the NHS foundation trust's website.

B.2 Appointments to the board

Main principle

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. Directors of NHS foundation trusts must be "fit and proper" to meet the requirements of the general conditions of the provider licence.

Supporting principles

The search for candidates for the board of directors should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender.

The board of directors should also satisfy itself that plans are in place for orderly succession for appointments to the board, so as to maintain an appropriate balance of skills and experience within the NHS foundation trust and on the board.

Code provisions

B.2.1. The nominations committee or committees, with external advice as appropriate, are responsible for the identification and nomination of executive and non-executive directors. The nominations committee should give full consideration to succession planning, taking into account the future challenges, risks and opportunities facing the NHS foundation trust and the skills and expertise required within the board of directors to meet them.

B.2.2. Directors on the board of directors and governors on the council of governors should meet the “fit and proper” persons test described in the *provider licence*. For the purpose of the licence and application criteria, “fit and proper” persons are defined as those without recent criminal convictions and director disqualifications, and those who are not bankrupt (undischarged). Trusts should also abide by the CQC essential standards which include provisions on appointments to senior positions in organisations subject to CQC regulations.

B.2.3. There may be one or two nominations committees. If there are two committees, one will be responsible for considering nominations for executive directors and the other for non-executive directors (including the chairman). The nominations committee(s) should regularly review the structure, size and composition of the board of directors and make recommendations for changes where appropriate. In particular, the nominations committee(s) should evaluate the balance of skills, knowledge and experience on the board of directors and, in the light of this evaluation, prepare a description of the role and capabilities required for appointment of both executive and non-executive directors, including the chairman.

B.2.4. The chairman or an independent non-executive director should chair the nominations committee(s).

B.2.5. The governors are responsible at a general meeting for the appointment, re-appointment and removal of the chairman and the other non-executive directors. They should agree with the nominations committee a clear process for the nomination of a new chair and non-executive directors. Once suitable candidates have been identified the nominations committee should make recommendations to the council of governors.

B.2.6. Where an NHS foundation trust has two nominations committees, the nominations committee responsible for the appointment of non-executive directors should consist of a majority of governors.

If only one nominations committee exists, when nominations for non-executives, including the appointment of a chairman or a deputy chairman, are being discussed, there should be a majority of governors on the committee and also a majority governor representation on the interview panel.

B.2.7. When considering the appointment of non-executive directors, the council of governors should take into account the views of the board of directors on the qualifications, skills and experience required for each position.

B.2.8. The annual report should describe the process followed by the council of governors in relation to appointments of the chairman and non-executive directors.

B.2.9. It is a requirement of the 2006 Act that the chairman, the other non-executive directors and – except in the case of the appointment of a chief executive the chief executive, are responsible for deciding the appointment of executive directors. The nominations committee with responsibility for executive director nominations should identify suitable candidates to fill executive director vacancies as they arise and make recommendations to the chairman, the other non-executives directors and, except in the case of the appointment of a chief executive, the chief executive.

B.2.10. It is for the non-executive directors to appoint and remove the chief executive. The appointment of a chief executive requires the approval of the council of governors.

B.2.11. An independent external adviser should not be a member of or have a vote on the nominations committee(s).

B.2.12. A separate section of the annual report should describe the work of the nominations committee(s), including the process it has used in relation to board appointments.

B.3 Commitment

Main principle

All directors should be able to allocate sufficient time to the NHS foundation trust to discharge their responsibilities effectively.

Code provisions

B.3.1. For the appointment of a chairman, the nominations committee should prepare a job specification defining the role and capabilities required including an assessment of the time commitment expected, recognising the need for availability in the event of emergencies. A chairman's other significant commitments should be

disclosed to the council of governors before appointment and included in the annual report. Changes to such commitments should be reported to the council of governors as they arise, and included in the next annual report. No individual, simultaneously whilst being a chairman of an NHS foundation trust, should be the substantive chairman of another NHS foundation trust.

B.3.2. The terms and conditions of appointment of non-executive directors should be made available for inspection. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other 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.

B.3.3. The board of directors should not agree to a full-time executive director taking on more than one non-executive directorship of an NHS foundation trust or another organisation of comparable size and complexity, nor the chairmanship of such an organisation.

B.4 Development

Main principle

All directors and governors should receive appropriate induction on joining the board of directors or the council of governors and should regularly update and refresh their skills and knowledge.

Supporting principles

The chairman should ensure that directors and governors continually update their skills, knowledge and familiarity with the NHS foundation trust and its obligations to fulfil their role both on the board, the council of governors and on committees. The NHS foundation trust should provide the necessary resources for developing and updating its directors' and governors' knowledge and capabilities.

To function effectively, all directors need appropriate knowledge of the NHS foundation trust and access to its operations and staff.

Code provisions

B.4.1. The chairman should ensure that new directors and governors receive a full, formal and tailored induction on joining the board or the council of governors. As part of this, directors should seek out opportunities to engage with stakeholders, including patients and clinicians.

B.4.2. The chairman should regularly review and agree with each director their training and development needs.

B.5 Information and support

Main principle

The board of directors and the council of governors should be supplied in a timely manner with relevant information in a form and of a quality appropriate to enable them to discharge their respective duties. Statutory requirements on the provision of information from the board of directors to the council of governors are provided in [*Your statutory duties: A reference guide for NHS foundation trust governors.*](#)

Supporting principles

The chairman is responsible for ensuring that directors and governors receive accurate, timely and clear information. Management has an obligation to provide such information but directors and governors should seek clarification or detail where necessary.

The responsibilities of the chairman include ensuring good information flows in the board, the council of governors and their committees, between directors and governors, and between senior management and non-executive directors, as well as facilitating appropriate induction and assisting with professional development as required.

Code provisions

B.5.1. The board should ensure that directors, especially non-executive directors, have access to the independent professional advice, at the NHS foundation trust's expense, where they judge it necessary to discharge their responsibilities as directors. Directors should also have access, at the NHS foundation trust's expense, to training courses and/or materials that are consistent with their individual and collective development programme as described in B.4. Decisions to appoint an external adviser should be the collective decision of the majority of non-executive directors. The availability of independent external sources of advice should be made clear at the time of appointment.

Committees should be provided with sufficient resources to undertake their duties. The board of directors should also ensure that the council of governors is provided with sufficient resources to undertake its duties with such arrangements agreed in advance.

B.5.2. The board of directors and the council of governors should be provided with high-quality information appropriate to the respective functions of the boards and relevant to the decisions they have to make. The board of directors and the council of governors should agree their respective information needs with the executive directors. The information for the boards should be concise, objective, accurate and timely, and it should be accompanied by clear explanations of complex issues. The board of directors should have complete access to any information about the NHS

foundation trust that it deems necessary to discharge its duties, including access to senior management and other employees.

B.5.3. The board of directors and in particular non-executive directors, may reasonably wish to challenge assurances received from the executive management. They need not seek to appoint a relevant adviser for each and every subject area that comes before the board of directors, although they should, wherever possible, ensure that they have sufficient information and understanding to take decisions on an informed basis. When complex or high-risk issues arise, the first course of action should normally be to encourage further and deeper analysis to be carried out in a timely manner, within the NHS foundation trust. On occasion, non-executives may reasonably decide that external assurance is appropriate.

B.5.4. Non-executive directors should receive the necessary information and feel able to raise appropriate challenge of recommendations or decisions of the board, in particular making full use of their skills and experience gained both as a director of the trust and also in other leadership roles. They should expect and apply similar standards of care and quality in their role as a non-executive director of an NHS foundation trust as they would in other similar roles.

B.5.5. Governors should canvass the opinion of their members and the public, and for appointed governors the body they represent, on the NHS foundation trust's forward plan, including its objectives, priorities and strategy, and their views should be communicated to the board of directors.

B.5.6. The board of directors should consider and take account of the views of the council of governors on the NHS foundation trust's forward plan. Where appropriate, the board of directors should communicate to the council of governors where their views have been incorporated in the NHS foundation trust's plans, and, if not, the reasons for this.

B.6 Evaluation

Main principles

The board of directors should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

The outcomes of the evaluation of the executive directors should be reported to the board of directors. The chief executive should take the lead on the evaluation of the executive directors.

The council of governors, which is responsible for the appointment and re-appointment of non-executive directors, should take the lead on agreeing a process for the evaluation of the chairman and the non-executives, with the chairman and the non-executives. The outcomes of the evaluation of the chairman and the non-executive directors should be agreed by the governors. The governors should bear

in mind the desirability of using the senior independent director to lead the non-executive directors in an evaluation of the chairman.

The council of governors should assess its own collective performance and its impact on the NHS foundation trust.

Supporting principles

Evaluation of the board of directors should consider the balance of skills, experience, independence and knowledge of the NHS foundation trust on the board, its diversity, including gender, how the board works together as a unit, and other factors relevant to its effectiveness.

Individual evaluation of directors should aim to show whether each director continues to contribute effectively and to demonstrate commitment and has the relevant skills for the role (including commitment of time for board and committee meetings and any other duties) going forwards.

The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board, identifying individual and collective development needs, and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

The focus of the chairman's appraisal will be his/her performance as leader of the board of directors. The appraisal should carefully consider that performance against pre-defined objectives that support the design and delivery of the NHS foundation trust's priorities and strategy described in its forward plan.

Code provisions

B.6.1. The board of directors should state in the annual report how performance evaluation of the board, its committees, and its individual directors, including the chairman, has been conducted, bearing in mind the desirability for independent assessment, and the reason why the NHS foundation trust adopted a particular method of performance evaluation.

B.6.2. Evaluation of the boards of NHS foundations trusts should be externally facilitated at least every three years. The evaluation needs to be carried out against the board leadership and governance framework (which will be) set out by Monitor. The external facilitator should be identified in the annual report and a statement made as to whether they have any other connection to the trust.

B.6.3. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman taking into account the views of executive directors.

B.6.4. The chairman, with assistance of the secretary of the boards, if applicable, should use the performance evaluations as the basis for determining individual and

collective professional development programmes for directors relevant to their duties as board members.

B.6.5. Led by the chairman, the council of governors should periodically assess their collective performance and they should regularly communicate to members and the public details on how they have discharged their responsibilities, including their impact and effectiveness on:

- contributing to the development of forward plans of NHS foundation trusts; and
- communicating with their member constituencies and the public and transmitting their views to the board of directors.

The council of governors should use this process to review its roles, structure, composition and procedures, taking into account emerging best practice. Further information can be found in Monitor's publication: [Your statutory duties: A reference guide for NHS foundation trust governors](#).

B.6.6. There should be a clear policy and a fair process for the removal from the council of any governor who consistently and unjustifiably fails to attend the meetings of the council of governors or has an actual or potential conflict of interest which prevents the proper exercise of their duties. In addition, removal from the council of governors may be appropriate where behaviours or actions of a governor or group of governors may be incompatible with the values and behaviours of the NHS foundation trust. Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

B.7 Re-appointment of directors and re-election of governors

Main principle

All non-executive directors and elected governors should be submitted for re-appointment or re-election at regular intervals. The performance of executive directors of the board should be subject to regular appraisal and review. The board of directors should ensure planned and progressive refreshing of the board.

Code provisions

B.7.1. Approval by the council of governors of the appointment of a chief executive should be a subject of the first general meeting after the appointment by a committee of the chairman and non-executive directors. All other executive directors should be appointed by a committee of the chief executive, the chairman and non-executive directors.

B.7.2. Non-executive directors, including the chairman should be appointed by the council of governors for the specified terms subject to re-appointment thereafter at intervals of no more than three years and to the 2006 Act provisions relating to removal of a director. The chairman should confirm to the governors that following formal performance evaluation, the performance of the individual proposed for re-appointment continues to be effective and to demonstrate commitment to the role. Any term beyond six year (eg, two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may in exceptional circumstances serve longer than six years (eg, two three-year terms following authorisation of the NHS foundation trust) but subject to annual re-appointment. Serving more than six years could be relevant to the determination of a non-executive's independence.

B.7.3. Elected governors must be subject to re-election by the members of their constituency at regular intervals not exceeding three years. The names of governors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable members to take an informed decision on their election. This should include prior performance information such as attendance records at governor meetings and other relevant events organised by the NHS foundation trust for governors.

B.8 Resignation of directors

Main principle

The board of directors is responsible for ensuring ongoing compliance by the NHS foundation trust with its licence, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations. In so doing, it should ensure it retains the necessary skills within its board and directors and puts in place appropriate succession planning.

Code provision

The board of directors should not agree to an executive member of the board leaving the employment of an NHS foundation trust, except in accordance with the terms of their contract of employment, including but not limited to service of their full notice period and or material reductions in their time commitment to the role, without the board first having completed and approved a full risk assessment.

Section C. Accountability

C.1 Financial, quality and operational reporting

Main principle

The board of directors should present a fair, balanced and understandable assessment of the NHS foundation trust's position and prospects.

Supporting principle

The responsibility of the board of directors to present a fair, balanced and understandable assessment extends to all public statements and reports to regulators and inspectors, as well as information required to be presented by statutory requirements.

The board of directors should establish arrangements that will enable it to ensure that the information presented is fair, balanced and understandable.

Code provisions

C.1.1. The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, are fair, balanced and understandable and provide the information necessary for patients, regulators and other stakeholders to assess the NHS foundation trust's performance, business model and strategy. There should be a statement by the external auditor about their reporting responsibilities. Directors should also explain their approach to quality governance in the Annual Governance Statement (within the annual report).

C.1.2. The directors should report that the NHS foundation trust is a going concern with supporting assumptions or qualifications as necessary.

C.1.3.

- a) The board of directors must notify Monitor and the council of governors without delay and should consider whether it is in the public interest to bring to the public attention, any major new developments in the NHS foundation trust's sphere of activity which are not public knowledge, which may lead by virtue of their effect on its assets and liabilities, or financial position or on the general course of its business, to a substantial change to the financial wellbeing, health care delivery performance or reputation and standing of the NHS foundation trust.
- b) The board of directors must notify Monitor and the council of governors without delay and should consider whether it is in the public interest to bring to

public attention all relevant information which is not public knowledge concerning a material change in:

- the NHS foundation trust's financial condition;
- the performance of its business; and/or
- the NHS foundation trust's expectations as to its performance which, if made public, would be likely to lead to a substantial change to the financial wellbeing, health care delivery performance or reputation and standing of the NHS foundation trust.

C.1.4. At least annually, the board of directors should set out clearly its financial, quality and operating objectives for the NHS foundation trust and disclose sufficient information, both quantitative and qualitative, of the NHS foundation trust's business and operation, including clinical outcome data, to allow members and governors to evaluate its performance. Further requirements are included in the *NHS Foundation Trust Annual Reporting Manual*.

C.2 Risk management and internal control

Main principles

The board of directors is responsible for determining the nature and extent of the significant risks it is willing to take in achieving its strategic objectives. The board should maintain sound risk management systems.

The board of directors should maintain a sound system of internal control to safeguard public and private investment, the NHS foundation trust's assets, patient safety and service quality. The board should report on internal control through the Annual Governance Statement (formerly the Statement on Internal Control) in the annual report.

Monitor publications the *NHS Foundation Trust Annual Reporting Manual* and the latest *NHS Foundation Trust Accounting Officer Memorandum* provide further guidance.

Code provision

C.2.1. The board of directors should, at least annually, conduct a review of the effectiveness of the NHS foundation trust's risk management and internal control systems and should report to members and governors that they have done so. The review should cover all material controls, including financial, operational and compliance controls.

C.3 Audit committee and auditors

Main principle

The board of directors should establish formal and transparent arrangements for considering how they should apply the corporate reporting and risk management and internal control principles and for maintaining an appropriate relationship with the NHS foundation trust's auditors.

Monitor's publications, *Audit Code for NHS Foundation Trusts and [Your statutory duties: A reference guide for NHS foundation trust governors](#)*, provide further guidance.

Code provision

C.3.1. The board of directors must establish an audit committee composed of non-executive directors which should include at least three independent non-executive directors. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

C.3.2. The main role and responsibilities of the audit committee should be set out in written terms of reference and should include details of how it will:

- Monitor the integrity of the financial statements of the NHS foundation trust, and any formal announcements relating to the trust's financial performance, reviewing significant financial reporting judgements contained in them;
- Review the NHS foundation trust's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, review the trust's internal control and risk management systems;
- Monitor and review the effectiveness of the NHS foundation trust's internal audit function, taking into consideration relevant UK professional and regulatory requirements;
- Review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;
- Develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and
- Report to the council of governors, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

C.3.3. The terms of reference of the audit committee, including its role and the authority delegated to it by the board of directors and by the council of governors should be made publicly available. A separate section of the annual report should describe the work of the committee in discharging those responsibilities.

C.3.4. The council of governors should take the lead in agreeing with the audit committee the criteria for appointing, reappointing and removing external auditors.

C.3.5. The audit committee should make a report to the council of governors in relation to the performance of the external auditor, including detail such as the quality and value of the work and the timeliness of reporting and fees, to enable the council of governors to consider whether or not to re-appoint them. The audit committee should also make a recommendation to the council of governors about the appointment, re-appointment and removal of the external auditor and approve the remuneration and terms of engagement of the external auditor.

If the council of governors does not accept the audit committee's recommendation, the board of directors should include in the annual report a statement from the audit committee explaining the recommendation and should set out reasons why the council of governors has taken a different position.

C.3.6. The NHS foundation trust should appoint an external auditor for a period of time which allows the auditor to develop a strong understanding of the finances, operations and forward plans of the NHS foundation trust. The current best practice is for a three- to five-year period of appointment.

C.3.7. When the council of governors ends an external auditor's appointment in disputed circumstances, the chairman should write to Monitor informing it of the reasons behind the decision.

C.3.8. The audit committee should review arrangements that allow staff of the NHS foundation trust to raise, in confidence, concerns about possible improprieties in matters of financial reporting and control, clinical quality, patient safety or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

C.3.9. A separate section of the annual report should describe the work of the committee in discharging its responsibilities. The report should include:

- the significant issues that the committee considered in relation to financial statements, operations and compliance, and how these issues were addressed;
- an explanation of how it has assessed the effectiveness of the external audit process and the approach taken to the appointment or re-appointment of the

external auditor, and information on the length of tenure of the current audit firm and when a tender was last conducted; and

- if the external auditor provides non-audit services, an explanation of how auditor objectivity and independence are safeguarded.

Section D. Remuneration

D.1 The level and components of remuneration

Main principle

Levels of remuneration should be sufficient to attract, retain and motivate directors of quality, and with the skills and experience required to lead the NHS foundation trust successfully, but an NHS foundation trust should avoid paying more than is necessary for this purpose.

Supporting principles

The performance-elements of executive directors' remuneration should be stretching and designed to promote the long-term sustainability of the NHS foundation trust.

The remuneration committee should decide if a proportion of executive director's remuneration should be structured so as to link reward to corporate and individual performance. The remuneration committee should judge where to position its NHS foundation trust relative to other NHS foundation trusts and comparable organisations. Such comparisons should be used with caution to avoid any risk of an increase in remuneration levels with no corresponding improvement in performance.

The remuneration committee should also be sensitive to pay and employment conditions elsewhere in the NHS foundation trust, especially when determining annual salary increases.

Code provisions

D.1.1. Any performance-related elements of the remuneration of executive directors should be designed to align their interests with those of patients, service users and taxpayers and to give these directors keen incentives to perform at the highest levels. In designing schemes of performance related remuneration, the remuneration committee should follow the following provisions:

- i) The remuneration committee should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching and designed to match the long-term interests of the public and patients.
- ii) Payouts or grants under all incentive schemes should be subject to challenging performance criteria reflecting the objectives of the NHS foundation trust. Consideration should be given to criteria which reflect the performance of the NHS foundation trust relative to a group of comparator trusts in some key indicators, and the taking of independent and expert advice where appropriate.

- iii) Performance criteria and any upper limits for annual bonuses and incentive schemes should be set and disclosed.
- iv) The remuneration committee should consider the pension consequences and associated costs to the NHS foundation trust of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement.

D.1.2. Levels of remuneration for the chairman and other non-executive directors should reflect the time commitment and responsibilities of their roles.

D.1.3. Where an NHS foundation trust releases an executive director, for example to serve as a non-executive director elsewhere, the remuneration disclosures of the annual report should include a statement of whether or not the director will retain such earnings.

D.1.4. The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointments would give rise to in the event of early termination. The aim should be to avoid rewarding poor performance. In an early termination, compensation should be reduced to reflect a departing director's obligation to mitigate loss.

D.2 Procedure

Main principle

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

Supporting principle

The remuneration committee should consult the chairman and/or chief executive about its proposals relating to the remuneration of other executive directors.

The remuneration committee should also be responsible for appointing any independent consultants in respect of executive director remuneration.

Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest.

Code provisions

D.2.1. The board of directors must establish a remuneration committee composed of non-executive directors which should include at least three independent non-executive directors. The remuneration committee should make available its terms of

reference, explaining its role and the authority delegated to it by the board of directors. Where remuneration consultants are appointed a statement should be made available of whether they have any other connection with the NHS foundation trust.

D.2.2. The remuneration committee should have delegated responsibility for setting remuneration for all executive directors, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of senior management for this purpose should be determined by the board but should normally include the first layer of management below board level.

D.2.3. The council of governors is responsible for setting the remuneration of non-executive directors and the chairman. The council of governors is responsible for setting the remuneration of non-executive directors and the chairman. The council of governors should consult external professional advisers to market-test the remuneration levels of the chairman and other non-executives at least once every three years and when they intend to make a material change to the remuneration of a non-executive.

Section E. Relations with stakeholders

E.1 Dialogue with members, patients and the local community

Main principle

The board of directors should appropriately consult and involve members, patients and the local community.

The council of governors should represent the interests of trust members and the public. This is a statutory requirement.

Notwithstanding the complementary role of the governors in this consultation, the board of directors as a whole has responsibility for ensuring that regular and open dialogue with its stakeholders takes place.

Supporting principles

The board of directors should keep in touch with the opinion of members, patients and the local community in whatever ways are most practical and efficient. There should be a members' meeting at least annually.

The chairman (and the senior independent director and other directors as appropriate) should maintain regular contact with governors to understand their issues and concerns.

NHS foundation trusts should use an open annual meeting and open board meetings to encourage stakeholder engagement. This is a statutory requirement.

Governors should seek the views of members and the public on material issues or changes being discussed by the trust. Governors should provide information and feedback to members and the public regarding the trust, its vision, performance and material strategic proposals made by the trust board.

Governors should pay due attention to their duty to represent patients and the local community. It is also incumbent on the board of directors to ensure governors have the mechanisms in place to secure and report on this feedback.

Code provisions

E.1.1. The board of directors should make available a public document that sets out its policy on the involvement of members, patients and the local community at large, including a description of the kind of issues it will consult on.

E.1.2. The board of directors should make some or all board meetings and one annual meeting open to the public.

E.1.3. The board of directors should clarify in writing how the public interests of patients and the local community will be represented, including its approach for

addressing the overlap and interface between governors and any local consultative forums already in place (eg, Local Healthwatch, the Overview and Scrutiny Committee, the local League of Friends, and staff groups).

E.1.4. The chairman should ensure that the views of governors and members are communicated to the board as a whole. The chairman should discuss the affairs of the NHS foundation trust with governors. Non-executive directors should be offered the opportunity to attend meetings with governors and should expect to attend them if requested by governors. The senior independent director should attend sufficient meetings with governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of governors.

E.1.5. The board of directors should ensure that the NHS foundation trust provides effective mechanisms for communication between governors and members from its constituencies. Contact procedures for members who wish to communicate with governors and/or directors should be made clearly available to members on the NHS foundation trust's website and in the annual report.

E.1.6. The board of directors should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of governors and members about the NHS foundation trust, for example through attendance at meetings of the council of governors, direct face-to-face contact, surveys of members' opinions and consultations.

E.1.7. The board of directors should monitor how representative the NHS foundation trust's membership is and the level and effectiveness of member engagement. This information should be used to review the trust's membership strategy taking into account any emerging best practice from the sector.

E.2 Co-operation with third parties with roles in relation to NHS foundation trusts

Main principle

The board of directors is responsible for ensuring that the NHS foundation trust co-operates with other NHS bodies, local authorities and other relevant organisations with an interest in the local health economy.

Supporting principle

The board of directors should enter a dialogue at an appropriate level with a range of third party stakeholders and other interested organisations with roles in relation to NHS foundation trusts based on the mutual understanding of objectives.

Code provisions

E.2.1. The board of directors should maintain a schedule of the specific third party bodies in relation to which the NHS foundation trust has a duty to co-operate. The board of directors should be clear of the form and scope of the co-operation required with each of these third party bodies in order to discharge their statutory duties.

E.2.2. The board of directors should ensure that effective mechanisms are in place to co-operate with relevant third party bodies and that collaborative and productive relationships are maintained with relevant stakeholders at appropriate levels of seniority in each. Periodically, the board of directors should review the effectiveness of these processes and relationships and, where necessary, take proactive steps to improve them.

Schedule A: Disclosure of corporate governance arrangements

NHS foundation trusts are required to provide a specific set of disclosures to meet the requirements of the *Code of Governance*, which should be submitted as part of the Annual Report (as referenced in the *NHS Foundation Trust Annual Reporting Manual*). The following list specifies everything that is required within this separate disclosure.

1. **A statement of how the NHS foundation trust is applying all of the principles of the Code of Governance.** The main principles are summarised in this document within “The main principles of the Code”.
2. The provisions listed below are enshrined elsewhere in legislation and are therefore statutory requirements. This supersedes the “comply or explain” requirements of the *Code of Governance*. **The disclosure must therefore contain a confirmation of compliance with each of the below provisions.**

Provision	Statutory requirement:
A.5.5.	The 2006 Act, as amended, gives the council of governors a statutory duty to receive the annual accounts, any report of an auditor on them and the annual report. These documents should be provided as part of the annual report. Governors must also receive the agenda and minutes of any meeting of the board of directors.
A.5.8.	The council of governors may require one or more of the directors to attend a governors meeting to obtain information about performance of the trust’s functions of the directors’ performance of their duties.
A.5.10	Governors should use their new rights and voting powers from the 2012 Act to protect the interests of patients, members and the public on major decisions taken by the board of directors.
B.2.5.	The governors are responsible at a general meeting for the appointment, re-appointment and removal of the chairman and the other non-executive directors.
B.2.9.	It is a requirement of the 2006 Act that the chairman, the other non-executive directors and – except in the case of the appointment of a chief executive – the chief executive are responsible for deciding the appointment of executive directors.
B.2.10.	It is for the non-executive directors to appoint and remove the chief executive. The appointment of a chief executive requires the approval of the council of governors.
B.5.6.	The board of directors should consider and take account of the views of the council of governors on the NHS foundation trust’s forward plan.
B.7.1.	Approval by the council of governors of the appointment of a chief executive should be a subject of the first general meeting after the appointment by a committee of the chairman and non-executive directors. All other executive directors should be appointed by a committee of the chief executive, the chairman and non-executive directors.

B.7.2.	Non-executive directors, including the chairman, should be appointed by the council of governors for the specified terms, subject to re-appointment thereafter at intervals of no more than three years and subject to the 2006 Act provisions relating to removal of a director.
B.7.3	Elected governors must be subject to re-election by the members of their constituency at regular intervals not exceeding three years.
D.2.3.	The council of governors is responsible for setting the remuneration of non-executive directors and the chairman. The council of governors is responsible for setting the remuneration of non-executive directors and the chairman.
E.1.2.	The board of directors should make some or all board meetings and one annual meeting open to the public.

3. The provisions listed below require a supporting explanation, even in the case that the NHS foundation trust is compliant with the provision. This explanation should be included with the annual report, **in a clearly identified separate disclosure specifically regarding the Code of Governance provisions.**

Provision	The disclosure statement in the annual report should include:
A.1.1.	A statement of how the board of directors and the council of governors operate, including a high-level statement of which types of decisions are to be taken by each and which are to be delegated to management by the board of directors.
A.1.2.	The names of the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the nominations, audit and remuneration committees.
A.1.2.	The number of meetings of the board of directors and committees and individual attendance by directors.
A.3.1.	Where a chief executive is appointed chairman, the reasons for their appointment.
A.5.3.	The names of the governors and details on their constituency, whether they are elected or appointed and the duration of their appointments, together with details of the nominated lead governor.
A.5.3.	The number of meetings of the council of governors and individual attendance by governors and directors.
B.1.1.	The names of the non-executive directors whom the board determines to be independent, with reasons where necessary.
B.1.4.	A description of each director's expertise and experience.
B.1.4.	A clear statement about the board of directors' balance, completeness and appropriateness.
B.2.12.	A section describing the work of the nominations committee, including the process it has used in relation to board appointments and an explanation if neither external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director.
B.3.1.	The other significant commitments of the chairman and any changes to them during the year.
B.6.1.	How performance evaluation of the board of directors, its committees and its directors has been conducted.

B.6.2.	Where an external facilitator has been used, they should be identified and a statement made as to whether they have any other connection to the company.
C.1.1.	An explanation from the directors of their responsibility for preparing the accounts and a statement that they consider that the annual report and accounts, taken as a whole is fair, balanced and understandable and provides the information necessary for patients, regulators and other stakeholders to assess the NHS foundation trust's performance, business model and strategy. There should be a statement by the auditors about their reporting responsibilities.
C.1.2.	A statement from the directors that the business is a going concern, with supporting assumptions or qualifications as necessary.
C.2.1.	A report that the board has conducted a review of the effectiveness of its system of internal controls.
C.3.5.	Where the council of governors does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor, a statement from the audit committee explaining the recommendation and the reasons why the council of governors has taken a different position.
C.3.9.	A statement describing the work of the audit committee in discharging its responsibilities including: the significant issues that were addressed; an explanation of how it has assessed the effectiveness of the external audit process and the approach taken to the appointment and reappointment of the external auditor, including the length of tenure of the current audit firm and when a tender was last conducted; and, if the external auditor provides non-audit services, an explanation of how auditor objectivity and independence is safeguarded.
D.1.3.	Where an executive director serves as a non-executive director elsewhere, whether or not the director will retain such earnings (<i>this should also be included as part of the remuneration disclosures of the annual report</i>).
E.1.5.	Contact procedures for members who wish to communicate with governors and/or directors.
E.1.6.	The steps the board has taken to ensure that its members, and in particular the non-executive directors, develop an understanding of the views of governors and members about the NHS foundation trust.

4. The provisions listed below require supporting information to be made **publicly available** even in the case that the NHS foundation trust is compliant with the provision. This requirement can be met by making supporting information available on request and on the NHS foundation trust's website.

Provision	Information required on website:
A.1.3.	A statement of the priorities and objectives of the NHS foundation trust and an explanation of how interests of patients, the local community and other stakeholders will be balanced.
B.1.4.	A description of each director's expertise and experience, with a clear statement about the board of directors' balance, completeness and appropriateness.
B.3.2.	The terms and conditions of appointment of non-executive directors.
D.2.1.	Where remuneration consultants are appointed, a statement of whether they have any other connection with the NHS foundation trust.
C.3.3. and D.2.1.	The terms of reference of the nominations, remuneration and audit committees, explaining their role and the authority delegated to them by the boards.
E.1.1.	The policy on the involvement of members, patients and the local community at large, including a description of the kind of issues on which they will be consulted.
E.1.5.	Contact procedures for members who wish to communicate with governors and/or directors.

5. The provisions listed below require supporting information to be made **available to governors**, even in the case that the NHS foundation trust is compliant with the provision. This information should be set out in papers accompanying a resolution to re-appoint a non-executive director.

Provision	Information required:
B.7.2.	Confirmation from the chairman that, following formal performance evaluation, the individual's performance continues to be effective and they continue to demonstrate commitment to the role, including commitment of time for board and committee meetings and any other duties.

6. The provisions listed below require supporting information to be made **available to members**, even in the case that the NHS foundation trust is compliant with the provision. This information should be set out in papers accompanying a resolution elect or re-elect a governors.

Provision	Information required:
B.7.3.	Sufficient biographical details and other relevant information, including any on prior performance, to enable members to take an informed decision on their election or re-election of governors.

7. For all provisions listed below there are no special requirements as per 1-6 above. For these provisions, the basic “comply or explain” requirement stands. The disclosure should therefore contain **a statement either confirming compliance with each of the provisions of the Code or, where appropriate, an explanation in each case why the trust has departed from the Code.**

Although a disclosure is only required for **departures** from the Code for the provisions listed in this section, NHS foundation trusts may also find it useful to provide a simple statement of compliance with each individual provision. This will ensure the disclosure is comprehensive and may help to ensure that each provision has been considered in turn and compliance has been confirmed internally.

In providing an explanation for any variation from the *Code of Governance* the NHS foundation trust should aim to illustrate how its actual practices are consistent with the principle to which the particular provision relates. It should set out the background, provide a clear rationale, and describe any mitigating actions it is taking to address any risks and maintain conformity with the relevant principle. Where deviation from a particular provision is intended to be limited in time, the explanation should indicate when the NHS foundation trust expects to conform to the provision.

The table below provides a summary of the provisions – the full provisions as listed in the document should be used for reference. In this summary “the board” refers to the board of directors, “the council” to the council of governors, and “trust” refers to the NHS foundation trust.

Provision	Summary:
A.1.4.	The board should ensure that adequate systems and processes are in place to monitor the effectiveness of the trust and should regularly review the performance of the trust.
A.1.5.	The board should report on its approach to clinical governance.
A.1.6.	The chief executive as accounting officer should follow Monitor’s procedure for recording and submitting objections to decisions.
A.1.7.	The board should establish the values and standards of conduct for the trust and its staff in accordance with NHS values.
A.1.8	The board should operate a code of conduct.
A.1.9.	The trust should arrange appropriate insurance to cover risk of legal action against its directors.
A.4.1.	The board should appoint one of the independent non-executive directors as senior independent director.
A.4.2.	The chairman should hold meetings with the non-executive directors without the executives present.
A.4.3	Where directors have concerns that cannot be resolved, they should ensure their concerns are recorded in board minutes.
A.5.1.	The council should meet sufficiently regularly to discharge its duties.

A.5.2.	The council should not be so large as to be unwieldy.
A.5.4.	The roles and responsibilities of the council of governors should be set out in a written document.
A.5.6.	The council should receive and consider other appropriate information required to enable it to discharge its duties.
A.5.7.	Although the chair is responsible for leadership of both the board and the council, the governors have a responsibility for making the arrangements between the board and the council work.
A.5.9.	The council should ensure its interaction and relationship with the board is appropriate and effective.
A.5.11.	The council should only exercise its power to remove the chairman or any non-executive directors after exhausting all other means of engagement with the board.
B.1.2.	At least half of the board, excluding the chairman, should comprise independent non-executive directors.
B.1.3	No individual should hold positions of director and governor of NHS foundation trusts at the same time.
B.2.1.	The nominations committee(s) are responsible for the identification and nomination of executive and non-executive directors.
B.2.2.	Directors on the board and governors on the council should meet the “fit and proper persons” test.
B.2.3.	The nominations committee(s) should regularly review the structure, size and composition of the board and make recommendations for changes where appropriate.
B.2.4.	The chairman or an independent non-executive director should chair the nominations committee(s).
B.2.6.	Where a trust has two nominations committees, the committee responsible for appointing non-executive directors should consist of a majority of governors.
B.2.7.	Governors should take into account the views of the board of directors when considering appointments of non-executive directors.
B.2.8.	The annual report should describe the process followed by the council in relation to appointments of the chairman and non-executive directors.
B.3.3.	The board should not agree to a full time executive director taking on more than one non-executive directorship of a trust or another similar organisation.
B.5.1.	The board should ensure that directors have access to independent professional advice and training courses, and that committees and the council have sufficient resources to undertake their duties.
B.5.2.	The board and council should be provided with high quality information relevant to the decisions they have to make.
B.5.3.	The board must ensure they have sufficient information to take decisions and challenge executive management on an informed basis. External assurance or advice may sometimes be appropriate.
B.5.4.	Non-executive directors should receive the necessary information and feel able to raise appropriate challenge to the board, making full use of their skills and experience gained from the role on the board and from other roles.

B.5.5.	Governors should canvass the opinion of members and the public and communicate these views to the board.
B.6.3.	The non-executive directors should be responsible for performance evaluation of the chairman.
B.6.4.	The chairman should use the performance evaluations as the basis for determining individual and collective development programmes.
B.6.5.	The council of governors should periodically assess their collective performance and communicate these details to the public.
B.6.6	There should be a clear policy and fair process for the removal of governors.
C.1.3.	The board of directors must notify Monitor of any major new developments in activity or material changes in the financial condition, performance or expectation of performance of the trust.
C.1.4	The board should set out its financial, quality and operating objectives at least annually.
C.3.1.	The board must establish an audit committee composed of non-executive directors which should include at least three independent non-executive directors.
C.3.2.	The main role and responsibilities of the audit committee should be set out in written terms of reference.
C.3.4.	The council should take the lead in agreeing with the audit committee the criteria for appointing, reappointing and removing external auditors.
C.3.6.	The trust should appoint an external auditor for a period of time which allows the auditor to develop a strong understanding of the finances, operation and forward plans of the trust.
C.3.7.	When the council ends an external auditor's appointment in disputed circumstances, the chairman should inform Monitor in writing of the reasons behind the decision.
C.3.8.	The audit committee should review arrangements by which staff of the trust may raise concerns in confidence and arrangements for proportionate and independent investigation of such matters.
D.1.1.	Performance related elements of remuneration for executive directors should be designed to give directors incentives to perform at the highest levels for the benefits of the patients and the public.
D.1.2.	Levels of remuneration for the chairman and other non-executive roles should reflect the time commitment and responsibilities of their roles.
D.1.4.	The remuneration committee should consider what compensation commitments their directors' terms of appointments would give rise to in the event of early termination.
D.2.2.	The remuneration committee should have delegated responsibility for setting remuneration for all executive directors.
E.1.3.	The board should clarify in writing how the public interests of patients and the local community will be represented.
E.1.4.	The chairman should ensure that the views of governors and members are communicated to the board as a whole.
E.1.7.	The board of directors should monitor how representative the trust's membership is and the level and effectiveness of member engagement.
E.2.1.	The board should maintain a schedule of the specific third-party bodies they must co-operate with.

E.2.2.	The board should ensure that effective mechanisms and relationships are in place to co-operate with relevant third party bodies and periodically review the effectiveness of those processes and relationships.
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Appendix A: The role of the NHS foundation trust secretary

The NHS foundation trust secretary has a significant role to play in the administration of corporate governance. In particular, the trust secretary would normally be expected to:

- ensure good information flows within the board of directors and its committees and between senior management, non-executive directors and the governors;
- ensure that board procedures of both the board of directors and the council of governors are complied with;
- advise the board of directors and the council of governors (through the chairman) on all governance matters; and
- be available to give advice and support to individual directors, particularly in relation to the induction of new directors and assistance with professional development.

Accordingly, the NHS foundation trust should give careful consideration to the appointment of a trust secretary in view of the clear benefits of the role. A trust secretary is normally employed by the NHS foundation trust. All directors and governors would have access to the advice and services of the trust secretary. Both the appointment and removal of the trust secretary would be a matter for the chief executive and chairman jointly.

Appendix B: The role of the nominated lead governor

The lead governor has a role to play in facilitating direct communication between Monitor and the NHS foundation trust's council of governors. This will be in a limited number of circumstances and, in particular, where it may not be appropriate to communicate through the normal channels, which in most cases will be via the chairman or the trust secretary, if one is appointed.

It is not anticipated that there will be regular direct contact between Monitor and the council of governors in the ordinary course of business. Where this is necessary, it is important that it happens quickly and in an effective manner. To this end, a lead governor should be nominated and contact details provided to Monitor, and then updated as required. The lead governor may be any of the governors, including the deputy chairman of the governors.

The main circumstances where Monitor will contact a lead governor are where Monitor has concerns as to board leadership provided to an NHS foundation trust, and those concerns may in time lead to the use by Monitor's Board of its formal powers to remove the chairman or non-executive directors. The council of governors appoints the chairman and non-executive directors, and it will usually be the case that Monitor will wish to understand the views of the governors as to the capacity and capability of these individuals to lead the trust, and to rectify successfully any issues, and also for the governors to understand Monitor's concerns.

Monitor does not, however, envisage direct communication with the governors until such time as there is a real risk that an NHS foundation trust may be in significant breach of its licence. Once there is a risk that this may be the case, and the likely issue is one of board leadership, Monitor will often wish to have direct contact with the NHS foundation trust's governors, but at speed and through one established point of contact, the trust's nominated lead governor. The lead governor should take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action. The lead governor will then be able to communicate more widely with other governors.

Similarly, where individual governors wish to contact Monitor, this would be expected to be through the lead governor.

The other circumstance where Monitor may wish to contact a lead governor is where, as the regulator, we have been made aware that the process for the appointment of the chairman or other members of the board, or elections for governors, or other material decisions, may not have complied with the NHS foundation trust's constitution, or alternatively, whilst complying with the trust's constitution, may be inappropriate.

In such circumstances, where the chairman, other members of the board of directors or the trust secretary may have been involved in the process by which these appointments or other decisions were made, a lead governor may provide a point of contact for Monitor.

Accordingly, the NHS foundation trust should nominate a lead governor, and to continue to update Monitor with their contact details as and when these change.

Appendix C: The *Code of Governance* and other regulatory requirements

Although compliance with the provisions in this guide is not necessarily mandatory, some of the provisions in this document are statutory requirements because they are enshrined elsewhere in legislation. In the first instance, boards, directors and governors should ensure they are meeting the governance requirements for FTs as set out in the 2006 Act (as amended by the 2012 Act) and reflected in the new provider licence and *Risk assessment framework*. This *Code of Governance* sits alongside a number of other Monitor reporting requirements which relate to governance.

Foundation Trust Condition 4: Governance in the new NHS foundation trust provider licence allows Monitor to use reasonable evidence, from disclosures made to us by NHS foundation trusts, to determine if there is a risk of a breach of the licence condition and make a decision regarding intervention. The information we receive includes: a **forward looking** disclosure on corporate governance (the Corporate Governance Statement); a **backward looking** disclosure on corporate governance (the *Code of Governance*); and a **backward looking statement on internal control, risk and quality governance** (the Annual Governance Statement).

For clarity, here we have provided a brief explanation of how the different requirements sit together and the purpose of each.

- **The Corporate Governance Statement – in the Annual Plan**

In order to comply with both the new provider licence and the *Risk assessment framework*, the Annual Plan also includes a requirement for a Corporate Governance Statement. This is a **mandatory requirement**. This is a forward looking statement of expectations regarding corporate governance arrangements over the next 12 months and trusts should be aware that **“issues not identified and subsequently arising can be used as evidence of self-certification failure”**. The requirement for the completion of the Corporate Governance Statement is separate to the disclosure requirements of this Code.

- **The *Code of Governance* disclosure requirements – listed in this document and the *NHS Foundation Trust Annual Reporting Manual***

This document is designed to set out **standards of best practice for corporate governance** – that is the behaviours and systems governing directors, and governors, and their role in ensuring adequate standards of audit and stakeholder engagement.

It is not mandatory to comply with this guidance, however, Section 7 of the *Annual Reporting Manual* **does require trusts to make some specific disclosures on a “comply or explain” basis** regarding the provisions listed in this document. (A detailed list of the disclosures required is provided in Schedule A of this document and duplicated in the *Annual Reporting Manual*, for ease of reference). This is a backward looking statement which should be submitted with the Annual Report.

- **The Annual Governance Statement – in the *NHS Foundation Trust Annual Reporting Manual***

In addition to listing the *Code of Governance* disclosure requirements, the *Annual Reporting Manual* also requires an Annual Governance Statement. The Annual Governance Statement is a backward looking statement which captures information on risk management and internal control, and includes some specific requirements on quality governance. It replaced and expanded on the former requirement for a Statement on Internal Control.

Completion of the Annual Governance Statement **is a mandatory requirement**. The Annual Governance statement does not relate to this *Code of Governance*.