

**Code of Governance for NHS Provider Trust  
(Comply or Explain)**

**Public Board  
28 March 2024**

<b>Presented for:</b>	Position Statement, Assurance and Approval
<b>Presented by:</b>	Jo Bray, Company Secretary
<b>Author:</b>	Jo Bray, Company Secretary
<b>Previous Committees:</b>	NONE.

<b>Our Annual Commitments for 2023/24 are:</b>	
Effectively develop and deploy new assets (buildings, equipment, IT)	✓
Reduce healthcare associated infections	✓
Improve staff retention	✓
Deliver the financial plan	✓
Reduce average length of stay by 0.5 days per patient	✓
Achieve the Access Targets for Patients	✓
Support a culture of research	✓

<b>Risk Appetite Framework</b>				
<b>Level 1 Risk</b>		<b>Level 2 Risks</b>	<b>(Risk Appetite Scale)</b>	<b>Impact</b>
Workforce Risk				
Operational Risk				
Clinical Risk				
Financial Risk				
External Risk	✓	Legal & Governance Risk - We will operate the Trust in compliance with the Law and UK Corporate Governance Code, where applicable.	Averse	Maintain

<b>Key points</b>	
1. The report sets out the requirements of the Code of Governance by NHS England and reports the Trust compliance against the standards.	Position Statement, Assurance and Approval

**1. Summary**

At the end of October 2022 NHS England issued the Code of Governance (the Code) for provider trusts, which set out a series of standards based on best practice of corporate governance from the private sector and replaced the Monitor Code of Governance established some years ago for NHS Foundation Trusts. This also reflects the developments of governance across Integrated Care Systems (ICSs).

The Code sits alongside other NHS England reporting requirements which relate to governance but do not conflict or connect with the Code and this also includes references to publications that focus on audit and internal control.

The Code sets out a series of standards whereby the Trust is required to include information within the Annual Report or via a comply or explain statement (as set out within the supporting Appendix to this report) which by means of this report to public Board can also be referenced within the Annual Report. As part of the yearend processes, External Audit are required to review the Annual Report to ensure the content reflects the specified requirements.

There is one statement E-2.1 that the Trust is non-compliant with which relates to performance related elements of Executive Remuneration eg a bonus scheme.

The Code, with the comply or explain statements and publication requirements within the Annual Report, although not a specific KLOE defined within the current requirements of the CQC Well-led, will be a key tool to assess corporate governance practices within the Trust.

**2. Financial Implications**

N/A

**3. Risk**

The Code presents no new risks to the Trust and therefore there is no change to the Trust's risk appetite and tolerances defined by the Board.

**4. Communication and Involvement**

The requirements for inclusion within the Annual Report will be addressed and published through the normal process and timescale. This report is published within the public Board report thus available for all.

**5. Equality Analysis**

N/A this report is available to all.

## **6. Publication Under Freedom of Information Act**

This paper has been made available under the Freedom of Information Act 2000.

## **7. Recommendation**

The Board are asked to note the new requirements of the Code of Governance for provider trusts, and the assurance that will be provided in due course by External Audit against the publication within the Annual Report and reflect on the self-assessment of the comply or explain against the statements of the Code and approve this is an accurate reflection of the Board and practices at LTHT.

## **8. Supporting Information**

The Appendix A below set out the criteria of the Code with statements which reference publication within the Annual Report or comply and explain as required.

Jo Bray  
**Company Secretary**  
31 January 2024

## **Appendix A**

[NHS England » Code of governance for NHS provider trusts](#)

Summary /context - To meet the requirements of 'comply or explain' each trust must comply with each of the provisions of the code (which in some cases will require a statement or information in the annual report, or provision of information to the public or, for foundation trusts, governors or members) or, where appropriate, explain in each case why the trust has departed from the code.

We recognise that departure from the specific provisions of the code may be justified in particular circumstances. Reasons for non-compliance with the code should be explained, with the trust illustrating how its actual practices are consistent with the principle to which the particular provision relates. It should set out the background, provide a clear rationale and describe any mitigating actions it is taking to address any risks and maintain conformity with the relevant principle. Where deviation from a particular provision is intended to be limited in time, the trust should indicate when it expects to conform to the provision.

It is important to note that:

- Some provisions require a statement or information in the annual report. Where information would otherwise be duplicated, trusts need only provide a clear reference to the location of the information within their annual report.
- Other provisions require a trust to make information publicly available or, for foundation trusts, to provide information to their governors or members.

- The remaining provisions are those for which ‘comply or explain’ applies.
- Schedule A of the code sets out which provisions fall into which category.

## Schedule A: Disclosure of corporate governance arrangements

Trusts are required to provide a specific set of disclosures to meet the requirement of the Code of Governance. These should be submitted as part of the annual report (as set out for foundation trusts in the [NHS foundation trust annual reporting manual](#) and for NHS trusts in DHSC group accounting manual.

The provisions listed below require a supporting explanation in a trust’s annual report, even in the case that the trust is compliant with the provision. Where the information is already in the annual report, a reference to its location is sufficient to avoid unnecessary duplication.

**NB Blue text is only applicable to NHS Foundation Trusts**

Provision	Requirement
Section A, 2.1	<p>The board of directors should assess the basis on which the trust ensures its effectiveness, efficiency and economy, as well as the quality of its healthcare delivery over the long term, and contribution to the objectives of the ICP and ICB, and place-based partnerships. The board of directors should ensure the trust actively addresses opportunities to work with other providers to tackle shared challenges through entering into partnership arrangements such as provider collaboratives. The trust should describe in its annual report how opportunities and risks to future sustainability have been considered and addressed, and how its governance is contributing to the delivery of its strategy.</p> <p>Can cross ref to section of the annual report</p>
Section A, 2.3	<p>The board of directors should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the trust’s vision, values and strategy, it should seek assurance that management has taken corrective action. The annual report should explain the board’s activities and any action taken, and the trust’s approach to investing in, rewarding and promoting the wellbeing of its workforce.</p> <p>Can cross ref to section of the annual report</p>

Section A, 2.8	<p>The board of directors should describe in the annual report how the interests of stakeholders, including system and place-based</p> <p>Can cross ref to section of the annual report</p>
	<p>Partners, have been considered in their discussions and decision making, and set out the key partnerships for collaboration with other providers into which the trust has entered. The board of directors should keep engagement mechanisms under review so that they remain effective. The board should set out how the organisation’s governance processes oversee its collaboration with other organisations and any associated risk management arrangements.</p> <p>Can cross ref to section of the annual report and use the information from the reports to Board on partnership working</p>
Section B, 2.6	<p>The board of directors should identify in the annual report each non-executive director it considers to be independent. Circumstances which are likely to impair, or could appear to impair, a non-executive director’s independence include, but are not limited to, whether a director:</p> <ul style="list-style-type: none"> <li>• has been an employee of the trust within the last two years</li> <li>• has, or has had within the last two years, a material business relationship with the trust either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the trust</li> <li>• has received or receives remuneration from the trust apart from a director’s fee, participates in the trust’s performance related pay scheme or is a member of the trust’s pension scheme</li> <li>• has close family ties with any of the trust’s advisers, directors or senior employees</li> <li>• holds cross-directorships or has significant links with other directors through involvement with other companies or bodies</li> <li>• has served on the trust board for more than six years from the date of their first appointment</li> <li>• is an appointed representative of the trust’s university medical or dental school.</li> </ul>

	<p>The biography of each director is described in the annual report with a link to the live register of interests on the Trusts website</p>
	<p>Where any of these or other relevant circumstances apply, and the board of directors nonetheless considers that the non-executive director is independent, it needs to be clearly explained why.  This is set out and described in each biography</p>
Section B, 2.13	<p>The annual report should give the number of times the board and its committees met, and individual director attendance.  This is set out in the annual report</p>
Section B, 2.19  (NHS foundation trusts only)	<p>For foundation trusts, this schedule should include a clear statement detailing the roles and responsibilities of the council of governors. This statement should also describe how any disagreements between the council of governors and the board of directors will be resolved. The annual report should include this schedule of matters or a summary statement of how the board of directors and the council of governors operate, including a summary of the types of decisions to be taken by the board, the council of governors, board committees and the types of decisions which are delegated to the executive management of the board of directors.  N/A</p>
Section C, 2.5  (NHS foundation trusts only)	<p>If an external consultancy is engaged, it should be identified in the annual report alongside a statement about any other connection it has with the trust or individual directors.  N/A</p>
Section C, 2.8  (NHS foundation trusts only)	<p>The annual report should describe the process followed by the council of governors to appoint the chair and non-executive directors. The main role and responsibilities of the nominations committee should be set out in publicly available written terms of reference.  N/A</p>
Section C, 4.2	<p>The board of directors should include in the annual report a description of each director's skills, expertise and experience.  This is set out and described in each biography, this is also on the website</p>
Section C, 4.7	<p>All trusts are strongly encouraged to carry out externally facilitated developmental reviews of their leadership and governance using the Well-led framework every three to five years, according to their circumstances. The external reviewer should be identified in the annual report and a statement made about any connection it has with the trust or individual directors.</p>

	<p>A Well-led review by AQUA was last carried out during the summer of 2021 and reported to public Board on January 2022</p>
<p>Section C, 4.13</p>	<p>The annual report should describe the work of the nominations committee(s), including:</p> <ul style="list-style-type: none"> <li>• the process used in relation to appointments, its approach to succession planning and how both support the development of a diverse pipeline</li> <li>• how the board has been evaluated, the nature and extent of an external evaluator’s contact with the board of directors and individual directors, the outcomes and actions taken, and how these have or will influence board composition</li> <li>• the policy on diversity and inclusion including in relation to disability, its objectives and linkage to trust vision, how it has been implemented and progress on achieving the objectives</li> <li>• the ethnic diversity of the board and senior managers, with reference to indicator nine of the NHS Workforce Race Equality Standard and how far the board reflects the ethnic diversity of the trust’s workforce and communities served</li> <li>• the gender balance of senior management and their direct reports.</li> </ul> <p>Can cross ref to section of the annual report – ACTION Jo to revise and re-draft for 2023/24</p>
<p>Section C, 5.15  (NHS foundation trusts only)</p>	<p>Foundation trust governors should canvass the opinion of the trust’s members and the public, and for appointed governors the body they represent, on the NHS foundation trust’s forward plan, including its objectives, priorities and strategy, and their views should be communicated to the board of directors. The annual report should contain a statement as to how this requirement has been undertaken and satisfied. N/A</p>
<p>Section D, 2.4</p>	<p>The annual report should include:</p> <ul style="list-style-type: none"> <li>• the significant issues relating to the financial statements that the audit committee considered, and how these issues were addressed</li> </ul> <p>Cross ref to section of the annual report – Finance</p>

## Agenda Item 14.1

	<ul style="list-style-type: none"> <li>• an explanation of how the audit committee (and/or auditor panel for an NHS trust) has assessed the independence and effectiveness of the external audit process and its approach to the appointment or reappointment of the external auditor; length of tenure of the current audit firm, when a tender was last conducted and advance notice of any retendering plans</li> <li>• where there is no internal audit function, an explanation for the absence, how internal assurance is achieved and how this affects the external audit</li> <li>• an explanation of how auditor independence and objectivity are safeguarded if the external auditor provides non-audit services.</li> </ul> <p style="color: red;">Cross reference to section of the annual report - Finance</p>
Section D, 2.6	<p>The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for stakeholders to assess the trust's performance, business model and strategy.</p> <p style="color: red;">Cross reference to section of the annual report - Finance</p>
Section D, 2.7	<p>The board of directors should carry out a robust assessment of the trust's emerging and principal risks. The relevant reporting manuals will prescribe associated disclosure requirements for the annual report.</p> <p style="color: red;">Set out in the CRR and BAF – need to cross ref this in the Annual Report - Finance</p>
Section D, 2.8	<p>The board of directors should monitor the trust's risk management and internal control systems and, at least annually, review their effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls. The board should report on internal control through the annual governance statement in the annual report.</p> <p style="color: red;">This is described in the Annual Governance Statement</p>
Section D, 2.9	<p>In the annual accounts, the board of directors should state whether it considered it appropriate to adopt the going concern basis of accounting when preparing them and identify any material uncertainties regarding going concern. Trusts should refer to the <i>DHSC group accounting manual</i> and <i>NHS foundation trust annual reporting manual</i> which explain that this assessment should be</p>

	<p>based on whether a trust anticipates it will continue to provide its services in the public sector. As a result, material uncertainties over going concern are expected to be rare.</p> <p><b>This is described in the Annual Accounts - Finance</b></p>
Section E, 2.3	<p>Where a trust releases an executive director, eg to serve as a nonexecutive director elsewhere, the remuneration disclosures in the annual report should include a statement as to whether or not the director will retain such earnings.</p> <p><b>Should this ever be the case this would be described in the Annual Accounts – N/A</b></p>

For the provisions listed below, **the basic ‘comply or explain’ requirement applies**. The disclosure in the annual report should therefore contain an explanation in each case where the trust has departed from the code, explaining the reasons for the departure and how the alternative arrangements continue to reflect the principles of the code. Trusts are welcome but not required to provide a simple statement of compliance with each individual provision. This may be useful in ensuring the disclosure is comprehensive and may help to ensure that each provision has been considered in turn. In providing an explanation for any variation from the code, the trust should aim to illustrate how its actual practices are consistent with the principles to which the particular provision relates. It should set out the background, provide a clear rationale, and describe any mitigating actions it is taking to address any risks and maintain conformity with the relevant principle. Where deviation from a particular provision is intended to be limited in time, the explanation should indicate when the trust expects to conform to the provision.

Provision	Requirement
Section A, 2.2	<p>The board of directors should develop, embody and articulate a clear vision and values for the trust, with reference to the ICP’s integrated care strategy and the trust’s role within system and place based partnerships, and provider collaboratives. This should be a formally agreed statement of the organisation’s purpose and</p> <p><b>Comply</b></p>
	<p>intended outcomes and the behaviours used to achieve them. It can be used as a basis for the organisation’s overall strategy, planning, collaboration with system partners, and other decisions.</p> <p><b>Comply - set out in Leeds Way Values, Org Strategy</b></p>

## Agenda Item 14.1

Section A, 2.4	<p>The board of directors should ensure that adequate systems and processes are maintained to measure and monitor the trust's effectiveness, efficiency and economy, the quality of its healthcare delivery, the success of its contribution to the delivery of the five year joint plan for health services and annual capital plan agreed by the ICB and its partners, and to ensure that risk is managed effectively. The board should regularly review the trust's performance in these areas against regulatory and contractual obligations, and approved plans and objectives, including those agreed through place-based partnerships and provider collaboratives.</p> <p><b>Comply – set out in the AGS</b>  <b>Standing agenda item – escalate to regulators and ICB</b></p>
Section A, 2.5	<p>The board of directors should ensure that relevant metrics, measures, milestones and accountabilities are developed and agreed so as to understand and assess progress and performance. Where appropriate and particularly in high risk or complex areas, the board of directors should commission independent advice, eg from the internal audit function, to provide an adequate and reliable level of assurance.</p> <p><b>Comply – set out in the AGS</b></p>
Section A, 2.6	<p>The board of directors should report on its approach to clinical governance and its plan for the improvement of clinical quality in the context of guidance set out by the Department of Health and Social Care (DHSC), NHS England and the Care Quality Commission (CQC). The board should record where in the structure of the organisation clinical governance matters are considered.</p> <p><b>Comply – set out in the AGS</b></p>
Section A, 2.7	<p>The chair should regularly engage with stakeholders including patients, staff, the community and system partners, in a culturally competent way, to understand their views on governance and performance against the trust's vision. Committee chairs should engage with stakeholders on significant matters related to their areas of responsibility. The chair should ensure that the board of directors as a whole has a clear understanding of the views of the stakeholders including system partners.</p> <p><b>Comply – engagement with stakeholders is reported to public Board via Chair and CE report, and within AGM</b>  <b>NHS foundation trusts must hold a members' meeting at least annually. Provisions regarding the role of the council of governors in stakeholder engagement are contained in Appendix B. N/A</b></p>

## Agenda Item 14.1

Section A, 2.9	<p>The workforce should have a means to raise concerns in confidence and – if they wish – anonymously. The board of directors should routinely review this and the reports arising from its operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action.</p> <p><b>Comply – FTSU – reported in annual report</b></p>
Section A, 2.10	<p>The board of directors should take action to identify and manage conflicts of interest and ensure that the influence of third parties does not compromise or override independent judgement.</p> <p><b>Comply – reported in annual report and available on website</b></p>
Section A, 2.11	<p>Where directors have concerns about the operation of the board or the management of the trust that cannot be resolved, these should be recorded in the board minutes. If on resignation a non-executive director has any such concerns, they should provide a written statement to the chair, for circulation to the board.</p> <p><b>Comply – covered in minutes of Board and Cttee. If and when applicable resignation of NEDs has and will be reported to Board</b></p>
Section B, 2.1	<p>The chair is responsible for leading on setting the agenda for the board of directors <b>and, for foundation trusts, the council of governors</b>, and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues.</p> <p><b>Comply</b></p>
Section B, 2.2	<p>The chair is also responsible for ensuring that directors <b>and, for foundation trusts, governors</b> receive accurate, timely and clear information that enables them to perform their duties effectively. <b>A foundation trust chair should take steps to ensure that governors have the necessary skills and knowledge to undertake their role.</b></p> <p><b>Comply</b></p>
Section B, 2.3	<p>The chair should promote a culture of honesty, openness, trust and debate by facilitating the effective contribution of non-executive directors in particular, and ensuring a constructive relationship between executive and non-executive directors.</p> <p><b>Comply – supported by 360 feedback, SID appraisal process</b></p>
Section B, 2.4  (NHS foundation trusts only)	<p><b>A foundation trust chair is responsible for ensuring that the board and council work together effectively.</b></p>

## Agenda Item 14.1

Section B, 2.5	<p>The chair should be independent on appointment when assessed against the criteria set out in Section B, provision 2.6. The roles of chair and chief executive must not be exercised by the same individual. A chief executive should not become chair of the same trust. The board should identify a deputy or vice chair who could be the senior independent director. The chair should not sit on the audit committee. The chair of the audit committee, ideally, should not be the deputy or vice chair or senior independent director.</p> <p><b>Comply</b></p>
Section B, 2.7	<p>At least half the board of directors, excluding the chair, should be non-executive directors whom the board considers to be independent.</p> <p><b>Comply</b></p>
Section B, 2.8	<p>No individual should hold the positions of director and governor of any NHS foundation trust at the same time.</p> <p><b>Comply</b></p>
Section B, 2.9	<p>The value of ensuring that committee membership is refreshed and that no undue reliance is placed on particular individuals should be taken into account in deciding chairship and membership of committees. <b>For foundation trusts, the council of governors</b> should take into account the value of appointing a non-executive director with a clinical background to the board of directors, as well as the importance of appointing diverse non-executive directors with a range of skill sets, backgrounds and lived experience.</p> <p><b>Comply</b></p>
Section B, 2.10	<p>Only the committee chair and members are entitled to be present at nominations, audit or remuneration committee meetings, but others may attend by invitation of the particular committee.</p> <p><b>Comply</b></p>
Section B, 2.11	<p><b>In consultation with the council of governors, NHS foundation trust boards should appoint one of the independent non-executive directors to be the senior independent director: to provide a sounding board for the chair and serve as an intermediary for the other directors when necessary. Led by the senior independent director, the foundation trust non-executive directors should meet without the chair present at least annually to appraise the chair's performance, and on other occasions as necessary, and seek input from other key stakeholders.</b> For NHS trusts the process is the same but the appraisal is overseen by NHS England as set out in the chair appraisal framework.</p> <p><b>Comply – SID carries out appraisal of Chair based on 360 and is reported to July public Board meeting</b></p>

<p>Section B, 2.12</p>	<p>Non-executive directors have a prime role in appointing and removing executive directors. They should scrutinise and hold to account the performance of management and individual executive directors against agreed performance objectives. The chair should hold meetings with the non-executive directors without the executive directors present.</p> <p>Comply with the following rationale; The CEO reports directly to the Chair, with Executive Directors reporting to the CEO. Appointment of Executive Directors will include relevant NED on the interview panel and inclusion of others with the assessment centre process. Annually the CEO reports formally to the Rem Cttee on his appraisal meetings and objective setting with each Executive. Rem Cttee approve remuneration of Executive Directors appointments Any concerns relating to the performance of any Executive would be discussed with the Chair and in the consideration of poor performance and consideration of removal would be discussed within the Rem Cttee (which is a meeting without the Executive Team present). By exception as required the Chair would hold meetings with NEDs</p>
<p>Section B, 2.14</p>	<p>When appointing a director, the board of directors should take into account other demands on their time. Prior to appointment, the individual should disclose their significant commitments with an indication of the time involved. They should not take on additional external appointments without prior approval of the board of directors, with the reasons for permitting significant appointments explained in the annual report. Full-time executive directors should not take on more than one non-executive directorship of another trust or organisation of comparable size and complexity, and not the chairship of such an organisation.</p> <p>Comply – this would be part of the appointment review process</p>
<p>Section B, 2.15</p>	<p>All directors should have access to the advice of the company secretary, who is responsible for advising the board of directors on all governance matters.</p> <p>Comply – should this ever be required Both the appointment and removal of the company secretary should be a matter for the whole board. Comply - should this ever be required</p>
<p>Section B, 2.16</p>	<p>The board of directors as a whole is responsible for ensuring the quality and safety of the healthcare services, education, training and research delivered by the trust and applying the principles and standards of clinical governance set out by DHSC, NHS England, the CQC and other relevant NHS bodies.</p> <p>Comply</p>

## Agenda Item 14.1

<p>Section B, 2.17</p>	<p>All members of the board of directors have joint responsibility for every board decision regardless of their individual skills or status. This does not impact on the particular responsibilities of the chief executive as the accounting officer.</p> <p><b>Comply</b></p>
<p>Section B, 2.18</p>	<p>All directors, executive and non-executive, have a responsibility to constructively challenge during board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy. In particular, non-executive directors should scrutinise the performance of the executive management in meeting agreed goals and objectives, receive adequate information and monitor the reporting of performance. They should satisfy themselves as to the integrity of financial, clinical and other information, and make sure that financial and clinical quality controls, and systems of risk management and governance, are robust and implemented.</p> <p><b>Comply – evidence via mins of meetings, agenda items to Board and Cttees, IQPR and AGS</b></p>
<p>Section B, 2.19</p>	<p>The board of directors should meet sufficiently regularly to discharge its duties effectively. A schedule of matters should be reserved specifically for its decisions.</p> <p><b>Comply – Standing Orders, Standing Financial Instructions and Scheme of Delegation – Forward plan for Board</b></p>
<p>Section C, 2.1  (NHS foundation trusts only)</p>	<p>The nominations committee <b>or committees of foundation trusts</b>, with external advice as appropriate, are responsible for the identification and nomination of executive and non-executive directors. The nominations committee should give full consideration to succession planning, taking into account the future challenges, risks and opportunities facing the trust and the skills and expertise required within the board of directors to meet them. Best practice is that the selection panel for a post should include at least one external assessor from NHS England and/or a representative from the ICB, and the foundation trust should engage with NHS England to agree the approach.</p> <p><b>Comply – use of external recruitment and adherence to recommendations for selection panel. Rem Cttee has received reports on succession planning</b></p>

## Agenda Item 14.1

<p>Section C, 2.2</p> <p>(NHS foundation trusts only)</p>	<p>There may be one or two nominations committees. If there are two committees, one will be responsible for considering nominations for executive directors and the other for non-executive directors (including the chair). The nominations committee(s) should regularly review the structure, size and composition of the board of directors and recommend changes where appropriate. In particular, the nominations committee(s) should evaluate, at least annually, the balance of skills, knowledge, experience and diversity on the board of directors and, in the light of this evaluation, describe the role and capabilities required for appointment of both executive and nonexecutive directors, including the chair.</p> <p>N/A</p>
<p>Section C, 2.3</p> <p>(NHS foundation trusts only)</p>	<p>The chair or an independent non-executive director should chair the nominations committee(s). At the discretion of the committee, a governor can chair the committee in the case of appointments of non-executive directors or the chair.</p> <p>N/A</p>
<p>Section C, 2.4</p> <p>(NHS foundation trusts only)</p>	<p>The governors should agree with the nominations committee a clear process for the nomination of a new chair and non-executive directors. Once suitable candidates have been identified, the nominations committee should make recommendations to the council of governors.</p> <p>N/A</p>
<p>Section C, 2.5</p> <p>(NHS foundation trusts only)</p>	<p>Open advertising and advice from NHS England’s Non-Executive Talent and Appointments team should generally be used for the appointment of the chair and non-executive directors.</p> <p>N/A</p>
<p>Section C, 2.6</p> <p>(NHS foundation trusts only)</p>	<p>Where an NHS foundation trust has two nominations committees, the nominations committee responsible for the appointment of nonexecutive directors should have governors and/or independent members in the majority. If only one nominations committee exists, when nominations for non-executives, including the appointment of a chair or a deputy chair, are being discussed, governors and/or independent members should be in the majority on the committee and also on the interview panel.</p> <p>N/A</p>
<p>Section C, 2.7</p> <p>(NHS foundation trusts only)</p>	<p>When considering the appointment of non-executive directors, the council of governors should take into account the views of the board of directors and the nominations committee on the qualifications, skills and experience required for each position.</p> <p>N/A</p>

## Agenda Item 14.1

<p>Section C, 3.1  (NHS trusts only)</p>	<p>NHS England is responsible for appointing chairs and other nonexecutive directors of NHS trusts. A committee consisting of the chair and non-executive directors is responsible for appointing the chief officer of the trust. A committee consisting of the chair, nonexecutive directors and the chief officer is responsible for appointing the other executive directors. NHS England has a key advisory role in ensuring the integrity, rigour and fairness of executive appointments at NHS trusts. The selection panel for the posts should include at least one external assessor from NHS England. N/A</p>
<p>Section C, 4.1</p>	<p>Directors on the board of directors <b>and, for foundation trusts, governors on the council of governors</b> should meet the ‘fit and proper’ persons test described in the provider licence. For the purpose of the licence and application criteria, ‘fit and proper’ persons are defined as those having the qualifications, competence, skills, experience and ability to properly perform the functions of a director. They must also have no issues of serious misconduct or mismanagement, no disbarment in relation to safeguarding vulnerable groups and disqualification from office, be without certain recent criminal convictions and director disqualifications, and not bankrupt (undischarged). Trusts should also have a policy for ensuring compliance with the CQC’s guidance Regulation 5: Fit and proper persons: directors. <b>Comply – reported annual to March Board meeting, and has been subject to Internal Audit review</b></p>
<p>Section C, 4.3</p>	<p>The chair should not remain in post beyond nine years from the date of their first appointment to the board of directors and any decision to extend a term beyond six years should be subject to rigorous review. To facilitate effective succession planning and the development of a diverse board, this period of nine years can be extended for a limited time, particularly where on appointment the chair was an existing non-executive director. The need for extension should be clearly explained and should have been agreed with NHS England. <b>Explain – the Chairs terms of office were extended by NHS England for org memory and continuity to support the Building the Leeds Way New Hospital Programme – they expire in July 2025</b></p>

<p>Section C, 4.4  (NHS foundation trusts only)</p>	<p>Elected foundation trust governors must be subject to re-election by the members of their constituency at regular intervals not exceeding three years. The governor names submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable members to make an informed decision on their election. This should include prior performance information. Best practice is that governors do not serve more than three consecutive terms to ensure that they retain the objectivity and independence required to fulfil their roles. N/A</p>
<p>Section C, 4.5</p>	<p>There should be a formal and rigorous annual evaluation of the performance of the board of directors, its committees, the chair and individual directors. For NHS foundation trusts, the council of governors should take the lead on agreeing a process for the evaluation of the chair and non-executive directors. The governors should bear in mind that it may be desirable to use the senior independent director to lead the evaluation of the chair. NHS England leads the evaluation of the chair and non-executive directors of NHS trusts. NHS foundation trusts and NHS trusts should make use of NHS Leadership Competency Framework for board level leaders.</p> <p>Comply rationale Each member of the Board is subject to an annual appraisal Each Committee of the Board produces an annual report, reporting delivery against annual work plan and objectives. Scrutiny process by Audit Cttee reviewing annual reports from Cttees CQC Well-led and review of AQUA</p>
<p>Section C, 4.6</p>	<p>The chair should act on the results of the evaluation by recognising the strengths and addressing any weaknesses of the board of directors. Each director should engage with the process and take appropriate action where development needs are identified.</p> <p>Comply rationale Annual Appraisal process and report of assurance to Rem Cttee Well-led recommendations from the AQUA (external) review – assurance process by Exec Team in Q4 2024 for closing the loop and self-assessment for any deterioration since this review. Commence preparation for new criteria of CQC Well-led Quality Statements and external review during winter 2024/25 (to comply with CQC three year external review process).</p>

<p>Section C, 4.8  (NHS foundation trusts only)</p>	<p>Led by the chair, foundation trust councils of governors should periodically assess their collective performance and regularly communicate to members and the public how they have discharged their responsibilities, including their impact and effectiveness on:</p> <ul style="list-style-type: none"> <li>• holding the non-executive directors individually and collectively to account for the performance of the board of directors</li> <li>• communicating with their member constituencies and the public and transmitting their views to the board of directors</li> <li>• contributing to the development of the foundation trust's forward plans.</li> </ul> <p>The council of governors should use this process to review its roles, structure, composition and procedures, taking into account emerging best practice. Further information can be found in Your statutory duties: a reference guide for NHS foundation trust governors and an Addendum to Your statutory duties – A reference guide for NHS foundation trust governors. N/A</p>
<p>Section C, 4.10  (NHS foundation trusts only)</p>	<p>In addition, it may be appropriate for the process to provide for removal from the council of governors if a governor or group of governors behaves or acts in a way that may be incompatible with the values and behaviours of the NHS foundation trust. NHS England's model core constitution suggests that a governor can be removed by a 75% voting majority; however, trusts are free to stipulate a lower threshold if considered appropriate. Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties should be asked to consider the evidence and determine whether or not the proposed removal is reasonable. NHS England can only use its enforcement powers to require a trust to remove a governor in very limited circumstances: where they have imposed an additional condition relating to governance in the trust's licence because the governance of the trust is such that the trust would otherwise fail to comply with its licence and the trust has breached or is breaching that additional condition. It is more likely that NHS England would have cause to require a trust to remove a director under its enforcement powers than a governor. N/A</p>

## Agenda Item 14.1

<p>Section C, 4.11</p>	<p>The board of directors should ensure it retains the necessary skills across its directors and <b>works with the council of governors</b> to ensure there is appropriate succession planning.</p> <p><b>Comply rationale</b>  <b>NED have succession plan and use of Ass NEDs</b>  <b>Development of succession plan for wider organisation as we review and work towards the implementation of the Messenger Review</b></p>
<p>Section C, 4.12</p>	<p>The remuneration committee should not agree to an executive member of the board leaving the employment of the trust except in accordance with the terms of their contract of employment, including but not limited to serving their full notice period and/or material reductions in their time commitment to the role, without the board first completing and approving a full risk assessment.</p> <p><b>Comply – would adhere to this if ever required</b></p>
<p>Section C, 5.1</p>	<p>All directors and, <b>for foundation trusts, governors</b> should receive appropriate induction on joining the board of directors or the council of governors and should regularly update and refresh their skills and knowledge. Both directors <b>and, for foundation trusts, governors</b> should make every effort to participate in training that is offered.</p> <p><b>Comply – all have tailored induction programmes</b></p>
<p>Section C, 5.2</p>	<p>The chair should ensure that directors <b>and, for foundation trusts, governors</b> continually update their skills, knowledge and familiarity with the trust and its obligations for them to fulfil their role on the board, <b>the council of governors</b> and committees. The trust should provide the necessary resources for its directors and, <b>for foundation trusts, governors</b> to develop and update their skills, knowledge and capabilities. Where directors <b>or, for foundation trusts, governors</b> are involved in recruitment, they should receive appropriate training including on equality diversity and inclusion, including unconscious bias.</p> <p><b>Comply – addressed within appraisal and mid year review processes</b></p>
<p>Section C, 5.3</p>	<p>To function effectively, all directors need appropriate knowledge of the trust and access to its operations and staff. Directors <b>and governors</b> also need to be appropriately briefed on values and all policies and procedures adopted by the trust.</p> <p><b>Comply – available to all</b></p>
<p>Section C, 5.4</p>	<p>The chair should ensure that new directors and, <b>for foundation trusts, governors</b> receive a full and tailored induction on joining the board <b>or the council of governors</b>. As part of this, directors should seek opportunities to engage with stakeholders, including patients, clinicians and other staff, and system partners. Directors should also have access at the trust’s expense to training courses and/or materials that are consistent with their individual and collective development programme.</p> <p><b>Comply – available to all</b></p>

## Agenda Item 14.1

Section C, 5.5	<p>The chair should regularly review and agree with each director their training and development needs as they relate to their role on the board.</p> <p><b>Comply – addressed within appraisal and mid year review processes</b></p>
Section C, 5.6  (NHS foundation trusts only)	<p>A foundation trust board has a duty to take steps to ensure that governors are equipped with the skills and knowledge they need to discharge their duties appropriately.</p> <p>N/A</p>
Section C, 5.8	<p>The chair is responsible for ensuring that directors <b>and governors</b> receive accurate, timely and clear information. Management has an obligation to provide such information but directors <b>and, for foundation trusts, governors</b> should seek clarification or detail where necessary.</p> <p><b>Comply – Standing Orders define Board and Cttee reports to be routinely issued six days prior to the meeting/s taking place. Board and Cttee template underpinned by risk framework defines reporting requirements – use of SPC for data</b></p>
Section C, 5.9	<p>The chair's responsibilities include ensuring good information flows across the board <b>and, for foundation trusts, across the council of governors</b> and their committees; between directors and governors; and for all trusts, between senior management and non-executive directors; as well as facilitating appropriate induction and assisting with professional development as required.</p> <p><b>Comply – as above</b></p>
Section C, 5.10	<p>The board of directors and, <b>for foundation trusts, the council of governors</b> should be provided with high-quality information appropriate to their respective functions and relevant to the decisions they have to make. The board of directors <b>and, for foundation trusts, the council of governors</b> should agree their respective information needs with the executive directors through the chair. The information for boards should be concise, objective, accurate and timely, and complex issues should be clearly explained. The board of directors should have complete access to any information about the trust that it deems necessary to discharge its duties, as well as access to senior management and other employees.</p> <p><b>Comply – as above</b></p>

## Agenda Item 14.1

<p>Section C, 5.11</p>	<p>The board of directors and in particular non-executive directors may reasonably wish to challenge assurances received from the executive management. They do not need to appoint a relevant adviser for each and every subject area that comes before the board of directors, but should ensure that they have sufficient information and understanding to enable challenge and to take decisions on an informed basis. When complex or high-risk issues arise, the first course of action should normally be to encourage further and deeper analysis within the trust in a timely manner. On occasion, non-executives may reasonably decide that external assurance is appropriate.</p> <p><b>Comply – as above and NEDs have called upon external assurance if required</b></p>
<p>Section C, 5.12</p>	<p>The board should ensure that directors, especially non-executive directors, have access to the independent professional advice, at the trust's expense, where they judge it necessary to discharge their responsibilities as directors. The decision to appoint an external adviser should be the collective decision of the majority of nonexecutive directors. The availability of independent external sources of advice should be made clear at the time of appointment.</p> <p><b>Comply – as above and NEDs have called upon external assurance if required, and explained by Co Sec at NED induction</b></p>
<p>Section C, 5.13</p>	<p>Committees should be provided with sufficient resources to undertake their duties. <b>The board of directors of foundation trusts should also ensure that the council of governors is provided with sufficient resources to undertake its duties with such arrangements agreed in advance.</b></p> <p><b>Comply – evidenced by flow of reporting and assurance to Board</b></p>
<p>Section C, 5.14</p>	<p>Non-executive directors should consider whether they are receiving the necessary information in a timely manner and feel able to appropriately challenge board recommendations, in particular by making full use of their skills and experience gained both as a director of the trust and in other leadership roles. They should expect and apply similar standards of care and quality in their role as a non-executive director of a trust as they would in other similar roles.</p> <p><b>Comply – this would be explored in appraisal and mid year review and be raised as a separate issue if this was not taking place</b></p>
<p>Section C, 5.16  (NHS foundation trusts only)</p>	<p><b>Where appropriate, the board of directors should in a timely manner take account of the views of the council of governors on the forward plan, and then inform the council of governors which of their views have been incorporated in the NHS foundation trust's plans, and explain the reasons for any not being included.</b></p> <p>N/A</p>

## Agenda Item 14.1

<p>Section C, 5.17</p>	<p>The trust should arrange appropriate insurance to cover the risk of legal action against its directors. <b>Assuming foundation trust governors have acted in good faith and in accordance with their duties, and proper process has been followed, the potential for liability for the council should be negligible. Governors may have the benefit of an indemnity and/or insurance from the trust. While there is no legal requirement for trusts to provide an indemnity or insurance for governors to cover their service on the council of governors, where an indemnity or insurance policy is given, this can be detailed in the trust's constitution.</b></p> <p><b>Comply – annual report to July Board – ‘acting in good faith’ minuted evidence to cover insurance set out in the report</b></p>
<p>Section C, 2.1</p>	<p>The board of directors should establish an audit committee of independent non-executive directors, with a minimum membership of three or two in the case of smaller trusts. The chair of the board of directors should not be a member and the vice chair or senior independent director should not chair the audit committee. The board of directors should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole should have competence relevant to the sector in which the trust operates.</p> <p><b>Comply</b></p>
<p>Section C, 2.2</p>	<p>The main roles and responsibilities of the audit committee should include:</p> <ul style="list-style-type: none"> <li>• monitoring the integrity of the financial statements of the trust and any formal announcements relating to the trust's financial performance, and reviewing significant financial reporting judgements contained in them</li> <li>• providing advice (where requested by the board of directors) on whether the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for stakeholders to assess the trust's position and performance, business model and strategy</li> <li>• reviewing the trust's internal financial controls and internal control and risk management systems, unless expressly addressed by a separate board risk committee composed of independent non-executive directors or by the board itself</li> <li>• monitoring and reviewing the effectiveness of the trust's internal audit function or, where there is not one, considering</li> </ul>

## Agenda Item 14.1

	<p>annually whether there is a need for one and making a recommendation to the board of directors</p> <ul style="list-style-type: none"><li>• reviewing and monitoring the external auditor's independence and objectivity</li><li>• reviewing the effectiveness of the external audit process, taking into consideration relevant UK professional and regulatory requirements</li><li>• reporting to the board of directors on how it has discharged its responsibilities.</li></ul> <p>Comply – evidence in Audit Cttee annual report to May public Board each year</p>
Section D, 2.3	<p>A trust should change its external audit firm at least every 20 years. Legislation requires an NHS trust to newly appoint its external auditor at least every five years. An NHS foundation trust should retender its external audit at least every 10 years and in most cases more frequently than this.</p> <p>Comply – and re-tender process will commence during 2024/25</p>
Section D, 2.5	<p>Legislation requires an NHS trust to have a policy on its purchase of non-audit services from its external auditor. An NHS foundation trust's audit committee should develop and implement a policy on the engagement of the external auditor to supply non-audit services.</p> <p>Comply - report to Audit Cttee for work undertaken</p>

<p>Section E, 2.1</p>	<p>Any performance-related elements of executive directors' remuneration should be designed to align their interests with those of patients, service users and taxpayers and to give these directors keen incentives to perform at the highest levels. In designing schemes of performance-related remuneration, the remuneration committee should consider the following provisions.</p> <ul style="list-style-type: none"> <li>• Whether the directors should be eligible for annual bonuses in line with local procedures. If so, performance conditions should be relevant, stretching and designed to match the long term interests of the public and patients.</li> <li>• Payouts or grants under all incentive schemes should be subject to challenging performance criteria reflecting the objectives of the trust. Consideration should be given to criteria which reflect the performance of the trust against some key indicators and relative to a group of comparator trusts, and the taking of independent and expert advice where appropriate.</li> <li>• Performance criteria and any upper limits for annual bonuses and incentive schemes should be set and disclosed and must be limited to the lower of £17,500 or 10% of basic salary.</li> <li>• The remuneration committee should consider the pension consequences and associated costs to the trust of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement.</li> </ul> <p><b>Non Compliance – no bonus scheme</b></p>
<p>Section E, 2.2</p>	<p>Levels of remuneration for the chair and other non-executive directors should reflect the Chair and non-executive director remuneration structure.</p> <p><b>Comply – Chair and NEDs this is set by NHSE, Executive Team appointments due to size and scale of LTHT require HM Treasury approval as defined by threshold</b></p>

## Agenda Item 14.1

Section E, 2.4	<p>The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointments would give rise to in the event of early termination. The aim should be to avoid rewarding poor performance. Contracts should allow for compensation to be reduced to reflect a departing director's obligation to mitigate loss. Appropriate claw-back provisions should be considered in case of a director returning to the NHS within the period of any putative notice.</p> <p><b>Comply – and claw back included in all Executive Contracts</b></p>
Section E, 2.5	<p>Trusts should discuss any director-level severance payment, whether contractual or non-contractual, with their NHS England regional director at the earliest opportunity.</p> <p><b>Comply – should this ever be required</b></p>
Section E, 2.7	<p>The remuneration committee should have delegated responsibility for setting remuneration for all executive directors, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The board should define senior management for this purpose and this should normally include the first layer of management below board level.</p> <p><b>Comply rationale</b>  <b>VSM are CE and the Executive Team</b>  <b>A small number of very senior staff are on Spot Salaries and would be within the first layer of management below Board</b>  <b>All other pay grades are defined by AfC or Medical/Dental pay scales</b></p>

The provisions listed below require information to be made **available to governors**, even in the case that the trust is compliant with the provision.

Provision	Requirement
Section C, 4.9 (NHS foundation trusts only)	<p>The council of governors should agree and adopt a clear policy and a fair process for the removal of any governor who consistently and unjustifiably fails to attend its meetings or has an actual or potential conflict of interest which prevents the proper exercise of their duties. This should be shared with governors.</p>
Section C, 5.7 (NHS foundation trusts only)	<p>The board of directors and, for foundation trusts, the council of governors should be given relevant information in a timely manner, form and quality that enables them to discharge their respective duties. Foundation trust governors should be provided with information on ICS plans, decisions and delivery that directly affect the organisation and its patients. Statutory requirements on the provision of information from the foundation trust board of directors to the council of governors are provided in Your statutory duties: a reference guide for NHS foundation trust governors.</p>

The provisions listed below require supporting information to be made **available to members**, even in the case that the trust is compliant with the provision.

Provision	Requirement
Section C, 2.9  (NHS foundation trusts only)	Elected governors must be subject to re-election by the members of their constituency at regular intervals not exceeding three years. The names of governors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable members to make an informed decision on their election. This should include prior performance information.

The provisions listed below require information to be made **publicly available**, even in the case that the trust is compliant with the provision. This requirement can be met by making supporting information available on request

Provision	Requirement
Section B, 2.13	The responsibilities of the chair, chief executive, senior independent director if applicable, board and committees should be clear, set out in writing, agreed by the board of directors and publicly available. <b>Comply - Jo to check that these are on the website</b> <b>Jo to action with Jane</b>
Section C, 4.2	Alongside this, the board should make a clear statement about its own balance, completeness and appropriateness to the requirements of the trust. Both statements should also be available on the trust's website. <b>Jo to draft and agree with Linda and Phil</b> <b>Jo to action with Jane</b>
Section E, 2.6	The board of directors should establish a remuneration committee of independent non-executive directors, with a minimum membership of three. The remuneration committee should make its terms of reference available, explaining its role and the authority delegated to it by the board of directors. The board member with responsibility for HR should sit as an advisor on the remuneration committee. Where remuneration consultants are appointed, a statement should be made available as to whether they have any other connection with the trust. <b>Comply – we use NHS Providers benchmarking data for Executive Remuneration</b>

## Appendix C: The code and other regulatory requirements

Although compliance with the provisions in this guide is not necessarily mandatory, some of the provisions in this document are statutory requirements because they are enshrined elsewhere in legislation.

In the first instance, boards, directors and, for NHS foundation trusts, governors, should ensure that they are meeting the governance requirements for NHS foundation trusts as set out in the 2006 Act (as amended by the 2012 Act) and reflected in the NHS provider licence. This code sits alongside a number of other NHS England reporting requirements that relate to governance.

NHS England uses reasonable evidence, from disclosures made to us by NHS foundation trusts and NHS trusts, to determine if there is a risk of a breach of the licence condition ‘Foundation Trust Condition 4: Governance in the NHS foundation trust’ and to make a decision regarding intervention.

The information we receive includes: a **forward looking** disclosure on corporate governance (the corporate governance statement); a **backward looking** disclosure on corporate governance (the code of governance for NHS provider trusts); and a **backward looking statement on internal control, risk and quality governance** (the annual governance statement).

For clarity, here we have provided a brief explanation of how the different requirements sit together and the purpose of each.

- **Corporate governance statement – in the annual plan**

To comply with the provider licence, the Annual Plan also includes a requirement for a corporate governance statement. This is a mandatory requirement. This is a forward looking statement of expectations regarding corporate governance arrangements over the next 12 months and trusts should be aware that “**issues not identified and subsequently arising can be used as evidence of self-certification failure**”. The requirement for the completion of the corporate governance statement is separate to the disclosure requirements of this code.

- **The code disclosure requirements – listed in this document and the NHS foundation trust annual reporting manual and Department of Health and**

**Social Care Group accounting manual**

This document is designed to set out **standards of best practice for corporate governance**. It is not mandatory to comply with this guidance, however, the NHS foundation trust annual reporting manual and Department of Health and Social Care group accounting manual do require trusts to make some specific disclosures on a ‘comply or explain’ basis regarding the provisions listed in this document. (A detailed list of the disclosures required is provided in Schedule A of this.) This is a backward looking statement which should be submitted with the annual report.

- **Annual governance statement – in the NHS foundation trust annual reporting manual and Department of Health and Social Care Group accounting manual**

In addition to listing the code disclosure requirements, the NHS Foundation trust annual reporting manual and Department of Health and Social Care Group accounting manual also require an annual governance statement. The annual governance statement is a backward looking statement which captures information on risk management and internal control, and includes some specific requirements on quality governance.

Completion of the Annual governance statement is a **mandatory requirement**.

The annual governance statement does not relate to this code.