

GOVERNWELL  
INDUCTION  
TOOLKIT

3

CHAPTER THREE  
WHAT IS  
MY ROLE?



# 3

## TOOLKIT OVERVIEW

- 1 Introduction
- 2 What does my trust look like?
- 3 What is my role?**
- 4 How do I carry out my role?
- 5 What type of information am I going to see?

## CHAPTER OBJECTIVES

The aim of this chapter is to help you understand:

- your role as a governor
- the role of the council of governors
- what accountability means
- more about what each of the statutory duties involves

## CHAPTER CONTENTS

- 3.1 Types of governor
- 3.2 Lead governor
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- 3.17 Receiving the annual report and accounts
- 3.18 Non-statutory duties

## 3.1 TYPES OF GOVERNOR

### KEY POINTS

- **All governors have the same duties.**
- **Each trust has elected and appointed governors.**
- **The trust's constitution specifies the number of governors in each category.**
- **Elected governors are elected by the public or staff members of the trust.**
- **Appointed governors (partner or stakeholder) are chosen from groups with a link to the trust and will be specified in the trust's constitution.**
- **Public governors form the majority of the council i.e. at least 51 per cent.**

The council of governors is made up of different types of governors. The trust's constitution sets out the size and membership of the council. It specifies the total number of governors and also the number of governors in each category. All governors have the same duties, as set out in the Health and Social Care Act 2012, see chapter 3.3.

**Elected governors**, are elected by the members and fall into two groups:

### 1) PUBLIC GOVERNORS

who may represent a geographical areas or a particular type of service user, for example patients or carers. promote recovery and quality of life through effective, innovative, and caring mental health, social care and specialist community services.

### 2) STAFF GOVERNORS

who represent the view of staff. Individuals voluntarily put themselves forward for election. By law there must be a minimum of three staff governors. Staff governors bring a unique perspective to the council of governors and have an important role in supporting, informing and influencing at a number of levels. They bring a strong clinical or professional perspective and the knowhow accrued from working with staff and patients.

### THE CONSTITUTION

The constitution will describe the local stakeholder organisations which have a link to the trust and are entitled to appoint representatives to the council of governors. These **stakeholder governors** or **appointed governors** are not elected but are invited and appointed by the foundation trust on the recommendation of their organisations. Examples are local councils, universities, local voluntary groups and charities. **Patient, service user** and **carer governors** are not compulsory but may help to ensure that the people who use the trust's services are appropriately represented.

### FIND OUT MORE

[www.gov.uk/government/publications/nhs-foundation-trust-governors-a-brief-guide-to-your-duties](http://www.gov.uk/government/publications/nhs-foundation-trust-governors-a-brief-guide-to-your-duties)

Please note whilst reading: Monitor became part of NHS Improvement in April 2016

Sometimes there is misunderstanding of the governor role. The table below set out the dos and don'ts for **all** governors.

WHAT ALL GOVERNORS DO	WHAT ALL GOVERNORS DO NOT DO
Follow the appropriate rules of governor conduct issued by your trust and respect the confidentiality of information that you will see as a result of your role.	Act in a directorial capacity – a governor's role is very different.
Add value to the organisation and ensure its values and ethos are maintained and improved.	Press your own personal agenda at the expense of others or participate in discussions where you have a personal interest in the outcome. A declaration of a 'conflict of interest' may be needed.
Regularly attend, having read all papers and play an active part in council of governor (COG) meetings.	Speak to the media or issue press statements without consulting first with the chair and the communication office.
Consider carefully any questions you wish to ask at a CoG meeting. Can the query be clarified before the meeting? Or does it need asking at the meeting for assurance?	Have the right to walk into clinical areas of the trust without prior permission and/or being accompanied. Patient confidentiality is paramount.

In addition, **staff** governors need to consider the following.

WHAT STAFF GOVERNORS DO	WHAT STAFF GOVERNORS DO NOT DO
Represent staff members. To do this effectively they must keep aware of staff members views and concerns.	Promise to 'solve a human resource problem' on their own or become personally involved in individual concerns (unless it clearly affects the overall safety of the trust).
Have equal rights with all other governors.	Have a mandate to express any views other than your own.
Are not restricted to matters of staff interest only.	Have a mandate to pursue a trade union agenda.
Have a 'professional duty of candour' and must be open and honest and raise concerns where appropriate.	Work in isolation and feel unsupported. The trust would be advised to provide confidential channels of communication to allay concerns as they may be seen as criticising their own management.

## YOUR TRUST'S COUNCIL

Using your trust's constitution fill in the pie chart below to show what percentage of governors you have in each category (public, staff, patient/service user etc).



## 3.2 LEAD GOVERNOR

### KEY POINTS

- **Foundation trusts can decide whether they wish to appoint a lead governor, although the majority do.**
- **If appointed, the lead governor has a particular role to communicate with NHS Improvement in exceptional circumstances, not all the time.**
- **In some trusts, the role of the lead governor is wider and may be set out in a written role description.**

NHS Improvement continues to recommend that the board of governors appoints a lead governor who would lead the council of governors where it is not considered appropriate for the chair or another one of the non-executive directors to do so. These occasions are likely to be infrequent but one example may be a meeting discussing the appointment of the chair. The lead governor will not deputise for the deputy chair of the board of directors. The lead governor should be elected by the council of governors.

### DO WE HAVE A LEAD GOVERNOR?

Talk to your existing governors (or lead governor if you have one) to find out about the lead governor role at your trust. You may find the following questions helpful:

Who is eligible to be a lead governor?

How do they get elected?

How long is their term of office?

Do they have any additional roles or responsibilities?

## 3.3 STATUTORY DUTIES

### KEY POINTS

- **Governors' statutory duties are set out in the Health and Social Care Acts of 2006 and 2012.**
- **They set the parameters of the council of governors role, i.e. what you can expect and what you are required to do.**

Governors perform a range of statutory and non-statutory duties (see page 26 for more information on non-statutory duties). The statutory duties are set out in the NHS Act 2006 and the Health and Social Care Act 2012.

They are as follows:

- To represent the interests of members and the public.
- To hold the non-executive directors to account for the performance of the board.
- To appoint, remove and decide upon the terms of office (including levels of remuneration) of the chair and non-executive directors of the trust.
- To appoint or remove the trust's external auditor.
- To approve or not approve the appointment of the trust's chief executive.
- To approve or not approve an application by the trust to enter into an acquisition, merger, separation and dissolution.
- To approve or not approve increases to non-NHS income of more than five per cent of total income.
- To consider a report from the board of directors each year on the use of income from the provision of goods and services from sources other than the NHS in England.
- To approve changes to the trust's constitution jointly with the board.

- To receive the annual report and accounts and auditor's report at a general meeting.
- To express a view on the board's plans for the trust in advance of the trust's submission of the plans to NHS Improvement.
- Significant transactions must be approved by the governors. The trust may choose to include a description of these in the constitution.

Governors have:

- The power to require one or more directors to attend a meeting to answer questions.
- The right to receive board agendas before the meeting and minutes as soon as possible after the meeting.

### FIND OUT MORE

[www.gov.uk/government/publications/nhs-foundation-trust-governors-your-legal-obligations](http://www.gov.uk/government/publications/nhs-foundation-trust-governors-your-legal-obligations)

## 3.4 CORPORATE RESPONSIBILITY AND GOVERNANCE

### KEY POINTS

- **The council of governors works collectively to carry out its duties and make decisions.**
- **Governance is the way organisations are directed, controlled and led.**
- **The council forms part of a trust's governance structure.**

### THE COUNCIL OF GOVERNORS, AS A PUBLIC BODY

The council is made up of individual governors have all chosen to be involved in different capacities, for different reasons, with different views on the trust. This mix helps the trust be truly representative of the community it serves. However, as a council of governors, the individual governors have a corporate existence and a corporate responsibility.

This has several consequences. Firstly, authority rests with the whole council of governors – not with any one person, such as the lead governor. When they act on their own, they are doing so only on the authority of the whole body, and only in so far as they are authorised to act. Secondly, collective responsibility should be taken for the outcomes of the council's decisions – even if you personally do not agree with them and voted against them. This principle does not however prevent legitimate whistleblowing.

### WHAT IS CORPORATE GOVERNANCE?

Corporate governance is the means by which organisations are directed, controlled and led. It is what the board of directors does. It involves boards setting and implementing strategy, supervising the work of the executive, setting and modelling organisational culture and being accountable to key stakeholders. The infrastructure that supports good governance defines relationships and the rights and responsibilities of those who work with and in the organisation, determines the rules and procedures through which the organisation's objectives are set, and provides the means of attaining those objectives and monitoring performance. Importantly, it defines where accountability lies throughout the organisation.

The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public. (Health and Social Care Act 2012).

It may provide goods and services for any purposes relating to the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and the promotion and protection of public health. More than half of the trust's income must come from fulfilling its principal purpose. 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 and service users.

## THE CODE OF GOVERNANCE

The NHS foundation trust code of governance (the Code) was first issued by Monitor (updated July 2014). The Code is still valid and is a way of providing guidance to NHS foundation trusts to help them deliver effective corporate governance, contribute to better organisational performance and ultimately discharge their duties in the best interests of patients. In this document, the regulator sets out a common overarching framework for the corporate governance of NHS foundation trusts that complements the statutory and regulatory obligations they have.

### FIND OUT MORE

<https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>

### THE CODE OF GOVERNANCE

Looking at the code of governance, identify the areas where governors are mentioned.

## 3.5 THE ROLE OF THE COUNCIL

### KEY POINTS

- **Governors work collectively as a council to carry out their role.**
- **Governors do not undertake operational management of the trust.**

NHS foundation trust governors are the direct representatives of local interests within their organisation. Governors do not undertake operational management of NHS foundation trusts; rather, they challenge the board of directors and hold the NEDs to account for the board's performance. It is also the governors' responsibility to represent their members' interests, particularly in relation to the strategic direction of the trust.

The purpose of the council of the governors is:

- to act in the best interests of the trust and to adhere to its values and code of conduct
- to hold the NEDs collectively to account for the performance of the board, including ensuring the board of directors acts so that the trust does not breach the terms of its licence, and
- to ensure the regular feedback of information about the trust, its vision and its performance to the members and stakeholder organisations that either elected or appointed them.

An effective council of governors is one that:

- works closely and collaboratively with the board in an open and transparent way
- makes decisions collectively as a team
- explores issues through sub-committees, working groups or task and finish groups that report back to the whole council
- conducts most of its business through public meetings
- represents the member and public interest, particularly in relation to the strategic direction of the trust
- holds non-executive directors to account for the performance of the board
- is well trained so they fully understand their role and what it is not, to make the best use of their time
- is well prepared
- has high standards of professionalism
- evaluates its effectiveness.

## COUNCIL DOs AND DON'Ts

**Identify which of these things the council of governors does and doesn't do:**

(answers on page 30)



1	Set the overall budget for the trust.	
2	Decide the number of staff.	
3	Decide on how health services are provided to different service users.	
4	Decide on the level of pay for the trust's chief executive and executive team.	
5	Hold the trust to account for its performance against national targets.	
6	Receive information about the quality of service provision.	
7	Use information and data from similar trusts to help hold the board to account for the trust's performance.	
8	Require the trust to have in place an effective policy for handling complaints and other feedback.	
9	Feedback to the trust any concerns its members have about staff performance.	
10	Lead inspections of the trust.	
11	Authorise all expenditure.	
12	After visiting the trust, report back on the quality of service perceived.	
13	Hold the board to account for ensuring that the trust has developed, implemented and monitored the effectiveness of all the policies it needs.	
14	Decide which consultants are appointed.	
15	Write the trust's policies on their own.	
16	Be aware of the performance objectives which have been set for individual non-executive directors.	
17	Approve the appointment of the trust's chief executive.	
18	Remove, if appropriate, the trust's auditor.	
19	Appoint and, if appropriate, remove the trust's chief executive.	
20	Help to decide the priorities for improving the trust when the trust's annual operational plan is being drawn up.	
21	Contribute to the decision regarding the priorities set by the trust in its annual quality account.	
22	Rubber stamp recommendations from the chief executive.	

## 3.6 ACCOUNTABILITY

### KEY POINTS

- **One of the key duties of governors is to hold the non-executive directors to account for the performance of the board.**
- **To be accountable is to be answerable.**

The 2012 Act specifies that it is the duty of the council of governors to hold the non-executive directors individually and collectively to account for the performance of the board of directors. The meaning of 'holding the non-executive directors to account' is not described in legislation. There is therefore no one 'right way' to hold the non-executive directors to account, which may lead to a variety of interpretations by different councils of governors and boards of directors.

To be accountable is to be answerable. For proper accountability relationships to work the accountable body needs to: be responsible for a particular area of work, needs to have the authority to do that work and to change the way of working if necessary, needs to be answerable to another party and needs to be subject to sanction or reward. In being accountable to governors NEDs will want to demonstrate that the board is controlling all of the risks to achieving its strategy and has sufficient assurance that this is the case, so governors will be asking NEDs about assurance and will be looking to be convinced to a reasonable level that the right assurances (evidence) are available.

Accountability includes: being **accountable**, **taking account of**, and **giving an account**.

This means being **accountable** for...

- effectiveness: trust performance including quality
- efficiency: value for money.

To hold to account effectively, governors need clear information to be able to judge performance, **taking account of...**

- performance data
- feedback from stakeholders – patients, families, staff, commissioners, carers
- benchmarking against peers
- policies, plans, improvement strategies
- trust environment
- availability of sources of triangulation – comparing responses to the same questions.

And then... **giving an account**

- to public and staff members, patients and the community.

## KEY PRINCIPLES

- The non-executive directors are accountable to the council of governors for the performance of the board of directors. To exercise this accountability effectively the non-executive directors will need the support of their executive director colleagues.
- A properly functioning accountability relationship will require the non-executive directors to provide governors with a range of information on how the board has assured itself on key areas of quality, operational and financial performance: to give an account of the performance of the trust. The non-executive directors will need to encourage questioning and be open to challenge as part of this relationship. It is important that the board as a whole allows governors time to discuss what they have heard, form a view and to feed back.
- Governors' duty to "hold the non-executive directors, individually and collectively to account for the performance of the board of directors" does not mean that governors are responsible for the decision itself, or the operational detail behind it. Responsibility for a decision remains with the board of directors, acting on behalf of the NHS foundation trust.

## THE CHAIN OF ACCOUNTABILITY

Put the roles below in the correct boxes to show how the chain of accountability flows in a foundation trust (answers on page 30).

**Governors**

**Executive directors**

**Members and the public**

**Non-executive directors**



## WANT TO KNOW MORE ABOUT ACCOUNTABILITY?

GovernWell runs training on this specialist skills topic. See our website at:

<https://nhsproviders.org/programmes/governwell/training-courses/specialist-skills-module>

## 3.7 REPRESENTATION OF MEMBERS

### KEY POINTS

- **Governors can play an active role in engagement between the trust and the community.**
- **Different parts of the electorate will want to engage in different ways.**
- **Finding out about what members want and need and applying that can be one of the most rewarding parts of the governor role.**

Engagement with members is a vital part of how governors fulfil their intermediary role between the trust and the membership. Foundation trusts are required to demonstrate to NHS Improvement that they are engaged with their membership and governors are a vital communication route through which that happens. Engagement can be formal or informal and large scale or personal – all forms are useful, but remember that members will have varying communication needs. You will need to work with the trust to think about the right language to use and the right opportunities to create to ensure that all parts of the electorate get the chance to engage with their governors.

It's important that you try to find out what the trust's members think so that you can reflect those views when you are playing your part as a governor. However your role is to exercise your powers and rights in the light of all relevant information – you need to take the information the trust provides into account just as much as what you know about members' wishes or aspirations for the trust. You are an independent governor, there to exercise your own judgement in the light of all relevant factors, not just the views of those who elected you.

### WANT TO KNOW MORE ABOUT MEMBERSHIP AND PUBLIC ENGAGEMENT?

GovernWell runs training on this specialist skills topic. See our website at:

<https://nhsproviders.org/programmes/governwell/training-courses/specialist-skills-module>

### FIND OUT MORE

[www.gov.uk/government/publications/nhs-foundation-trust-governors-representing-the-interests-of-members-and-the-public](http://www.gov.uk/government/publications/nhs-foundation-trust-governors-representing-the-interests-of-members-and-the-public)

## 3.8 APPOINTMENT OF NEDs

### KEY POINTS

- **The council of governors appoint the non-executive directors of the trust, including the chair.**
- **The council has no powers of delegation.**
- **Some trusts bring in external expertise (e.g. a recruitment consultancy) to help find the right candidates.**

One of the key duties for the council of governors is to appoint the non-executive directors of the trust. These are the individuals that the council will 'hold to account' and it is important that you choose the right candidates.

The process for appointing a new NED should be agreed in advance. The foundation trust code of governance states:

*'There should be a formal, rigorous and transparent procedure for the appointment.'*

*'Appointments should be made on merit and based on objective criteria.'*

*'Governors will need to do a considerable amount of work to ensure that their NHS FT has the right chair and the non-executives are right and proper persons.'*

Some trusts use specialist recruitment agencies to help them find the right candidate. As well as traditional interview techniques, there are other ways of getting to know a candidate before deciding whether to appoint them and to give members of the whole council the opportunity to meet them. You can find out more about the different types of techniques in our 'recruitment case studies' document on the GovernWell website.

If the task of appointing a new NED is delegated to a sub-committee, the committee makes a recommendation to the whole council for approval. Appointment of a new NED requires the majority of governors at that council meeting to vote in favour. Removal of a NED requires three quarters of the whole council to vote in favour.

### WANT TO KNOW MORE ABOUT THE GOVERNOR'S ROLE IN NON-EXECUTIVE APPOINTMENTS?

GovernWell runs training on this specialist skills topic. See our website at:

<https://nhsproviders.org/programmes/governwell/training-courses/specialist-skills-module>

And for GovernWell guidance documents on NED appointments:

<https://nhsproviders.org/programmes/governwell/support-and-guidance/guidance-documents>

## 3.9 REMUNERATION OF NEDs

### KEY POINTS

- **Governors set the levels of remuneration for NEDs**
- **Getting the right balance between protecting public funds and attracting strong candidates is an important part of the decision.**

Setting NED terms and conditions, including the level of remuneration is one of the council of governors' explicit obligations.

The publication *Your statutory duties: a reference guide for NHS foundation trust governors* notes that the governors' role in setting non-executive directors' terms and conditions is important to the trust, its service users and the wider community:

*'Significant factors in attracting, retaining and motivating the chair and other non-executive directors are the terms and conditions on offer to them, including levels of pay... governors should strike a balance between motivating the right candidates and paying no more than is necessary.'*

(paragraph 5.3, Terms and conditions of the chair and other non-executive directors)

The code of governance provides that the council of governors must arrange for a nominations committee to carry out a range of functions relating to the board and its members, including setting NED terms and conditions and then making recommendations to the full council of governors.

Some trusts have one committee of NEDs which deals with executive director terms and conditions and a separate committee of governors which makes decisions about NED terms and conditions.

NED remuneration and other terms and conditions should be reviewed in advance every time the trust is considering a NED appointment and, in any event, at least every three years. Reviews may include looking at what other comparable organisations are offering to ensure that the trust remains competitive and attractive to strong candidates and reference to guidance from NHS Improvement.

The code of governance sets out the main principle which must guide all decisions about remuneration:

*'D.1.a 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 necessary for this purpose and should consider all relevant and current directions relating to contractual benefits such as pay and redundancy entitlements.'*

And provides that:

*'D.2.2. Levels of remuneration for the chairperson and other non-executive directors should reflect the time commitment and responsibilities for their roles.'*

NHS Providers can provide additional advice in this area. Please contact GovernWell support at 020 7304 6912 or email [governors@nhsproviders.org](mailto:governors@nhsproviders.org).

### FIND OUT MORE

- <https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>
- <https://www.gov.uk/government/publications/nhs-foundation-trust-governors-your-legal-obligations>
- [https://www.improvement.nhs.uk/documents/6110/Chair\\_and\\_NED\\_Remuneration\\_Structure\\_1nov.pdf](https://www.improvement.nhs.uk/documents/6110/Chair_and_NED_Remuneration_Structure_1nov.pdf)

And for GovernWell guidance documents on setting NED terms and conditions:

<https://nhsproviders.org/programmes/governwell/support-and-guidance/guidance-documents>

## NOTES

## 3.10 APPOINTMENT OF EXTERNAL AUDITOR

### KEY POINTS

- **Every foundation trust must have an external auditor appointed by the governors.**
- **The council of governors will be supported by the trust's audit committee in deciding which auditor to appoint.**
- **The auditor's role is to ensure the accounts are prepared correctly and the foundation trust is using its resources efficiently.**

An external audit is an examination of the annual financial statements of the foundation trust, in accordance with specific rules, by someone who is independent of the foundation trust. The external auditor performs the audit by examining and testing the information prepared by the foundation trust to support the figures and information it includes in its financial statements.

In contrast, an internal audit provides the foundation trust with independent assurance that internal financial (and non-financial) processes and systems are working properly.

Foundation trusts will have arrangements in place for the delivery of both external and internal audit. Both external and internal auditors report their work to the foundation trust's audit committee which is made up of nominated non-executive directors. The chief executive, director of finance, director of assurance and head of internal audit of the foundation trust shall generally be invited to attend routine meetings of the audit committee.

Governors may be invited to attend meetings of the audit committee. The audit committee is however a committee of the board and therefore governors cannot be members. The audit committee has primary responsibility for monitoring and reviewing financial and other risks and associated controls, corporate governance and financial assurance.

Among many other duties the audit committee supports the council of governors to determine and deliver the process for appointing the external auditor every three to five years (depending on the length of contract used by the foundation trust). It is the council of governors, as a whole, which must make the final decision on the appointment of the external auditor.

### WANT TO KNOW MORE ABOUT RECRUITING THE EXTERNAL AUDITOR?

Have a look at the GovernWell publication on this topic on our website.

<https://nhsproviders.org/programmes/governwell/support-and-guidance/guidance-documents>

## 3.11 APPROVAL OF CHIEF EXECUTIVE APPOINTMENT

### KEY POINT

- **Chief executive appointment is a NED responsibility but governors have a role to play in overseeing the quality of the process.**

Appointment of a chair is a governor decision, but appointing a chief executive is the responsibility of the chair and NEDs. There should be a formal, rigorous and transparent procedure for the appointment. Appointments should be made on merit and based on objective criteria.

The chief executive is crucial to the effective performance and development of the trust and will have an important relationship with the governors, but his/her key relationship is with the board and the chair, and this is reflected in the difference in the appointment arrangements between the chair and chief executive. The council can veto the NEDs' decision about the right candidate but only in exceptional circumstances.

## 3.12 SIGNIFICANT TRANSACTIONS

### KEY POINTS

- **NHS foundation trusts are permitted to decide themselves what constitutes a 'significant transaction' and may choose to set out the definition(s) in the trust's constitution.**
- **Alternatively, with the agreement of the governors, trusts may choose not to give a definition, but this would need to be stated in the constitution.**
- **Significant transactions, if defined in the constitution, can only go ahead if more than half of the governors attending a meeting approve.**

There are many different types of activity that could be classed as a significant transaction, such as entering into a joint venture (a business agreement in which two or more parties agree to develop a new legal entity or enterprise with shared revenues and assets) or franchising arrangements (where a third party is permitted to use the trust's intellectual property, such as proprietary branding, logos).

'Significant' transactions may be defined based on financial criteria (e.g. any contract valued over a certain monetary value, or over a certain percentage of the trust's annual turnover); or wider criteria encompassing any transaction that would significantly affect the trust's risk profile, service delivery, or the geographical area it serves.

### SIGNIFICANT TRANSACTIONS AT YOUR TRUST

Have a look at your trust's constitution. Are significant transactions defined? If they are, how?  
Can you think of an example where you as governors would need to approve the transaction?

### FIND OUT MORE

<https://improvement.nhs.uk/resources/supporting-nhs-providers-considering-transactions-and-mergers/#h2-transactions-guidance>

## 3.13 NON-NHS INCOME

### KEY POINTS

- **Foundation trusts may have income from non-NHS sources. They are required to re-invest surpluses into NHS services.**
- **Governors must approve any increases of non-NHS income that are greater than five per cent of the trusts' total annual income.**
- **Such approval requires that more than half of the governors voting at that meeting must agree.**

An NHS foundation trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is not greater than its total income from the provision of goods and services for any other purposes i.e. a foundation trust must raise the majority of its income from the provision of goods and services for the NHS in England.

"Non-NHS income" for goods and services may include, for example, income from private patients, rental for retail spaces and overseas patients. Foundation trusts are required to explain the impact of non-NHS income on their NHS service provision in their annual reports.

If your trust proposes to increase the proportion of its total annual income attributable to non-NHS sources by five per cent or more (e.g. increasing non-NHS income levels from a current level of two per cent of income to a proposed level of seven per cent or more), it may do so only if more than half of the members of the council of governors voting at a meeting approve implementation of the proposal.

Governors must decide whether the trust's non-NHS income work would significantly interfere with the trust's principal purpose i.e. the provision of goods and services for the health service in England, or the performance of its other functions. The board must report to governors each year on how this income is used for the benefit of NHS patients.

### NON-NHS INCOME AT YOUR TRUST

Identify two areas of non-NHS income at your trust (other than private patients).

1

2

## 3.14 MERGERS AND ACQUISITIONS

### KEY POINTS

- **A merger is when two foundation trusts or trusts join together where the two boards merge as well as the organisations.**
- **An acquisition is when one foundation trust or trust takes over another and the acquiring board takes over the role of running the new organisation.**
- **More than half of all governors are needed to approve an application by a trust for a merger, acquisition, separation or dissolution.**

There is growing consensus that current models of health and social care provision are not fit for purpose. As foundation trusts seek to reorganise, or respond to changes in the financial climate or the local health economy, they may consider some of the transactions explained in this section.

A **merger** refers to a joining of an NHS foundation trust with another NHS foundation trust or with an NHS trust to form one new trust which must seek authorisation as a foundation trust. An **acquisition** refers to a foundation trust acquiring part (or whole) of another NHS foundation trust or an NHS trust. Following an acquisition, the board of the acquired body is disbanded; following a merger the boards of the two organisations are merged (but director posts are usually lost to ensure the board remains a manageable size).

A **separation** refers to a foundation trust separating into two or more new foundation trusts. A foundation trust may also make an application to NHS Improvement for the trust to be **dissolved**. This might happen if, for example, the foundation trust is being acquired by another foundation trust.

The council of governors must approve an application by the trust to enter into a merger, acquisition, separation or dissolution. In this case, approval means more than half of all governors agree with the application.

### FIND OUT MORE

<https://improvement.nhs.uk/resources/supporting-nhs-providers-considering-transactions-and-mergers/#h2-transactions-guidance>

## 3.15 CHANGES TO THE CONSTITUTION

### KEY POINTS

- **Every foundation trust has a constitution which sets out the purpose of the trust and how it will be governed. The NHS constitution often shapes this.**
- **Any changes to the constitution must be agreed by both the board and the council of governors.**
- **If there is a change to the constitution which affects the role of the council, this must be presented at the next annual member's meeting.**

Changes might be necessary because of new legislation, which will affect all foundation trusts, or because of local changes.

Local changes might include changes to the membership of the board of directors (for example increasing the number of NEDs to ensure that they remain in the majority) or to the definition of member constituencies. This may be necessary if the trust is to provide new types of service or cover wider geographical areas.

### FIND OUT MORE

[www.gov.uk/government/publications/nhs-foundation-trusts-model-core-constitution](http://www.gov.uk/government/publications/nhs-foundation-trusts-model-core-constitution)

## 3.16 EXPRESSING A VIEW ON THE BOARD'S PLANS

### KEY POINTS

- **Each year every foundation trust must set out its strategy for the following financial year in the annual operating plan, including details of any major projects, financial information, and performance targets.**
- **The annual operating plan must have regard for the governors' views.**
- **Governors have the opportunity to express a view on the plan but the council of governors' approval is not required.**

A trust's annual operating plan must be submitted to NHS England and NHS Improvement in accordance with guidance (as shown below) –

[www.gov.uk/government/collections/nhs-foundation-trusts-documents-and-guidance](http://www.gov.uk/government/collections/nhs-foundation-trusts-documents-and-guidance)

The plan must have regard for governors' views. Governors should have opportunity to discuss it but don't have to approve it.

The annual operating plan includes information on:

- the local system-wide operating plan
- activity and capacity planning
- quality planning
- workforce planning
- finance
- risk management
- membership and elections.

The governors' role is to ensure that the interests of members and the public are considered when the foundation trust proposes strategic development. How this is carried out varies extensively between trusts.

How does this work in your trust?

### FIND OUT MORE

[www.england.nhs.uk/deliver-forward-view](http://www.england.nhs.uk/deliver-forward-view)

## 3.17 RECEIVING THE ANNUAL REPORT AND ACCOUNTS

### KEY POINTS

- **The council of governors is entitled, by law, to a copy of the annual report and accounts. It is a public document laid before parliament.**
- **The council is also entitled to receive a copy of any report on the accounts made by the auditors.**
- **The annual accounts and report must also be presented, by a director, to the members of the trust at the annual members' meeting (held in public).**

Governors will see many reports to help keep them informed about the foundation trust. The range of reports is generally agreed between council of governors and the board. There is a legal requirement for the trust to provide the council of governors with:

- the annual accounts
- any report from the auditor on the accounts
- the annual report.

These documents must be presented to the council of governors by a director at the annual members' meeting.

The council of governors can comment on the report and accounts but the trust is not obliged to change them to reflect governors' comments.

### FIND OUT MORE

<https://improvement.nhs.uk/resources/nhs-foundation-trust-annual-reporting-manual>

## 3.18 NON-STATUTORY DUTIES

### KEY POINTS

- **Some trusts enable governors to fulfil a wider role in the organisation.**
- **No-one will be required or expected to devote time beyond that necessary to deliver the essential parts of the governor remit.**
- **Training and supervision should be provided to anyone carrying out additional functions. There is a requirement on trusts to provide governors with the knowledge and skills they need to perform the role.**

Trusts may develop a number of non-statutory roles for governors, according to the needs of the organisation. These may include member recruitment, publicity events, membership surgeries, carrying out surveys, focus groups, service reviews and assessments.

The extent of individual governors' engagement in these additional roles will vary according to their interests and available time – there is no automatic expectation that governors will go beyond the commitment necessary to fulfil their statutory duties.

As a governor, you will be given the training and guidance in how to go about these non-statutory activities. In most circumstances you will be carrying them out in association with trust staff or board members you will not be expected to do these alone. If there are relevant trust policies you will have the essential elements explained to you, to protect you and the trust. Make sure you follow the guidance you are given and ask questions about anything you don't understand or with which you aren't familiar.

**Freedom to speak up** – national guidance was released in May 2018 and aims to ensure that trusts have 'effective speaking up arrangements' to help protect patients and improve the experience of NHS workers. Having a healthy speaking up culture is an indicator of a well-led trust. Please ask your governor co-ordinator to explain the system and personnel responsible for 'Freedom to speak up' in your trust.

### FIND OUT MORE

[https://improvement.nhs.uk/documents/2468/Freedom\\_to\\_speak\\_up\\_guidance\\_May2018.pdf](https://improvement.nhs.uk/documents/2468/Freedom_to_speak_up_guidance_May2018.pdf)

## HERE'S A TASK FOR YOU

Review the agendas from your trust's last few council of governors meetings and identify which items refer to statutory duties and which to non-statutory duties:



# ANSWERS

## COUNCILS DO

- Hold the trust to account for its performance against national targets.
- Receive information about the quality of service provision.
- Use information and data from similar trusts to help hold the board to account for the trust's performance.
- Require the trust to have in place an effective policy for handling complaints and other feedback.
- Feedback to the trust any concerns its members have about staff performance.
- After visiting the trust, report back on the quality of service perceived.
- Hold the board to account for ensuring that the trust has developed, implemented and monitored the effectiveness of all the policies it needs.
- Be aware of the performance objectives which have been set for individual non-executive directors.
- Approve the appointment of the trust's chief executive.
- Remove, if appropriate, the trust's external auditor.
- Help to decide the priorities for improving the trust when the trust's annual operational plan is being drawn up.
- Contribute to deciding the priorities set by the trust in its annual quality account.

## COUNCILS DON'T

- Set the overall budget for the trust.
- Decide the number of staff.
- Decide on how health services are provided to different service users.
- Decide on the level of pay for the trust's chief executive and executive team.
- Lead inspections of the trust.
- Authorise all expenditure.
- Decide which consultants are appointed.
- Write the trust's policies on their own.
- Appoint and, if appropriate, remove the trust's chief executive.
- Rubber stamp recommendations from the chief executive.

## THE CHAIN OF ACCOUNTABILITY (answers to page 14)

Put the roles below in the correct boxes to show how the chain of accountability flows in a foundation trust.

**Members and the public**

**Governors**

**Non-executive directors**

**Executive directors**

# CHAPTER THREE REFLECTION

## REFLECTION QUESTIONS

1

Are you aware of the different types of governor?  
How similar or different are their roles?

2

Do you understand your duties as a governor?

3

Do you understand how you carry out those duties as a council  
rather than as individuals?

**NHS Providers** is the membership organisation for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS trusts and foundation trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate.

NHS Providers has all trusts in voluntary membership, collectively accounting for £84bn of annual expenditure and employing more than one million staff.

Thank you to Kathryn Stuart, Lois Howell, Claire Lea and members of the governor advisory committee for their support in developing this resource.

## GOVERNWELL INDUCTION TOOLKIT



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March 2020

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Registered charity 1140900  
Registered in England & Wales as company 7525114  
Registered Office  
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CHAPTER THREE  
WHAT IS  
MY ROLE?

3