

SALISBURY NHS FOUNDATION TRUST
THE ROLES & RESPONSIBILITIES OF THE COUNCIL OF GOVERNORS
(ADOPTED ON 20.7.2015)

“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 keep them informed.”¹

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¹ Paragraph A.5.4 of Monitor’s Code of Governance (dated July 2014) for Foundation Trusts

1. How the Trust operates, and where does the Council of Governors fit in?

The over-all concern of the **Council of Governors** (“The Council”) is to see that the Trust and the hospital are being properly run.

It has powers and duties which it exercises to ensure the Trust’s success. In effect it has a watching brief over the Board of Directors’ activities. If the executive and the non-executive directors fail in their duties, the last line of defence of the public interest is the Council of Governors, who may in the last resort report their concerns to ‘Monitor’, the regulator of Foundation Trusts.

The primary responsibility for the management of the Trust’s affairs thus rests with the Board, and the duties of the executive, non-executive directors and the governors are quite different.

2. The primary duties of the Council of Governors as set out by Parliament²

The Council has two primary duties:

- (1) to hold the ***non-executive directors*** individually and collectively to account for the performance of the Board;

“Holding to account” is not defined, but a helpful description is that it involves questioning the non-executive directors and receiving their explanations, reviewing and testing what they say, forming a judgment whether they are fulfilling their duties, and lastly providing feed-back to them.

- (2) to represent the interests of the members of the Trust and of the public generally;

The governors are the link between the Trust, its hospital, and its members. This link is achieved by listening to what they hear from the public, and communicating this to the Board.

3. The Board of Directors

The **Board of Directors** (“The Board”) is responsible for the management of the Trust, including its future direction. It comprises **non-executive** directors and **executive** directors.

The **Chairman** heads the **non-executive** directors (as well as chairing the Council), and it is their principal function to support and challenge the executive directors in fulfilling their duties. They, in turn, are held to account by the governors (see 2).

The day-to-day management of the Trust is in the hands of the **executive** directors headed by the Chief Executive. The other executive directors are the:

- Medical Director
- Director of Nursing
- Director of Finance & Procurement
- Director of Human Resources & Organisational Development
- Chief Operating Officer.

² National Health Act 2006 amended by the Health & Social Care Act 2012

4. *Governors' responsibilities to members of the Trust and to the Public.*

Governors have a particular responsibility to ensure that the Trust maintains the high standards of medical and nursing care expected by the public.

- (1) Information relevant to this is provided both to the Council and to the Board. The Council is provided with all the paperwork for public Board meetings, and is provided with the agendas and minutes for private Board meetings.
- (2) Governors should attend meetings of the Board whenever possible and may ask questions. If confidentiality requires, this may be at the start of the Board's Part II meeting
- (3) Part II Board meetings, which are confidential, are attended by one governor as an observer under a protocol agreed by the board. Should any matter arise which the observer considers to be of public interest, this will be brought to the attention of the chairman when appropriate.
- (4) Governors may sit on internal committees and working groups and report back to the Council.

5. *The Public Interface*

Governors should, in conjunction with the Trust office, organise Constituency meetings, which are an important means of communication with members.

It is the duty of governors to communicate with their members through newsletters or local websites. It is appropriate to show such communications to the Trust's press officer before publication.

Staff governors are in a special position in that they are much closer to what is happening within the hospital, particularly in their own areas. They should canvass the opinions of the staff.

Governors may receive information from patients and ex-patients and their relatives or carers, whom they may meet outside the hospital environment - Governors should have 'an ear to the ground'.

In the course of their duties, governors may receive confidential information in a number of ways, including from fellow governors. It is their strict duty always to maintain that confidence.

Governors do not deal directly with complaints. These should be reported to the appropriate person within the Trust. However, a governor is entitled to ensure that any complaint which they have received is dealt with appropriately.

Governors may visit wards and clinics either as part of Real Time Feedback and talk to patients and their relatives, or when participating in PLACE (Patient-Led Assessment of the Care Environment) inspections of the fabric.

Governors are concerned particularly with the interface between the hospital and its patients and the public, including:

- (1) reception of in-patients and out-patients
- (2) food
- (3) signage
- (4) quality and cleanliness of the hospital environment
- (5) parking and transport
- (6) sanitary facilities
- (7) linen
- (8) waiting lists and cancellations
- (9) the usefulness and ease of use of the Trust's website.

6. The Governors

As at May 2015 there are 15 governors elected by the 8 constituencies which represent the Trust's catchment area. There are 6 governors elected by the staff. Wiltshire Council, Wessex Community Action, and Wiltshire, Dorset and West Hampshire Clinical Commissioning Groups have each the right to appoint a governor. A new appointed governor role has been created to represent local military interests. There are 27 governors in all.

No governor can serve for more than a total of three terms of three years.

7. Lead Governor

One of the elected governors is elected by the Council to act as Lead Governor. The original role of the Lead Governor was to be a contact for Monitor in case of in case of serious concern, but the locally defined role includes:-

- (1) Ensuring on a day to day basis that the Council is working harmoniously to achieve its goals.
- (2) Meeting regularly with the Chairman to discuss in private any issues that are causing concern to governors, and whether any matters in the Trust should be brought to the attention of the Council.

Duties

- a) to chair meetings of the Council which cannot for any reason be chaired by the Chairman or the Deputy Chairman.
- b) to consult routinely with the governors regarding the planning and preparation of the agendas for Council meetings and work programme, and to agree them with the Chairman.
- c) to communicate regularly with the Chairman, to receive reports, as appropriate, on matters considered by the Board at closed meetings, and to provide updates/information to all governors as may be appropriate in the circumstances.
- d) to provide input into the appraisal of the Chairman;
- e) to take an active role in the activities of the Council;
- f) to be a point of contact for governors when they have concerns;
- g) to be a point of contact for Monitor when appropriate;

8. The Council of Governors' duties, powers and rights in law

In addition to the primary duties already set out³, other rights and powers include:

- (1) The Board is under a duty to ensure that the governors are equipped by the Trust with the skills and with the knowledge which they require as governors⁴, and the governors have a corresponding right to be provided with the training that they need.
- (2) The right to require one or more of the directors to attend a meeting for the purpose of providing information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or the directors' performance)⁵. Any exercise of this power must be included in the Trust's annual report⁶.
- (3) The power of appointing (or removing) the chairman and the other non-executive directors⁷.

³ National Health Service Act 2006 as amended by the Health & Social care Act 2012, in particular in schedule 7 to the Act

⁴ Paragraph 10B of Schedule 7

⁵ Paragraph 10C of Schedule 7

⁶ Paragraph 26(2)(aa) of Schedule 7

⁷ Paragraph 17(1) of Schedule 7

- (4) The power of approving the appointment of the chief executive⁸.
- (5) The power of determining the remuneration and terms of office of the non-executive directors (who include the chairman)⁹.
- (6) The right to be provided with a copy of the agenda for any meeting of the directors prior to the meeting¹⁰.
- (7) The right to be provided with a copy of the (approved) minutes of a board meeting as soon as practicable¹¹.
- (8) The power of appointing or removing, in conjunction with the Audit Committee¹², the Trust's external auditor.
- (9) In preparing the Trust's forward plan directors must take notice of the views of the governors¹³. Equally, it is for the governors to ensure that they are in a position to provide their views.
- (10) A right to be presented with the annual accounts at a general meeting, any report of the auditor on them and the annual report¹⁴.
- (11) Duties in connection with the approval of the provision by the Trust of non-NHS goods and services¹⁵.
- (12) A duty to approve or disapprove 'significant transactions' proposed by the Trust in accordance with a locally derived definition¹⁶.

9. Monitor's Guidance

Monitor, the sector regulator for health services in England, publishes the *NHS Foundation Trust Code of Governance*¹⁷. It is updated from time to time, the last, as at May 2015, being dated July 2014. It is intended to represent best practice advice. Section A.5 relates specifically to Governors. Monitor also publishes *Your Statutory Duties, a Reference Guide for NHS Foundation Trust Governors*¹⁸, August 2013. It also publishes *Director-Governor Interaction in NHS Foundation Trusts – a best practice Guide for Boards of Directors*¹⁹ June 2012. All of these are relevant to the functions of governors and how they should go about their task. They should be regarded as required reading for governors.

10. Monitor's Code of Governance

The Code includes the following (in summary)

(1) Main Principles

- A.5.a The council of governors has a duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors.
- A.5.b The council of governors is responsible for representing the interests of NHS foundation trust members and the public and staff in the governance of the NHS foundation trust.

⁸ Paragraph 17(5) of Schedule 7

⁹ Paragraph 18(1) of Schedule 7

¹⁰ Paragraph 18D(1) of Schedule 7

¹¹ Paragraph 18D(2) of Schedule 7

¹² Paragraph 23(2) of Schedule 7

¹³ Paragraph 27(3) of schedule 7

¹⁴ Paragraph 28 of Schedule 7

¹⁵ Section 43(3C) and (3D) of the 2006 Act as inserted by section 164 of the 2012 Act

¹⁶ Section 51 A

¹⁷ <https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>

¹⁸ <https://www.gov.uk/government/publications/nhs-foundation-trust-governors-your-legal-obligations>

¹⁹ <https://www.gov.uk/government/publications/nhs-foundation-trust-governors-and-directors-working-better-together>

- A.5.c Governors are responsible for regularly feeding back information about the trust to members and the public and stakeholder organisations that either elected or appointed them.

(2) Supporting Principles

- A.5.d Governors should discuss and agree with the board of directors how they will undertake these and any other additional roles.
- A.5.e 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.
- A.5.f Governors should use their voting rights (including those described in A.5.14 and A.5.15) to hold the non-executive directors individually and collectively to account and act in the best interest of patients, members and the public.

(3) Code provisions

- A.5.1 Typically the council of governors would be expected to meet as a full council at least four times a year. Governors should make every effort to attend the meetings of the council of governors.
- A.5.2 The council of governors should be of sufficient size but not unwieldy.
- A.5.3 The annual report should identify the members of the council of governors, and the lead governor.
- 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 keep them informed.
- A.5.5 The chairperson is responsible for leadership of both the board of directors and the council of governors, but the governors also have a responsibility to make the arrangements work and should take the lead in inviting the chief executive and other executives as appropriate, and question them.
- A.5.6 The council of governors should establish a policy for engagement with the board of directors for circumstances when they have concerns. It should provide input into the board's appointment of a senior independent director.
- A.5.7 The council of governors should ensure its interaction and relationship with the board of directors is appropriate and effective, with the timely supply of information, agendas etc.
- A.5.8 The council of governors should only exercise its power to remove the chairperson or any non-executive directors as a last resort.
- A.5.9 The council of governors should receive and consider other appropriate information required to enable it to discharge its duties, for example clinical statistical data and operational data.
- B.6.5 Led by the chairperson, the council of governors should periodically assess their collective performance and they should regularly communicate to members and the public details of how they have discharged their responsibilities.
- B.6.6 There should be a clear policy and a fair process, agreed and adopted by the council of governors, for the removal, in appropriate circumstances, of a governor from the council.