

SALISBURY NHS FOUNDATION TRUST

THE ROLES & RESPONSIBILITIES OF THE COUNCIL OF GOVERNORS

(ADOPTED ON 25.11.2013)

Paragraph B.1.4 of Monitor's Code of Governance (dated March 2010) for foundation trusts provides that:

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

This intends to fulfil that requirement.

Where do governors fit in?

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, the Director of Nursing, the Director of Finance, the Director of Human Resources and the Chief Operating Officer. The non-executive directors are headed by the Chairman, and it is part of their function to see that the executive directors are fulfilling their duties. Together they form the board of directors. The board thus has responsibility for the management of the Trust including its future direction.

The Chairman and the other non-executive directors are appointed by the governors, and may be removed by the governors. They are answerable to the governors. The governors have in effect a watching brief over the Trust's activities as is described below.

The overall responsibility for the management of the Trust's affairs thus rests with the board, and the duties of the executive and non-executive directors and the governors are quite different. The governors have limited powers and duties which they exercise to ensure the Trust's success. If the executive and the non-executive directors fail in their duties, the last line of defence of the public interest is the governors.

The primary duties of governors as set out in the Act

As provided by the National Health Act 2006 amended by the Health & Social Care Act 2012 the primary duties of the council of governors are:

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

- (2) to represent the interests of the members of the Trust as a whole and the interests of the public.

The first gives the governors their supervisory role. The second makes them a mouthpiece within the Trust for the members of the Trust and the public. The Act does not say what it means by “holding to account”, 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.

How the Trust operates

The Trust is run by the board of directors, the day-to-day management being in the hands of the full-time executive directors. The Council of Governors ensures that the non-executive directors are doing their job by holding them to account. The over-all concern of the governors is to see that the Trust and the hospital are being properly run.

Secondly the governors are the link between the Trust, its hospital, and its members. They are to represent the interests of the members and the public generally through their communication with the directors, and by listening to what they hear from their members and the public. Governors do not deal directly with complaints. These should be reported to the appropriate person within the Trust. But a governor is entitled to see that any complaint which they have received is dealt with swiftly and appropriately.

The Council of Governors has important powers of appointment (and removal) of the chairman and the non-executive directors.

Governors are entitled to be provided with the information needed by them to fulfil their functions. They can require directors to attend a meeting to provide such information. In the course of acting as a governor, governors may receive confidential information in a number of ways including from fellow-governors. It is their strict duty to maintain that confidence at all times.

The regulator of foundation trusts is called Monitor. Monitor has a number of regulatory functions and publishes codes and guides relating to the governance of foundation trusts. The Foundation Trust Governors’ Association is a membership association for governors. It considers governorship issues and publishes papers concerning them. Both have websites and their publications are available on them.

Governors’ responsibilities to members of the Trust and to the public.

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

- (1) Information relevant to this is provided to governors at their meetings and in the paperwork for the meetings. It is also provided similarly to the board. The governors are provided with the paperwork for board meetings in so far as they are open to the public, and they are provided with the agendas and minutes for board meetings. They can attend board meetings in so far as they are open to the public.

- (2) Governors may visit wards as part of Real Time Feedback and talk to patients and their relatives if visiting. They may also take part in PLACE assessments – checking cleanliness etc.
- (3) 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’.
- (4) Constituency meetings will be an important source of information.
- (5) Governors may use appropriate websites to communicate with their members.
- (6) Staff governors are in a special position in that they are much closer to what is happening with the hospital, particularly within their own areas.

In addition to those fundamental matters governors have a particular concern with the interface between the hospital and its patients and the public. This includes:

- reception of in-patients and out-patients
- food
- signage
- parking and transport
- sanitary facilities
- linen
- waiting lists and cancellations
- the ease of use of the Trust’s website.

In addition to their statutory duties, it is the custom of the Trust’s governors to undertake further tasks on a voluntary basis.

- Governors are expected to sit on committees and working groups, and to report back to the council
- Governors should attend meetings of the board whenever possible and they may ask questions. If confidentiality requires, this may be at the start of the Board’s Part 2 (confidential) meeting
- Governors may attend meetings organised by the Foundation Trust Governors Association, and by other local Foundation Trusts, and report back to the council
- Governors may involve themselves with newsletters to members.

The Governors

As at November 2013 there are 15 governors elected by the 8 constituencies which represent the Trust’s catchment area. There are 6 governors elected by the staff. There is one governor nominated by Wiltshire Council, and one nominated by Wessex Community Action. The Wiltshire, Dorset and West Hampshire Clinical Commissioning Groups have each appointed a governor. There are 26 governors in all. No governor can serve more than a total of 9 years under any circumstances.

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

These are contained in the National Health Service Act 2006 as amended by the Health & Social care Act 2012, in particular in schedule 7 to the Act. In addition to the primary duties already set out they include:

- (1) The Trust has a duty to ensure that the governors are equipped by the Trust with the skills and with the knowledge which they require as governors – paragraph 10B of Schedule 7. The directors are responsible for that. Conversely the governors should ensure that they get what they need.
- (2) A 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) – paragraph 10C of Schedule 7. Any exercise of this power must be included in the Trust's annual report – paragraph 26(2)(aa) of Schedule 7.
- (3) The power of appointing (or removing) the chairman and the other non-executive directors – paragraph 17(1) of Schedule 7.
- (4) The power of approving the appointment of the chief executive – paragraph 17() of Schedule 7.
- (5) The power of determining the remuneration and terms of office of the non-executive directors (who include the chairman) – paragraph 18(1) of Schedule 7.
- (6) The right to be provided with a copy of the agenda for any meeting of the directors prior to the meeting – paragraph 18D(1) of Schedule 7.
- (7) The right to be provided with a copy of the minutes of a board meeting as soon as practicable after the meeting – paragraph 18D(2) of Schedule 7.
- (8) The power of appointing or removing the Trust's external auditor – paragraph 23(2) of Schedule 7.
- (9) In preparing the Trust's forward plan directors must have regard of the views of the governors – paragraph 27(3) of schedule 7. Conversely it is for the governors to ensure that they are in a position to provide their views.
- (10) A right to be presented at a general meeting with the annual accounts, any report of the auditor on them and the annual report – paragraph 28 of Schedule 7.
- (11) Duties in connection with the approval of the provision by the Trust of non-NHS goods and services – section 43(3C) and (3D) of the 2006 Act as inserted by section 164 of the 2012 Act.
- (12) A duty to approve or disapprove 'significant transactions' proposed by the Trust - section 51 A.

Monitor's Guidance

Monitor publishes the *NHS Foundation Trust Code of Governance*. It is updated from time to time. It has not as at November 2013 been updated to reflect the 2012 Act (though a consultation paper has been produced). It is intended to represent best practice advice. Section B relates specifically to the Council of Governors. Monitor also publishes *Your Statutory Duties, a Reference Guide for NHS Foundation Trust Governors*, August 2013, which does reflect the 2012 Act. It also publishes *Director-Governor Interaction in NHS Foundation Trusts – a best practice Guide for Boards of Directors*. 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.

Monitor's Code of Governance

The Code includes the following (in summary):

B.1.1 The Council should meet at least 4 times a year. Governors should make every effort to attend.

B.1.2 The Council should not be so large as to be unwieldy. Its structure, composition and procedures should be reviewed regularly.

B.1.3 The annual report should include information about the governors, and should identify the lead governor.

B.1.4 The roles and responsibilities of the Council should be set out in a document, including an explanation of the responsibilities to members of the Trust and how governors will seek their views and inform them. [That is this document.]

B.1.5 The Council must receive appropriate information to enable it to discharge its duties, including clinical and operational data.

B.1.6 While the Chairman is responsible for leading both the Board of Directors and the Council the governors have a responsibility to make arrangements work and should invite to their meetings the chief executive and other directors, as may be appropriate.

B.1.7 and A.3.3 The council should establish a policy of engagement with the board for those circumstances where they have concerns about the performance of the Board. In consultation with the Council the Board of Directors should appoint a non-executive director to be the senior independent director. This could be the deputy chairman. [The Trust in fact combines these two positions, and there is simply a deputy chairman, who is a non-executive director.]

B.1.8 The Council should ensure that its interaction with the board is effective, by in particular agreeing the timely communication of relevant information.

B.1.9 Governors should acknowledge the overall responsibility of the Board to run the Trust and should not try to veto its decisions or obstruct the implementation of its strategies.

B.1.10 The Council should only use its power to remove the chairman or a non-executive director as a last resort.

D.1 and D.1.3 The Chairman is responsible for ensuring that the directors and the governors receive accurate, timely and clear information. The Council should advise the Board of its information needs.

D.1.5 and D.1.6 Governors should canvass the opinion of their members on the Trust's forward plan, and the Board must take account of the opinion of the governors.

D.2.3 There should be a process for the removal of a governor who consistently fails to attend meetings, or otherwise breaches their duties. [This is contained in the Trust's constitution.]