

## Chapter 8 – Councils of governors

### Introduction

Foundation trusts (FTs) were introduced by the Health and Social Care (Community Health and Standards) Act 2003 and the first FTs were authorised in 2004. The Labour government of the time envisaged that every NHS trust would eventually become a foundation trust with its own council of governors. However, subsequent changes in policy direction and legislation have led to a 'mixed economy' of NHS trusts and FTs. The duty on trusts and FTs to cooperate has led to NHS trusts and FTs in the same system working ever more closely together and this has had some impact on the work of councils of governors (councils).

In recent years, FTs themselves have questioned the purpose and value of FT status for several reasons:

- Operational, financial, workforce and other sustained pressures have made it impossible in practice to realise the financial freedoms FTs should enjoy.
- NHS England (NHSE) policy has increasingly sought to equalise the regulation and oversight of trusts and FTs, moving into decision-making spaces that were established as the preserve of FTs themselves.
- The introduction of integrated care boards (ICBs) has further muddied the landscape and particularly led governors to question the role of councils of governors within systems.

Notwithstanding policy and legislative changes, the statutory role of councils of governors remains unchanged and it is up to the individual foundation trust to determine if and, if so, how it wishes the governor role to extend beyond the basic statutory duties. NHSE maintains and revises '[Your statutory duties: A reference guide for NHS foundation trust governors](#)' and its [addenda](#), and we do not intend to reiterate the information contained in those documents.

Instead, this section suggests approaches to enable FTs and governors to focus on the things that will make the most difference to patients, addressing the core statutory duties only where necessary, and argues that ongoing attention to and review of working arrangements between boards and councils will enable all parties to derive the most benefit from the relationship.

### Effective councils of governors – at a glance

- Ensure your council and all individual members understand their statutory role and any broader role that you as a trust want the council to have: ensure their focus is on adding value.
- Ensure your council is properly resourced: this is likely to enable your council to be as effective as possible and will support governors to operate within their agreed role. An appropriate level of resource to support governors may seem difficult to justify when finances are under strain, but sound governance remains important under challenged circumstances.
- Help your governors and the council as a whole to understand that holding NEDs to account is about the performance of the trust in context, not about the performance of individual NEDs. There is no

right way of doing this, only your way, so ensure that your way has been thought through and delivers what you want it to for the long term as well as at present, and that the agreed way can survive senior leadership changes, particularly that of the chair.

- Be clear that representing the interests of patients and the public is about governors' own life experience and that of those they know rather than their seeking to canvas broader views. Governors can be fair and proportionate representatives, but they can never be 100% typical of their local population.
- Diversity that is representative of the diversity of local populations is often difficult to achieve, but working towards a more diverse council is not impossible through the use of lawful positive action.
- Set the tone for the role that you want and the sort of council you need at election time. The governors role is in our view firmly a governance role – holding the board to account via the NEDs for its performance and ensuring through appropriate challenge that the board is considering the interests of the wider public in its decision-making. Sometimes prospective governors think that the role is more like a patient representative role than it is. If your FT is taking the more circumscribed governance approach, it is best to be very clear about this up front and throughout.
- Ensure you have a Code of Conduct for the council and a fair and proportionate means of dealing with alleged misconduct. This is best done well before any possibility of alleged misconduct arises.
- Ensure appropriate ongoing training and development is provided for governors.
- Provide opportunities for governors to meet NEDs on an informal basis and get to know them.
- Experience has shown that councils respond more favourably to being led by being worked with rather than feel that they are being dictated to.
- Skilful agenda setting and careful chairing are likely to ensure that council and committee meetings add value. Note that the information needs of governors do not always correspond with what governors want, so a balance needs to be struck between avoiding suspicions of secrecy and while not providing governors with excessive amounts of information that is of no use to them. Informal meetings and pre-meetings can help in this regard.
- Be mindful of the limited statutory role of the lead governor, and ensure that they have the role you want them to have, not necessarily the role they know about from colleagues at other trusts. Interaction with the lead governor is not a substitute for interaction with the council.
- Use staff, appointed and patient governors to bring a different perspective and to increase the diversity of opinions expressed at your council.
- Keep your council focussed to help you council add the most value possible. Inevitably there will be mission creep if the FT is not vigilant.

## The foundation trust model

The FT model is in essence about promoting good corporate governance. Councils of governors are a quasi-democratic means of making FTs accountable to the public they serve. While technically FTs still have greater autonomy than NHS trusts, in practice the distinctions between NHS trusts and FTs have diminished. The council of governors is arguably the feature that most often comes to mind when considering the difference between FTs and NHS trusts.

Councils have important statutory powers, but they need support to exercise them effectively and use sound judgement. Experience has shown that governors tend to take their responsibilities very seriously and see themselves as advocates for the wellbeing and interests of patients. Governors have a keen interest in the services their FT provides. They have some important powers and an electoral mandate to exercise them.

Good councils are councils that are adequately resourced, are supported in a well understood role and are well led. The success or otherwise of councils is directly related to their understanding of their role and the effectiveness of the support they receive. This doesn't necessarily mean support and leadership that is onerous, but it does mean support needs to be thought through and planned.

## Resourcing the council

One of the challenges for some FTs when working with councils and with governors is adequate resourcing. Working with volunteers requires a skill set that may not come naturally to, or be possible for, busy company secretaries or for chairs. For FTs able to resource a membership manager or assistant/deputy company secretary, their ability to prioritise the needs of the council can bring great value to the council and the trust. This can enable the chair and company secretary to focus on supporting other areas of corporate governance, drawing on their time and expertise as needed.

To be specific, efficient administration skills are necessary but often not sufficient: governors require careful induction, both proactive and responsive information sharing and communication, and good meeting facilitation. Ideally their key point of contact in the trust will be senior enough to both convey to governors that the council matters and to make decisions relating to the operation of the council. The person responsible for supporting the council should be sufficiently empathetic to recognise those times when governors need additional support or guidance, and to respond appropriately to their questions and concerns. Some understanding of good governance will also help ensure that council processes and interactions are focused on enabling governors to undertake their statutory duties effectively – whoever is in post may well benefit from training in the statutory duties of governors. The postholder should be comfortable working closely with the chair and senior independent director, particularly when NED recruitment and annual appraisals are being undertaken, and have the confidence of the board about their interactions with the council.

Whoever is supporting the council should also have good access to the chair and company secretary, and ongoing awareness of board priorities. Some chairs greatly value the council, are natural communicators, and readily make themselves available to governors. Others through preference or necessity prioritise their focus on their boards and as a result they may have a more distant relationship with the council. The chair can do much of the heavy lifting with a council – their presence at council committees from time to time as well as the council meetings themselves is valuable to hear directly from governors (informing their own triangulation) and identify areas they may wish to explore further with NEDs or at full board.

## A focus on added value and council's statutory role and responsibilities

Valuable leadership time and energy needs to be spent on the things that will contribute the most to the FT and its patients. Duties that governors may wish to perform but which are not required by their role should be minimised to enable them to add real value to their trust and its patients.

## Holding the NEDs to account for the performance of the board

This is a statutory duty and as such we do not intend to discuss it in detail. However, it is worth noting that the legislation says nothing about what this duty means or how it is to be performed. This can be a problem if governors are not given clear guidance by the trust and can lead to councils attempting to duplicate the work of the board, or to governors seeing themselves as quasi-NEDs. Clearly this should be avoided.

But the lack of prescription in the legislation also presents an opportunity to do things your way. There is no right or wrong way to do this, but it makes sense to be clear with governors and NEDs that it is unrealistic to expect governors to identify mistakes made by the board that the board itself failed to spot. Councils are not the last line of defence, though the act of explaining to governors may in itself be helpful to boards in terms of assurance.

There is a section on 'observers' at committees of the board in the section on [Effective board committees](#), which discusses governance concerns regarding the practice of allowing governors to observe board committees. Where the FT chooses to enable governor observation of committees, care must be taken to ensure that the committees' ability to conduct itself openly is not curtailed, and that governors are clear that they are there to observe the process of challenge, support and scrutiny undertaken at assurance committees: they are not there to appraise individual NED performance. To prevent mission creep, it can be helpful to rotate observation between different governors, and across each of the committees throughout the year. This avoids individual governors getting too close to the subject matter. Equally, having a pre-brief and debrief with the NED chair of the committee can help governors understand the context of the meeting, and give them a forum to ask questions or raise any concerns at the end of their observation. Governor observers should feed back to the whole council on their observation of the process at a committee, to ensure the whole council benefits from what they have learned. This again reinforces the purpose of the observation as to understand the process undertaken rather than seek to scrutinise the content.

This duty is linked to the duty to represent the interests and the public at large which is addressed in brief below.

## Representing the interests of members and the public at large

FTs have sometimes devoted considerable resource to encouraging governors to undertake public and patient research: this is unnecessary for them to represent the interests of members and the wider public in their role.

It is also unlikely to maximise the return on such research. More fruitful, in our view, is an emphasis on governors using their own life experience to inform their representation of the public interest. However, governors also need to take account of the fact that as a group they are unlikely fully to represent the demography of their area and that they may need to take a broader view than just relying on their personal experience. Many FTs provide governors with suggested ways to connect with local communities through existing forums (for example GP patient participation groups or the Women's Institute) or at trust patient and/or public-facing events (maximising return on investment and enabling governors to interact with staff members too).

More on the role of governors within integrated care systems is available in the final section of our chapter on [considerations for system working](#).

## Diversity and inclusion on the council

It is extremely unlikely that, if left to evolve without intervention, the council will be as diverse as the communities it serves nor as inclusive as would be optimal.

Councils typically are made up of people older than the average age of the adult community. They also tend to be made up of a greater proportion of white people than in the national population. It is not possible to comment on non-visible diversity, perhaps with the exception that as older people they are more likely to experience less than good health and experience age acquired disability and are therefore more likely to use the trust's services. This means trusts may well need to consider positive action at election time and when appointing governors to encourage diversity and inclusion while ensuring their actions are lawful. Where council diversity is limited, trusts may wish to consider options such as inviting representatives of seldom heard communities or those experiencing health inequalities to join as appointed governors, or simply to talk to the council, or the co-option of attendees to council or relevant committees.

It should be noted that inclusion is not just about encouraging a balanced council membership. It is also about ensuring all voices on the council are heard and given equal weight.

## Pre-election briefings and induction – setting the tone

All interactions with governors naturally set the tone for your relationship with the council. Supporting governors to build a good understanding of what their role is – and what it isn't – is worth spending time and effort on. For example, a briefing (if not in person then using the website, such as a video explaining the role) to support those thinking of standing for election can help potential governors understand the role and responsibilities before they decide whether to apply.

The role is frequently misunderstood: some people are interested because they think it's about making decisions about the day to day running of the organisation, or will enable them to campaign on a specific issue. It's appropriate therefore to greatly emphasise the governance role of the council, and describe the

activities actually undertaken so prospective governors are clear about what they'll be doing, how much time they're likely to spend doing it, and what they won't be doing.

Inductions once elected/appointed provide a second opportunity to reinforce their governance role. It's helpful to have the chair at inductions if possible, or failing that the senior independent director, so that governors meet their key board contacts at an early stage and are reasonably assured that the council is valued by the trust.

NHS Providers' [induction toolkit](#) and core skills programme for governors ([GovernWell](#)) can also help set the tone.

## Governor conduct

Not all FTs have processes and procedures in place for managing concerns raised about governor conduct. Unfortunately, there is a good amount of precedent for FTs waiting until a problem arises before trying to put processes and procedures in place. Having agreed procedures in place before issues arise is much easier and therefore preferable to trying to establish fair, transparent processes at the point difficulties occur. By the time a process is selected it may be open to criticism as being unfair, and there may be concerted opposition to what is proposed and difficulty in reaching agreement on a way forward. We therefore strongly recommend that FTs work with their councils to put in place a jointly agreed procedure for managing any governor conduct issues that may occur in the future. This should not be based on the trust's disciplinary procedure for staff, since governors are not employees, though it may use some of the same principles.

The model constitution for FTs says that the constitution should make provision for the removal of governors. It deliberately does not prescribe the process that trusts and councils should undertake to fairly and transparently arrive at such a decision.

Trusts should ensure that their constitution notes that governor conduct will be managed using a procedure which includes provision for investigation and action to be taken. We recommend that the procedure itself should not be included in the constitution since procedures should be simple to review and revise, but its existence and use in cases where conduct issues arise should be noted.

Trusts should also review their code of conduct for governors (or develop one with the council if one does not already exist) and ensure it is up to date and effective, as part of this process. For more on governor conduct, including good practice principles and an outline model procedure based on conversations with our members, see the guidance available in the [council of governors section](#) of the Compendium of resources.

## Day to day management of a council - working with, not dictating to

Governors have a reasonable interest in how the structures used to manage the council are developed and implemented. It is right and proper that governors are involved in decisions that affect the council itself as well as decisions the council has legal responsibility to make. Acting in a collaborative and collegiate way sets this tone for working with the council and governors.

Governors should therefore be involved with the trust in:

- Setting agendas for council meetings.
- Developing/reviewing the committee/meeting structure that supports them.
- Advising on their ongoing information and training and development needs.
- Developing and reviewing the effectiveness of their own code of conduct and procedures for managing breaches of that code and other behavioural issues.
- Developing and reviewing the effectiveness of any procedures that involve the council (for example, approving transactions, recruiting and appointing NEDs and appointing the external auditor).

Our experience is that these activities can be undertaken effectively at a committee of the council with specific responsibility for these areas. Having a smaller forum outside full council meetings to set agendas and discuss emerging issues/concerns as well as make recommendations to the council enables more detailed work to be done without taking up time at council meetings. Such a forum encourages ongoing discussion in between council meetings, and develops a trusting, ongoing relationship between active governors (who tend to want to be involved in these types of activities) and those supporting them. This may be chaired by the company secretary or whoever takes responsibility for the council, or equally by the lead governor, working closely with the company secretary/council lead (but see section on lead governors below). An example of the terms of reference of such a committee is [included here](#).

## Effective council meetings and committees of the council

Many of the considerations outlined in our [advice around effective board/committee meetings](#) pertain equally to meetings of the council and its committees, for example achievable and focused agendas, good chairing, inclusive and respectful behaviours around the table, clear action logs and timely follow up of actions, and appropriate paperwork provided far enough in advance.

However, there are some specific pitfalls to avoid and processes you may wish to put in place to get the most out of these meetings.

The information needs of the council are different from those of the board. It can be tempting to provide the council with papers already prepared for board forums. This can sometimes work well – for example board committee assurance reports which are then presented to council by NEDs enabling governors to ask questions and understand NEDs' levels of assurance. Where it works less well is when detailed operational reports and complex and lengthy performance reports are presented in full or unmediated.



Council meetings and committees will include some information-sharing (updates from the CEO or other directors on areas of trust focus/development) but in the main should enable governors to seek information from NEDs about their (NEDs') levels of assurance about the board's performance. Presenting more detail than is needed to the council encourages governors to get into unnecessarily detailed conversations, or duplicate the work of the NEDs. Instead, focused conversation between NEDs and governors supports both parties in their role: governors can help NEDs triangulate by sharing their perspectives and the perspectives of public/staff members and stakeholders, and NEDs help governors understand the performance of the board. Some governors have a tendency to focus on the chief executive when they are present. NEDs also may find it easy to defer to the CEO on detailed questions. It is worth considering asking the CEO to leave the meeting after giving their report to council. This helps move the focus onto the NEDs/assurance and also minimises the time the CEO spends in meetings where they are not adding value. Issues raised by governors should be conveyed to executive directors via the company secretary or chair/NEDs, and can be followed up directly outside meetings if required. Sometimes, the chief executive may wish to stay to hear the governors' conversation with the NEDs, but they should make it clear that they are there only to listen.

It is also important to ensure time is made available to governors for discussion and to ask questions. Governors will understandably become frustrated if there is not enough time for meaningful discussion at their meetings.

Pre-meets of the council can be useful to help focus and prioritise issues governors wish to explore, reduce duplication in questions at council, and help governors back each other up in areas that require more probing. It can also provide a chance to weed out questions that are too detailed or operationally focused, and help steer governors away from personal areas of interest if required. These may be chaired by the lead governor or company secretary – though it can be useful to give governors this time to themselves to develop their own relationships and speak freely, if the trust is content that governors will be able to manage their time and contributions well.

## The lead governor

Governors are required to nominate a lead governor and may also select a deputy if they wish (there is no legal or regulatory requirement to do so). Any governor may be the lead governor. Having a deputy can be useful to aid succession planning for the lead role, and to provide the lead with a peer who can act as their sounding board and a source of support.

Lead governors have a clearly circumscribed role, which is explained at some length in the [NHS trust code of governance 2022](#) (appendix B, section 4).

In summary, the lead governor has a role in facilitating direct communication between NHS England (NHSE) and the trust's council of governors where:

- NHSE has concerns about the board's leadership and may wish to use its powers to remove the chair or NEDs (who are appointed by the council); or



- Individual governors wish to contact NHSE; or
- NHSE believe that the process for appointing the chair or other board members, or elections for governors or other material decisions, may be inappropriate.

FTs are able to specify additional responsibilities for lead governors – but they are non-statutory and for the trust and council to agree.

The name 'lead governor' has created confusion since the role's inception. The postholder is elected by their peers but should not be viewed as more senior or powerful than other governors in any way. All governors have the same statutory duties and responsibilities and their powers are powers of the council as a body; they are not wielded by individual governors. Communication with the lead governor does not replace communication with the council as a whole, for example, nor are the views of the lead governor more important than any other governor's.

In practice, it can sometimes be useful for a lead governor to have some additional responsibilities so long as there is clear recognition of the principles in the paragraph above. For example, some FTs have benefitted from lead governors chairing pre-meetings of the council (see section above on [effective council meetings](#)). They can also undertake a pastoral role for the other governors, alerting the chair or company secretary if there are issues to be aware of. As will be noted several times in this section, governors are very effective at supporting and challenging each other when required, provided the tone is set that this is done respectfully with a focus on behaviours rather than individuals. Lead governors may also be asked to chair whatever forum council agendas are set in (see [day to day management of the council](#) section above).

Any extension to the role should be clearly defined and set out in a role description. It is worth recognising that the council selects its lead governor, so trusts would be wise not to extend the remit of the lead governor just because the current incumbent is particularly capable and effective in the role. Custom and practice becomes established and is hard to change later should another governor become the lead and be less capable. In particular, seek to avoid any extension of the role where the lead governor becomes a spokesperson or conduit for the council as a whole, which may undermine the council's remit as a collective body and encourage others to do the same.

The tenure of the lead governor, usually either a year or two years, should be clearly established.

## Staff governors

The role of a staff governor can be challenging. They add huge value to the council and FT, bringing knowledge of trust practices, understanding of areas of the business, and in some cases, information about patient experience of services. As such, they can often be influential on the council, and governors and NEDs alike may seek confirmation or otherwise from staff governors as part of their assurance-seeking.

For staff governors themselves, there can be a temptation to regularly use their forum to escalate operational or management issues. The issue is often framed as understanding the difference between being a union representative and a governor, in the sense that they should be encouraged to share their and colleagues' perspectives on the performance of the trust but not persistently argue cases or raise workforce issues that should be raised with their line manager or responded to through other trust processes. The distinction is not always clear and while staff governors should be given the space to explore their role during their induction period, they may also require regular conversations to support them. It is useful to ensure that staff governors know the various internal routes to which they can direct colleagues who have issues or concerns that they wish to raise as colleagues may also have misapprehensions about the staff governor role.

In some trusts, the chair holds separate meetings regularly with the staff governors to both listen to and learn from them and to advise the best avenue for any concerns outside of the council's remit. The company secretary should also make themselves available to offer advice on this.

## Appointed governors

Appointed governors tend to have full time jobs in their own organisations, so can find it challenging to regularly attend council meetings and particularly to get involved in voluntary committees and other activities. Their insight from partner and affiliated organisations adds value but, due to their time commitments in their substantive role, they can sometimes struggle to be present enough, and prepared enough, to add that value consistently. Their fellow public governors – often retired volunteers with more time – can see them as being unreliable, and in these circumstances it is important to regularly emphasise the value they add and the attendance challenges they face. Of course, if their absence is persistent or absolute, there should be a conversation about whether they should continue in the role.

They do add great value: they can help NEDs triangulate partner organisations' perspectives of the trust through their interactions at council, and this is likely to be more important as system working progresses. They also help other governors to gain a wider perspective on the performance of the trust.

## Patient governors

Patient governors can bring insight into services and help to bring the patient voice into the trust, so due consideration should be given as to whether a patient constituency is needed.

Many providers of general hospital services choose not to have a patient governor constituency because very often many members of the council will have had direct experience of being a patient. Likewise, ambulance trusts tend not to have 'regular' patients who would be able to participate in the council.

Specialist trusts and mental health trusts are more likely to have a service user or patient constituency precisely because of the ongoing nature of those trust's interactions with many of their patients. FTs may wish to

consider giving additional support to service user and patient governors if this is wanted by those concerned and is needed to help the governors in question to be heard and participate effectively.

## The membership – quality versus quantity and what to do with members

In the early days of FTs, membership quotas were established that trusts had to meet to demonstrate their ability to hold governor elections among a reasonably sized, reasonably representative number of members of the community the trust served. Membership numbers were monitored by the regulator.

This potentially skewed trusts' views about the membership – focusing on numbers and reporting ahead of what the members were for and how the trust would interact with them. There is no longer any requirement to hold any number of members over and above the minimum set out in FTs' constitutions. The constitutions themselves are no longer certified centrally by the regulator and so can be updated by trusts as required, subject to approval of both board and council. Ratification of changes at an annual members meeting is only required if the changes proposed are material to the powers or duties of the council.

On the journey to FT status, trusts sometimes set up new membership offices to recruit, communicate with and involve members. Some created a specific membership manager role, rather than absorb the work into current roles, sitting in either their communications and/or engagement teams, or the company secretary's team. In some trusts, membership recruitment, engagement and support has sat outside of the trust's other mechanisms for engagement with patients and the public. It is our view that membership engagement is best viewed and delivered as part of the trust's wider approach to patient and public involvement and engagement – members are, after all, members of the public and all are potential NHS patients, and are distinguished from all other people in your community only by their ability to stand for election to the council and vote in governor elections. This can reduce duplication of effort and more importantly join up intelligence received from various sources, enabling consolidated reporting through to management and when required, the board. Many FTs have established a membership committee, which considers recruitment, engagement and communications. If the communications team at the trust is responsible for member communications, it is important to involve them in this committee.

Members are hopefully an engaged and reasonably well-informed constituency of people trusts can engage with. And it is important to remember that governors acting alone – when not convened in a council forum – have no more powers than any member of the public. If governors choose to participate in other FT or system forums, they bring their governor knowledge, but they are a member of the public.

## Keeping governors mission-focused

The statutory role of the council is defined, but the way governors carry out their role and responsibilities is not. The FT should work with the council to regularly review and discuss how governors can best add value to the trust and undertake their role in the best interests of the patients and the wider public.

Given their limited powers, it is unsurprising that governors will be keen to seek out additional opportunities to help improve things. Custom and practice varies greatly from trust to trust and it is not uncommon for governors to wish to take on extra responsibility because governors elsewhere appear to have such responsibilities in their trust. This can lead to attempts to extend the governor mission in a way that does not suit the trust. It is particularly important therefore that FTs maintain a firm line about what they wish governors to do in their own trust and about what is not on the table. That is not to say that every idea from outside is a bad idea and should not be adopted. However, it is reasonable practice for boards and chairs to listen to what governors have to say about their role, and to make a decision about whether any proposal adds value. It is prudent to ensure that councils understand that this is the case at induction and at the first meeting of a new council.

It should also be noted that governors are often in post for six to nine years whereas staff and board members tend to spend less time in a role before moving on. Changes at board level, but particularly at chair level and among those charged with supporting governors open a window for mission creep, particularly if a new chair has a different style. FTs will need to take care at these times to ensure that unintended mission creep is avoided.

## Valuing and recognising governors

It is helpful to remember that most governors, despite their statutory role, are actually volunteers. As such, their contribution should be appropriately valued and recognised. Many trusts include an annual award for governors' contribution at their staff awards, for example, while regular thanks and talking about their contribution throughout the year is proper.

Cost-saving measures may seem sensible (for example, reduction in provision of refreshments at council meetings) but unless governors are fully bought into or indeed may suggest making such savings, the detrimental impact on morale may far outweigh the benefit of any cost saving.

Valuing governors' time by making the effort to ensure their meetings are well-run and interactions with the trust are meaningful is also part of recognising the commitment they give the trust.