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NHSProviders

NHS provider organisations – leadership, accountability and governance in England: an explainer

When people talk about 'NHS bosses' or 'trust leaders' who do they mean, what do they do, and who are they accountable to?

This explainer covers:

1 What are NHS trusts and foundation trusts?
2 What is the difference between NHS trusts and foundation trusts?
3 Leadership in trusts and FTs
4 What do NHS provider boards do?
5 Oversight, accountability and regulation in the NHS
6 The powers and duties of the Secretary of State for Health and Social Care

What are NHS trusts and foundation trusts?

The NHS is constituted differently in each of the four nations. This explainer focuses on arrangements in England, where 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.

The majority of secondary[i] healthcare in the English NHS is delivered by statutory bodies[ii]: either NHS trusts or NHS foundation trusts (some care is also delivered by private providers, charities and community interest companies). NHS trusts were introduced by the NHS and Community Care Act 1990, and are organisations established by the Secretary of State. Foundation trusts (FTs) were introduced by the Health and Social Care (Community Health and Standards) Act 2003 and the first NHS trusts were authorised as FTs in 2004. FTs were modelled on mutual organisations, designed to enable stronger public accountability and given more autonomy than NHS trusts: the Secretary of State had no powers of direction over them.

Although it was the policy of successive governments that all trusts would become FTs, changes in policy direction, finances and legislation mean this is no longer the case.

What is the difference between NHS trusts and FTs?

Few differences between the two types of organisation remain in practice. NHS England's (NHSE's) current policy is to use an identical regulatory approach for NHS trusts and FTs. The 2022 Act did not remove the differences between FTs and trusts, but it did introduce Secretary of State powers of direction over FTs, and stronger powers of intervention in both types of trust.

A 2015 study by The Health Foundation found that NHS trusts and FTs perform comparably in terms of the care they deliver.

The following notable differences between trusts and FTs remain in statute:

- NHS trust non-executive directors (NEDs) and chairs are appointed (and can be removed) by NHSE, while FT NEDs and chairs are appointed by, and can be fired by, each FT's council of governors[iii].
- Councils of governors also set NED and chair remuneration in FTs, but NHSE has moved to equalise this between NHS trusts and FTs using a common framework, deviation from which is discouraged.
- FTs have some freedoms to undertake mergers and acquisitions that NHS trusts do not.

In summary, the provider landscape remains a mixed economy and it would require primary legislation to change this. The Health and Social Care Act 2022 changed neither the statutory nature of NHS and foundation trusts, nor their roles and responsibilities. Whether a provider is an NHS trust or an FT has little impact on the delivery of care.

Leadership in trusts and FTs

NHS trusts and foundation trusts are led by unitary boards[iv]. These comprise a chair, chief executive, executive directors, and independent non-executive directors. Chairs lead the appointment of chief executives, who then lead the appointment of executive directors.

There is a wealth of evidence from the private sector demonstrating the importance of a unitary board structure which enables independent NED challenge: it is a critical component of good governance[v].

In law, every NHS provider board must have a finance director, a director who is a registered nurse or midwife, and a director who is a registered medical practitioner or dentist.

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NEDs are not directly employed by NHS organisations. They tend to work part time and are modestly remunerated (in 2023, the average annual pay for an NHS chair was £52,214 and £13,675[vi] for a NED). This is designed to enable them to exercise independent judgement and challenge the executive in the interest of patients.

Directors of NHS providers have legal duties under the Companies Act 2006 including:

- Act within their powers.
- Exercise independent judgement.
- Exercise reasonable care, skill and diligence.
- Avoid conflicts of interest.

Directors should also uphold the Seven Principles of Public Life (also called the Nolan Principles), standards set out in Regulations about being fit and proper for such office, and the standards and behaviours in the NHS provider code of governance (see section A in particular).

What do NHS provider boards do?

The general duty of an NHS board of directors and each director individually is to act with a view to promoting the success of the organisation to maximise the benefits for the public.

The function of these boards is corporate governance, namely: to set the strategy of their organisation, supervise the work of the executive, set and exemplify organisational culture and be accountable to stakeholders.

The board is responsible for arranging the organisation's resources to deliver its strategy, and so in practice concerns itself with all facets of the organisation, including:

- Clinical quality and the safety of care provided.
- Revenue and capital income and expenditure.
- Staffing levels and the skills mix of those staff.
- Buildings, equipment, medicines, health and safety, and the working environment.

Provider organisations use a delivery management system, led by the executives, to drive progress on their objectives. This operates alongside an assurance system, led by the non-executives, to provide the board with evidence that progress is being made. This parallel approach enables the board to control and oversee the organisation.

Oversight, accountability and regulation in the NHS

The Care Quality Commission (CQC) is responsible for the registration, inspection and monitoring of all health and care services in England, and regulates health providers in relation to the quality of their care. This includes publicly owned NHS organisations such as trusts and FTs, private providers, and independently contracted providers such as general practice (GP) surgeries.

NHSE holds NHS health organisations to account under its statutory responsibilities for the planning, funding, and delivery of healthcare in England. In practice, this involves ongoing performance management, and the segmentation of providers based on a range of performance indicators. NHSE has formal powers of intervention where providers are in breach of required standards and can mandate and provide recovery support to providers.

Both CQC and NHSE are accountable to Parliament via the Secretary of State. The Secretary of State for Health and Social Care appoints an independent chair of each body, who then appoints the chief executive.

Since 2022, integrated care boards (ICBs) have been given responsibility by NHSE for the day-to-day oversight and performance management of NHS providers. NHSE states that ICBs are not asked to undertake a formal regulatory role, but should work with NHSE as appropriate should formal intervention be required.

In addition, there are ten bodies regulating different types of health and care professionals in the UK, including the Nursing and Midwifery Council, General Medical Council, and the Health and Care Professions Council. These are overseen by the Professional Standards Authority for Health and Social Care.

Other arm's length bodies with various types of authority over NHS providers include:

- The Health Services Safety Investigations Body (HSSIB), which investigates patient safety concerns and shares learning. Provider organisations should comply with its findings. Its chair is appointed by the Secretary of State.
- The National Institute for Health and Care Excellence (NICE) which provides support and guidance on best practice and determines which treatments and drugs can be used by the NHS. Provider organisations should comply with its guidelines. It is accountable to Parliament through the Secretary of State.
- The Home Office, which is responsible for issuing controlled drugs licences.

- The NHS Counter Fraud Authority, which identifies, investigates and prevents fraud and other economic crime within the NHS.

NHS provider organisations must also comply with other national standards and regulations, including those around workplace health and safety. Britain's national regulator for workplace health and safety, which inspects NHS services and provides public assurance, is the Health and Safety Executive (HSE).

The powers and duties of the Secretary of State for Health and Social Care

The duties and powers of the Secretary of State and often parallel duties and powers of NHSE are set out in legislation[vii]. Duties are those things that the Secretary of State and NHSE **must** do. Powers are those things that the Secretary of State and NHSE **are permitted to do** to enable them to carry out their duties.

The legislation gives them considerable power to control and direct the NHS and its services, but there is also considerable discretion as to when and particularly how the SoS and NHSE choose to use those powers and undertake those duties.

They share the general duty to promote a comprehensive health service in England, and powers to do anything to discharge any function conferred on them under the Act.

The Secretary of State must act with a view to securing continuous improvement in the quality of services provided including prevention, diagnosis or treatment of illness, and improvement in the outcomes including effectiveness of the services, safety and the quality of patient experience.

The Secretary of State must also:
- Have regard to the NHS Constitution.
- Have regard to the need to reduce inequalities.
- Facilitate or promote research.
- Ensure that there is an effective system for the planning and delivery of education and training.
- Keep the treatment provided by the NHS under review.
- Publish a report setting out how to meet the workforce needs of the NHS (at least once every five years).

The Secretary of State exercises these duties in two main ways. Firstly, by setting out what NHS commissioning bodies (NHSE and ICBs) should and should not include in contracts, and secondly, through the 'mandate'. The NHS Mandate sets out NHSE's objectives each year, and must be laid before Parliament. The Secretary of State may also direct NHSE in the exercise of any of its functions at any time, and may assume most of the functions of NHSE if they consider NHSE is failing to deliver its objectives.

If an NHS commissioning body proposes a substantial[viii] reconfiguration of NHS services it must notify the Secretary of State. The Secretary of State has the power to 'call in' such a proposal for review, and to decide whether it is appropriate to proceed.

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[i] Understanding the three levels of care is helpful but they are not exhaustive definitions. Primary care describes services that are typically the first point of contact with the patient (including pharmacy and general practice) and may refer onwards if required. Secondary care typically describes the specialised services that patients are referred to (hospitals, and community and mental health services). Tertiary care describes either highly specialised or longer-term services, like plastic surgery or neurosurgery.

[ii] A statutory body is an organisation established by legal instrument.

[iii] The council of governors is a quasi-independent body of members of the public, FT staff and appointees from stakeholder organisations. Public governors are elected by the public members of an FT. Staff governors are elected by the staff members of an FT.

[iv] A unitary board is a leadership body consisting of executive directors and independent non-executive directors who collectively lead the organisation by setting the strategy and overseeing its delivery.

[v] See for example the Higgs Report and Walker Review.

[vi] Based on our 2023 survey of remuneration 2022/23, with responses from 70% of trusts.

[vii] The National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022.

[viii] There is no standard definition of 'significant'. This is for parties to agree locally and is generally considered to match the threshold at which public consultation would be necessary.

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