

Monitor

Making the health sector
work for patients

In association with:
Care Quality Commission
Department of Health
Foundation Trust Governors' Association
Foundation Trust Network

Your duties: a brief guide for NHS foundation trust governors



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What is this guide and who is it for?

This document is a brief guide to introduce your core duties as the governor of a National Health Service (NHS) foundation trust. It is provided as a more accessible summary of '[Your statutory duties: A reference guide for NHS foundation trust governors](#)', which you can refer to for further detail on any point.

It describes governors' "statutory" duties, meaning those you are required to carry out by law. It also outlines what governors can expect from the regulatory framework.

The guide is intended as an easy reference point on core parts of the governor role for:

- current governors (both those with experience and those new to the role)
- those who are thinking about standing for election
- other interested audiences such as patients and the public, NHS foundation trust leadership teams and staff, other NHS bodies, MPs and the media.

Some important organisations for governors

Following the Health and Social Care Act 2012, the NHS changed its structures and processes to more clearly put patients first, by focusing on improved quality and outcomes. NHS foundation trusts – and their governors – now interact with a range of organisations with new or changed roles.

Monitor

Monitor is the sector regulator for health services in England. Its job is to protect and promote the interests of patients by ensuring that the whole sector works for their benefit.

For example, Monitor makes sure foundation hospitals, ambulance trusts and mental health and community care organisations are well led and are run efficiently, so they can continue delivering good quality services for patients in the future. To do this, it works particularly closely with the Care Quality Commission (CQC), the quality and safety regulator. When the CQC establishes that an NHS foundation trust is failing to provide good quality care, Monitor takes remedial action to ensure the problem is fixed.

Monitor also sets prices for NHS-funded services, tackles anti-competitive practices that are against the interests of patients, helps commissioners ensure essential local services continue if providers get into serious difficulty and enables better integration of care so services are less fragmented and easier to access.

Care Quality Commission

The CQC is the independent regulator of health and adult social care in England. Its purpose is to make sure health and social care services provide people with safe, effective, compassionate, high quality care and to encourage care services to improve. The CQC's role is to monitor, inspect and regulate services to make sure

they meet fundamental standards of quality and safety and to publish what it finds, including performance ratings to help people choose care.

The CQC will ask the following questions when it inspects services:

- Are they safe?
- Are they effective?
- Are they caring?
- Are they well led?
- Are they responsive to people's needs?

The CQC's principles are to:

- put people who use services at the centre of our work
- be independent, rigorous, fair and consistent
- have an open and accessible culture
- work in partnership across the health and social care system
- be committed to being a high performing organisation and apply the same standards of continuous improvement to ourselves that we expect of others and
- promote equality, diversity and human rights.

The CQC regulates:

- treatment, care and support provided by hospitals, GPs, dentists, ambulances, community and mental health services
- treatment, care and support services for adults in care homes and in people's own homes (both personal and nursing care)
- services for people whose rights are restricted under the Mental Health Act.

A changed healthcare landscape

The way the NHS plans and buys services has changed following the Health and Social Care Act 2012, with 211 clinical commissioning groups (CCGs) taking on the role of primary care trusts locally.

Health and wellbeing boards (HWB) are where CCGs and local authorities come together to strategically plan and integrate health and social care in an area. Each HWB has a representative of the local HealthWatch (a consumer champion) as a member.

There are a large number of organisations seeking to maintain and improve the performance of the healthcare sector, each with discrete roles. These include the boards of the healthcare providers (eg hospitals, mental health, community and ambulance services), Monitor, the CQC, NHS England and CCGs, as well as Royal Colleges, the National Institute for Health and Care Excellence (NICE) and the General Medical Council (GMC). They all share the same goal: to make sure people get the best possible care and service from the NHS, in line with the principles and values of the [NHS Constitution](#).¹

What is an NHS foundation trust?

NHS foundation trusts are different from NHS trusts; they have a unique legal form known as “public benefit corporations”. NHS foundation trusts provide healthcare services for patients and service users in England. Unlike NHS trusts, they are free from central government control and can manage their own affairs and make their own decisions, including whether to make and invest surpluses. However, they remain subject to legal requirements and have a duty to exercise their functions “effectively, efficiently and economically”.²

Each NHS foundation trust sets out its governance structure in its constitution. There are legislative requirements concerning the governance of all NHS foundation trusts. For example, all NHS foundation trusts have:

- members
- a council of governors
- a board of directors.

We explain these further below.

Please note, in this document where we use the word “board”, it refers to the board of directors; where we use “council” it refers to the council of governors.

Members

Members of the public and staff who work at an NHS foundation trust can be “members” of the trust. In addition, NHS foundation trusts may opt to have a category of members who are either patients/service users and/or their carers. Members vote to elect governors and can also stand for election themselves.

Council of governors

The council of governors is made up of elected and appointed governors. Governors are volunteers and are not paid.

Elected governors are elected by distinct constituencies:

- public governors are elected by members of the public constituency

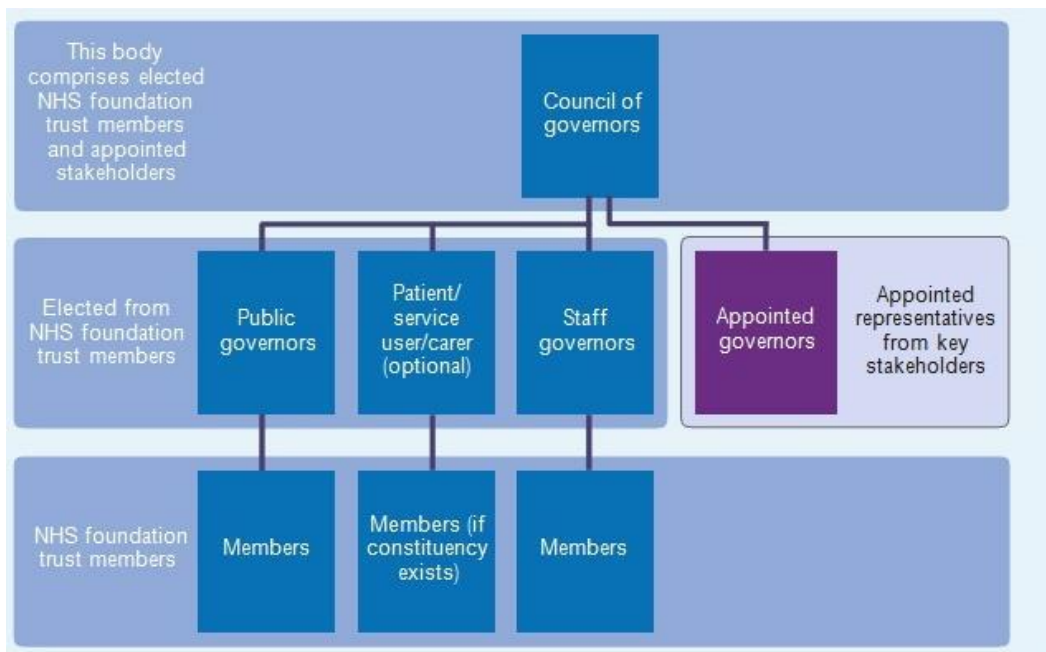
¹ <https://www.gov.uk/government/publications/the-nhs-constitution-for-england>

² National Health Service Act 2006, Chapter 5, s.63.

- staff governors are elected from the staff body and
- patient, carer or service user governors are elected by members who are patients/service users and/or their carers.

Appointed governors represent stakeholder organisations such as the local council or local charities. If the foundation trust wants governors appointed by an external organisation, this must be specified in the constitution. The structure of the council of governors is shown in the diagram below.

Figure 1: The structure of the council of governors



Governors are not directors. The 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 decisions taken by the board of directors on behalf of the NHS foundation trust. Responsibility for those decisions remains with the board of directors, acting on behalf of the trust. This is covered more fully in the [full guide to your statutory duties](#).

Board of directors

The board of directors is made up of executive directors and non-executive directors. The executive directors are employees, are led by the chief executive and are responsible for the day to day management of the foundation trust. Foundation trust boards must also include the following executive directors: a finance director, a director who is a registered doctor, a director who is a registered nurse or a registered midwife.

The non-executive directors are not employees. They bring an independent perspective to the board meeting and have a particular duty to challenge decisions and proposals made by executive directors. The board is led by the chair who is also a non-executive director. The board will also have a deputy chair and a senior independent director (SID).

The board’s overall duty is to ensure the provision of safe and effective services for members and for the public. The board does this through the governance of the foundation trust. Governance is the process by which boards lead and direct their organisation. This process includes setting the corporate strategy, setting organisational values and culture, and supervising the work of the executive directors. The board will reserve certain key decisions to itself but will delegate many decisions either to executive directors or to committees of the board. The board also has a duty to be accountable to governors, to regulators and to key stakeholders such as commissioners.

(The role and responsibilities of the board are covered in more detail on page 12 of the [full guide to your statutory duties](#).)

The dual role of the chair

The chair of the board of directors is also the chair of the council of governors. They are responsible for ensuring that the board and council work effectively together and that they receive the information they need to undertake their respective duties.

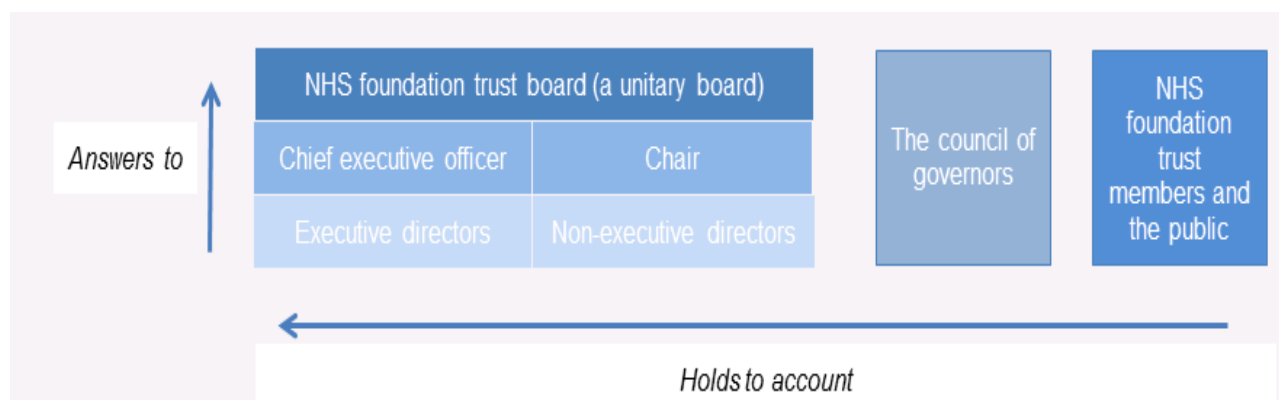
It is important that the board of directors and council of governors see their interaction as being one of constructive partnership and seeking to work effectively together.

Committees

NHS foundation trusts use board committees to make decisions in key business areas that might be delegated and to help the board obtain the assurances it needs. The trust is required by law to have board committees in place to make decisions on appointments, remuneration and matters relating to audits. The trust may also decide to have other committees and working groups, including governor committees and groups, but these are not compulsory.

A trust’s “chain of accountability” – including the position of the council of governors – is shown below.

Figure 2: NHS foundation trust “chain of accountability”



What does a governor do?

Governors have an important role in making an NHS foundation trust publicly accountable for the services it provides. They bring valuable perspectives and contributions to its activities. Importantly, as a governor you will hold non-executive directors to account for the performance of the board and represent the interests of NHS foundation trust members and the public. These duties are explained further below.

The over-riding role of the council of governors is to hold the non-executive directors individually and collectively to account for the performance of the board of directors and to represent the interests of NHS foundation trust members and of the public.

Holding non-executive directors to account for performance of the board

There is no one “right way” to hold non-executive directors to account and local approaches are emerging. It could be done by exercising the other required duties outlined in more detail below. For example:

- appointing or removing the chair, non-executive directors or auditors
- questioning non-executive directors on how the board is delivering on the goals identified in the forward plan
- inviting members of the board to meetings of the council of governors to answer questions.

The [full guide to your statutory duties](#) (see Table 2 on page 27) outlines the governors’ role in holding non-executives to account in more detail.

Representing the interests of members and the public

Governors are required by law to represent the interests of both members of the NHS foundation trust and of the public. They may choose a range of different ways to engage with these groups. We are aware of a number of methods that some councils of governors have chosen to adopt – and which you may wish to consider – such as governor “drop-in days” where members and the public can come and meet governors, or surveys.

Other specific governor duties

Here we list all the specific duties in which governors have a role; for further explanation see the [full guide to your statutory duties](#).

Amending the constitution

NHS foundation trusts working with governors have the power to amend their constitutions. Any changes made to the constitution of a NHS foundation trust must be:

- consistent with [schedule 7](#)³ of the National Health Service Act 2006 (which outlines the minimum requirements for the constitution of an NHS foundation trust)⁴
- approved by both more than half the council of governors and more than half the directors who are present at the vote.

Approving the appointment of the chief executive

The non-executive directors, including the chair, are responsible for appointing or removing the NHS foundation trust's chief executive. The council of governors can decide whether or not to approve the appointment of the chief executive.

Appointing and removing the chair and other non-executive directors

It is for the council of governors at a general meeting of the council to appoint or remove the chair and the other non-executive directors. As well as appointment and removal powers, governors also decide the remuneration, allowances and other terms and conditions for the chair and non-executive directors, working with the appointments⁵ and remuneration committees. However, if there is a breach of the conditions of the trust's licence, Monitor may need to exercise its statutory powers to suspend or remove a chair or other non-executive director. Under such circumstances, Monitor's statutory powers take precedence over the powers that may be exercised by the council of governors.

Appointing and removing the NHS foundation trust's external auditor

This duty will be carried out at a general meeting of the council of governors, after they have received a report from the Audit Committee on the matter. When appointing or removing the NHS foundation trust's external auditor, governors must consider the criteria for auditors set out in '[Audit Code for NHS Foundation Trusts](#)'. The process is covered in more detail in the statutory guide.

Receiving the NHS foundation trust's annual accounts and annual report

Governors must be presented with the NHS foundation trust's annual accounts, any report of the auditor on them and the annual report at a general meeting of the council. The presentation of the annual report and accounts to the council of governors is a good opportunity for the board of directors to brief the council of governors on the overall performance of the trust in the previous year. The council of governors should provide feedback to the board of directors based on its view of the

³ www.legislation.gov.uk/ukpga/2006/41/schedule/7

⁴ For support in understanding the relevant Acts of Parliament, please ask your trust's board secretary in the first instance.

⁵ Appointments committees can also be known as nomination committees.

overall performance of the board. Governors cannot change the content of the reports. To aid the feedback process, Monitor's NHS Foundation Trust Annual Reporting Manual (updated annually) sets out requirements for the content of these documents and includes both quality and financial aspects.

Preparing the forward plan

Preparation of the trust's forward plan is led by the board, but the law requires the board of directors to have regard to the view of the council of governors. To present an informed and representative view, governors should canvass the views of members and the public and feed back their views to the board of directors.

Taking decisions on significant transactions

Governors have a range of decision-making responsibilities on "significant transactions", mergers, acquisitions, separations and dissolutions. These are all explained further in the [full guide to your statutory duties](#).

In brief, **more than half of the council of governors present and voting at a meeting** can approve significant transactions locally (the definition of "significant" is set out in the constitution or the constitution will state that there is no local definition, but could include financial thresholds or changes to the nature of the business, such as taking on community services). For mergers, acquisitions, separations and dissolutions, **more than half of all governors, not just half the number that attends the meeting at which the decision is taken**, must approve the decision.

Following a merger with another NHS foundation trust (whose council of governors must also approve the transaction), both the respective councils of governors would be dissolved, and one new council of governors would be established.

Following an acquisition of an NHS foundation trust by another NHS foundation trust, the council of governors of the acquiring trust may remain in place. The acquiring NHS foundation trust is likely to extend its public constituency areas to cover the areas served by the acquired NHS foundation trust and new governors will need to be elected to represent these additional public constituency areas.

Taking decisions on non-NHS income

The principal purpose of an NHS foundation trust is to provide goods and services for the health service in England; income from these goods and services must always exceed the income from non-NHS sources. Governors have to approve any change to the proportion of income derived from non-NHS sources by deciding whether they believe the change would interfere, to any significant extent, with fulfilling the trust's principal purpose or its other functions.

If the board of an NHS foundation trust proposes to increase its non-NHS income by 5% or more in any one year (for example from 2% of income to 7%) then **more than half the governors voting at the meeting** must approve the proposal before it can take effect. This change would normally be signalled in the forward plan. It is possible that a change in non-NHS activities (such as an investment) could be subject to the provisions on significant transactions, outlined above.

What is a lead governor?

The lead governor is the main point of contact in a few specific circumstances in which Monitor may need to contact the council of governors or the other way round (see 'How governors will normally work with Monitor', below). Trust secretaries will usually disseminate communications from Monitor to governors. Some trusts choose to broaden the role of the lead governor (although this is not compulsory); some also choose deputy lead governors too. Where the role is broadened, the directors and governors should seek to agree a description of the role. Directors should not be involved in the choice of lead governor however – that is for the governors to decide.

What does the senior independent director do?

In consultation with the council of governors, the board appoints one of the non-executive directors as the senior independent director. They are an alternative point of contact for governors (and directors) when:

- they have concerns that have not been resolved through normal channels
- contact with the chair, finance director or chief executive is inappropriate
- discussing the chair's performance appraisal, remuneration or allowances.

What is the Panel for Advising Governors?

"The Panel" is both independent and national. Its role is to answer questions raised by the governors of an NHS foundation trust about whether the trust has failed or is failing to act in accordance with either:

- its own constitution or
- Chapter 5 of the NHS Act 2006 (which sets out how NHS foundation trusts operate and therefore the Panel also answers questions around healthcare standards).

A governor may refer a question to the Panel only if **more than half the members of the council of governors voting** approve the referral. Evidence of the vote will need to be provided to the Panel before it can consider a question from governors. The Panel's remit is to support governors in fulfilling their role in representing the interests of their members and the public. Best interests are served by governors seeking to resolve any questions or issues with their trust chair and other non-executive directors before posing a question to the Panel. However, the Panel is available as a free resource in the event of continued uncertainty.

How governors will normally work with Monitor

When appropriate, Monitor will interact with the council of governors through the lead governor. There are three main points where this would normally happen:

1. On appointment of the lead governor

Monitor staff, typically senior regional managers, will introduce themselves to the lead governor (usually in a telephone call), in the same way as they might with a new chair or chief executive.

2. During business as usual

In “business as usual” circumstances, the board and council of governors of an NHS foundation trust will manage their own relationship, though Monitor representatives might meet a small number of governors or the lead governor during the annual visit if it was felt appropriate – for example, to maintain communication.

3. If there is planned or actual regulatory action

Monitor will contact the lead governor if any action is planned. For example, Monitor may telephone the lead governor or write on the launch of an investigation, inviting comments, and again on conclusion of the investigation with likely recommendations. If a trust is found to be in breach of its licence to provide healthcare services, governors may wish to arrange to meet Monitor to hear its concerns and its expectations of the trust. Certainly, lead governors should feel able to contact Monitor where concerns arise while the trust is in breach.

Full detail of how Monitor manages interventions is described in its [‘Risk Assessment Framework’](#) and the [‘Enforcement Guidance’](#).

A diagram outlining the full range of actions that Monitor may take to fulfil its core responsibilities appears on page 7 of the [full guide to your statutory duties](#).

Further information and useful contacts

The [full guide](#) provides sources of further information but some important sources of support are:

Care Quality Commission	www.cqc.org.uk
Foundation Trust Governors’ Association	www.ftga.org.uk
Foundation Trust Network	www.foundationtrustnetwork.org
Monitor	www.monitor.gov.uk
Panel for Advising Governors	www.monitor.gov.uk/governorpanel



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