

Report to:	Council of Governors	Agenda item:	13
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Title of Report:	Addendum to <i>Your statutory duties – reference guide for NHS foundation trust governors: System working and collaboration: role of foundation trust councils of governors</i>
Status:	Discussion
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Appendices	Appendix 1: Addendum to <i>Your statutory duties – reference guide for NHS foundation trust governors: System working and collaboration: role of foundation trust councils of governors</i>

1. Report

At the last Council of Governors meeting in October, the Head of Corporate Governance introduced the then draft Code of governance for NHS provider trusts. That Code has now been adopted and will come into effect on 1 April 2023. Although most of the key provisions of the new Code replicated the 2013 Code of Governance, one of the main differences is the reference of the role of new system architecture introduced by the Health and Care Act 2022 – the Integrated Care System, which includes the Integrated Care Boards and Partnerships (ICBs and ICPs).

Further recognition of the new emphasis on partnership and system working has led to the publication, at the same time as the Code, of two other documents – *Guidance on good governance and collaboration* and *Addendum to Your statutory duties – reference guide for NHS foundation trust governors: System working and collaboration: role of foundation trust councils of governors*. The former document relates specifically to the NHS provider licence and will not be addressed here.

Your statutory duties – A reference guide for NHS foundation trust governors was a guidance document that was first published by Monitor (the then regulator of Foundation Trusts) in October 2009 and updated in August 2013. This was the definitive compendium of FT governors' roles, powers and responsibilities, and was a very important reference document, particularly at a time when the FT sector was still in its infancy. Most of its key provisions are now covered in the Model Constitution (a version of which the RUH adopted as its own Constitution).

The new guidance document which was published on 27 October 2022 is an addendum to *Your statutory duties*. It is the only one of the three documents referred to that is specifically directed at FTs as it is only they who have councils of governors. The document's main aim is to seek to update the role of councils of governors in the context of the new system based health and care sector.

Public governors will be aware that they were elected by RUH members, and not surprisingly, therefore, their primary responsibility would be to protect the interests of those using its services as well as the organisation itself. However, although the 2022 Act does not undermine the sovereignty of individual organisations, there is now a

legal obligation for them to collaborate with other partners within their systems. By extension, therefore, this guidance is asking councils of governors to adopt a slightly different role. It should be noted however, that the 3 core statutory duties imposed on governors (holding the NEDs to account for the performance of the board, representing the interests of FT members and the public and approving “significant transactions”) have not changed, but been slightly expanded.

In this regard, the guidance suggests that councils of governors should have the following additional considerations in carrying out their duties:

- They should consider the role that the FT has played within the ICS in exercising their duty to hold the NEDs to account for the performance of the board.
- To discharge their duty of representing the interests of trust members and the public, governors are required to take account of the interests of the public at large, and this includes the population of the local system of which the trust is a part.
- In considering whether to approve a significant transaction, a council of governors may consider whether it would benefit not just their own trust but the wider ICS as well.

This is a significant development in the role of the Council of Governors. It will be important in the coming months for governors to be fully briefed on all aspects of system working, including the roles of the constituent bodies within the ICS, and specifically on what is going on within our own BaNES, Swindon and Wiltshire (BSW) ICS. The Head of Corporate Governance will work with the Chair and executive colleagues to provide the necessary briefings.

Some joint work has been done by members of this Council with those of the 2 other acute trusts in BSW – Great Western Hospitals and Salisbury. It would be important to build on this going forward.

2. Recommendations (Note, Approve, Discuss)

The Council of Governors is asked to discuss and note the addendum document. Members should also consider how they wished to be briefed on the work of the ICS. Finally, thought should be given to establishing closer links with the councils of governors at the GWH and SFT.

3. Legal / Regulatory Implications

Councils of governors’ core legal duties as set out in the National Health Service Act 2006 (amended by the Health and Social Care Act 2012) remain the same. The latest guidance seeks to build on rather than contradict these provisions.

4. Risk (Threats or opportunities, link to a risk on the Risk Register, Board Assurance Framework etc)

None identified

5. Resources Implications (Financial / staffing)

No additional resources required.

6.	Equality and Diversity
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The new Code of governance and associated documents have been drafted with the promotion of equality and addressing health inequalities at their heart.

7.	References to previous reports
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Introduction to the 2022 Code of governance for NHS provider trusts – October 2022
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8.	Freedom of Information
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Public

Addendum to Your statutory duties –
reference guide for NHS foundation trust
governors

System working and collaboration: role of foundation trust councils of governors

27 October 2022

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Equality and health inequalities statement

Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and
- Given regard to the need to reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities.

About this document

This addendum supplements existing guidance for NHS foundation trust governors and explains how the legal duties of foundation trust councils of governors support system working and collaboration.

Key points

- This addendum is based on the existing statutory duties in the 2006 Act, and the principles regarding collaboration and system working in the June 2021 [Integrated care systems: design framework](#).
- To support collaboration between organisations and the delivery of better, joined-up care, councils of governors are required to form a rounded view of the interests of the 'public at large'.
- Updated considerations are set out in respect to the following legal duties of councils of governors: holding the non-executive directors to account, representing the interests of trust members and the public, and approving significant transactions, mergers, acquisitions, separations or dissolutions.
- This addendum only applies to a council of governors' statutory role within its own foundation trust's governance.

Action required

- NHS England expects councils of governors to act in line with the principles in this addendum.

Other guidance and resources

- [Integrated care systems: design framework](#)
- [Working together at scale: guidance on provider collaboratives](#)
- The wider suite of [Integrated care systems: guidance](#)

1. Introduction

This addendum to NHS England's [Your statutory duties: A reference guide for NHS foundation trust governors](#) (the guide for governors), originally published by Monitor, explains how the duties of NHS foundation trust councils of governors support system working and collaboration, and provides examples of good practice. It supplements (rather than replaces) the guide for governors, and the two documents should be used in conjunction.

The guide for governors lays out the statutory duties of NHS foundation trust councils of governors, as provided by the [National Health Service Act 2006](#) (the 2006 Act) and amended by the [Health and Social Care Act 2012](#). It is written for councils of governors (rather than trust boards). The legislation applies to councils of governors as a whole, not individual governors. Councils have no powers of delegation, so they can only take decisions in full council.

There is no change to the statutory duties for councils of governors, as outlined in the 2006 Act. For more details on any of the NHS foundation trust councils of governors' statutory duties and powers, please refer to the legislation or contact your trust secretary.

This addendum is based on the statutory duties in the 2006 Act and the principles regarding collaboration and system working in the June 2021 [Integrated care systems: design framework](#) and the Health and Care Act 2022. NHS England expects councils of governors to act in line with the principles in this addendum.

This addendum only applies to a council of governors' role **within its own foundation trust's governance**. It does not relate to the governance of the boards of integrated care boards (ICBs).

1.1 What has changed and why?

Background

A great deal has changed since the guide for governors was last updated in August 2013. With the publication of the NHS Long Term Plan (a 10-year plan outlining the

future of the NHS) in January 2019, the NHS set out its ambition to develop new ways of working based on the principles of co-design and collaboration.¹

These principles are not new to the NHS, as ‘working together for patients’ has been a core part of the NHS Constitution since 2012. However, the importance of different parts of the health and care system working together in the best interests of patients and the public has been starkly demonstrated during the COVID-19 pandemic. The immediate and long-term challenges facing the NHS, such as an ageing population, increased demand for services and health inequalities, can only be solved by organisations working together and putting patients, service users and populations at the heart of decision-making.

A key milestone in achieving this was the establishment of integrated care systems (ICSs) across England. ICSs bring local health and care organisations together to deliver the priorities for the health and care system, including complying with the triple aim of better health and wellbeing for everyone, better quality of health services for all individuals and sustainable use of NHS resources.² They do this over the defined geographical area, and depend on NHS organisations, local authorities and other partners that deliver health and care services working together to plan care that meets the needs of their population. This approach is often called ‘system working’.

The Health and Care Act 2022 has removed legal barriers to collaboration and integrated care and put ICSs on a statutory footing by establishing for each ICS:

- An integrated care partnership (ICP), a statutory joint committee of the ICB and the responsible local authorities in the ICS, bringing together organisations and representatives concerned with improving the care, health and wellbeing of the population. Each partnership has been established by the NHS and local government as equal partners and has a duty to develop an integrated care strategy proposing how the NHS and local government should exercise their functions to integrate health and care and address the needs of the population identified in the local joint strategic needs assessment(s).
- An ICB, which brings the NHS together locally, to improve population health and care; its unitary board allocates NHS budget and commissions services, and – having regard to the ICP’s integrated care strategy – produces a five-year joint

¹ [NHS Long Term Plan](#), p110, 7.1.

² [Integration and innovation: working together to improve health and social care for all](#) p23, 3.11.

plan for health services and annual capital plan agreed with its partner NHS trusts and foundation trusts.

The ICP and ICB, together with other key elements of the new arrangements including place-based partnerships and provider collaboratives, will bring together all partners within an ICS.

As ICSs develop, organisations are not only expected to provide high-quality care and manage their own finances, but to take on responsibility for wider objectives relating to NHS resources and population health jointly with other providers. This means that system and place-based partnerships will plan and co-ordinate services in a way that improves population health and reduces inequalities.

The success of individual trusts and foundation trusts will increasingly be judged against their contribution to the objectives of the ICS, in addition to their existing duties to deliver safe, effective care and effective use of resources.³ Trusts are also expected to avoid making decisions that might benefit their own institution but worsen the position for the system overall.⁴

Forming a rounded view in representing ‘the public’

The 2006 Act provides councils of governors with their statutory duties. Within those duties, councils of governors are legally responsible for representing the interests of the members of the NHS foundation trust and the public.⁵

While the meaning of ‘the public’ is not specified in legislation, councils of governors are not restricted to representing the interests of a narrow section of the public served by the NHS foundation trust – that is, patients and the public within the vicinity of the trust or those who form governors’ own electorates.

To support collaboration between organisations and the delivery of better, joined-up care, councils of governors are required to form a rounded view of the interests of the ‘public at large’. This includes the population of the local system of which the NHS foundation trust is part. No organisation can operate in isolation, and each is dependent on the efforts of others.

³ [Integrated care systems: design framework](#), p30.

⁴ [NHS Long Term Plan](#), p112, 7.9.

⁵ Paragraph 10A(b) of Schedule 7 to the [NHS Act 2006](#).

While staff governors and patient, carer and service user governors represent specific constituencies, they are also expected to represent the interests of the members of the trust as a whole and the public. Therefore, they are required to seek and form a view of the interests of the ‘public at large’.

This expectation also extends to appointed governors.⁶ The continued expectation of appointed governors is that they will work to further the relationship between their own organisation and the NHS foundation trust, but do so within the context of the system, of which they are part.

There is no requirement for trusts to appoint a governor from an ICB; however, they are free to do so, if they wish.

2. Updated considerations for the statutory duties of councils of governors

The statutory duties of councils of governors have not changed, and governors should not anticipate any material change to their day-to-day role.

However, the NHS’ move to a new way of working will affect what councils of governors need to consider when performing their statutory duties. Councils of governors will need to be assured their foundation trust board has considered the consequences of decisions on other partners within their system, and the impact on the public at large.

This section provides clarity on the three statutory duties that will be most affected by the transition to system working, setting out additional considerations for each duty, that reflect the new context trusts are operating in:

- a. Holding the non-executive directors individually and collectively to account for the performance of the board of directors.
- b. Representing the interests of the members of the NHS foundation trust and the public.

⁶ At least one governor is required to be appointed by a qualifying local authority and at least one by a university if the hospitals include a medical or dental school provided by a university. A foundation trust can decide whether to have any further appointing organisations, specifying as such in its constitution.

- c. Approving ‘significant transactions’, mergers, acquisitions, separations or dissolutions.⁷

Chapter 3 of the guide for governors gives the complete statutory duties and powers of the council of governors.

2.1 General duties of the council of governors (Chapter 4 of the guide for governors)

a. Holding the non-executive directors to account

What are the legal requirements?

The council of governors has a duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors.

General considerations

The guide for governors stipulates: “Holding the non-executive directors to account for the performance of the board does not mean the governors should question every decision or every plan. The role of governors in ‘holding to account’ is one of assurance of the performance of the board.”⁸ It suggests that the council of governors should therefore assess what it believes are the key areas of enquiry and provide appropriate challenge. These could be for example:

- due process is not being followed
- the interests of the members and of the public are not being appropriately represented
- the trust is at risk of breaching the conditions of its licence.

Councils of governors may not always agree with the decisions taken by the directors, and directors do not always have to adhere to the council’s preferences. However, the board of directors, as a whole, does have to give due consideration to the views of the council of governors, especially in relation to matters that concern the interests of the members of the NHS foundation trust and the public.⁹

⁷ [Your statutory duties – a reference guide for governors](#), p19.

⁸ [Your statutory duties – a reference guide for governors](#), p28.

⁹ Ibid.

Chapter 4, section 4.1 of the guide for governors gives a complete description of this duty.

What is the role of councils of governors?

Overall responsibility for running an NHS foundation trust lies with the board of directors, and the council of governors is the collective body through which directors explain and justify their actions. Holding to account is therefore not about the performance of individual directors, nor performance management of the board – that is, the council’s role is as follows:

1. To consider the board’s account of its performance against the criteria that the council has agreed with the board and based on the conditions in the provider licence.
2. To question the board on its account and feedback in a considered manner based on the evidence presented (asking for more evidence if necessary and reasonable).
3. In extreme cases, to raise difficult issues and, after listening to the account of the board, to consider contacting NHS England if it forms a reasonable belief that the trust is in danger of breaching the terms of its licence.

Updated considerations for governors to discuss with their trust’s board regarding system working

1. The success of an individual foundation trust will increasingly be judged against its contribution to the objectives of the ICS. This means the board’s performance must now be seen in part as the trust’s contribution to system-wide plans and their delivery, and its openness to collaboration with other partners, including with other providers through provider collaboratives. In holding non-executive directors to account for the performance of the board, NHS foundation trust councils of governors should consider whether the interests of the public at large have been factored into board decision-making, and be assured of the board’s performance in the context of the system as a whole, and as part of the wider provision of health and social care.

Councils of governors are permitted to demonstrate the interests of the public at large to the board if they feel that the board is not operating in the public’s

interests. (For further detail, please see Section 2.1b: Representing the interests of trust members and the public.)

2. Consideration should also be given to how the trust board's decision-making complies with the triple aim duty of better health and wellbeing for everyone, better quality of health services for all individuals and sustainable use of NHS resources, as well as the role the trust is playing in reducing health inequalities in access, experience and outcomes.
3. The statutory duties of councils of governors have not changed, and the relationship of councils of governors remains with their own foundation trust board, the ICB or any other part of the system(s) their trust operates in. It remains the case that if governors are acting outside the context of a council meeting they do so solely as individuals, ie outside their statutory role as governor.

Illustrative scenario 1: A council of governors considers the role the NHS foundation trust has played within the ICS in holding the non-executive directors to account for the performance of the board

To hold the non-executive directors to account, the council of governors may already have a number of approaches in place, including:

1. Observing the contributions of the non-executive directors at board meetings and during meetings with governors.
2. Gathering information on the performance of the board against its strategy and plans.
3. Receiving the trust's quality report and accounts and questioning the non-executive directors on their content.

These allow the council of governors to determine its key areas of concern and provide appropriate challenge.

The council of governors is mindful that NHS England has now set a clear expectation that NHS foundation trusts will collaborate effectively with system partners to co-design and deliver plans, and that the failure of a trust to do so may be treated as a breach of governance licence conditions.

To form a view about the trust's contribution to system performance and development, the council of governors may need to adapt its approaches.

1. Seeking to understand the arrangements for the trust's contribution to shared planning and decision-making forums – eg system and place-based arrangements and provider collaboratives – and how the interests of patients and the public are considered.
2. Requesting information on the ICP's integrated care strategy and the ICB's five-year joint plan from the board to understand how the trust's plans relate to overarching system development.
3. Requesting information on the ICB's performance from the board to understand how the trust's performance relates to that of its system.
4. Receiving assurance from non-executive directors that the board's decisions comply with the triple aim duty – better health and wellbeing for everyone, better quality of health services for all individuals and sustainable use of NHS resources – and have the opportunity to question the non-executive directors about this.

The trust is expected to ensure that the council of governors is provided with appropriate information, and that the governors are given opportunities to meet the board to raise questions about the trust's role within the system, or systems, of which it is part.

b. Representing the interests of trust members and the public

What are the legal requirements?

Under the 2006 Act, councils of governors have a duty to represent the interests of the members of the NHS foundation trust and the public.

General considerations

The general duty to represent the interests of members and the public includes (but is not limited to) all other statutory duties that councils of governors are expected to fulfil, and should underpin all elements of their role as outlined in the guide for governors and the NHS foundation trust's own constitution. The council of governors should therefore interact regularly with the members of the trust and the public to ensure it understands their views, and to clearly communicate information on trust and system performance and planning in return. However, governors should take care to disclose only those matters that the trust considers non-confidential.¹⁰

Councils of governors must be mindful that a number of different bodies and organisations (such as Healthwatch) represent the interests of the public, and governors should therefore work collaboratively with one another and with other representative bodies, to ensure that the public has been as broadly represented as possible.

It should be noted that while staff, patient, carer and service user governors represent specific constituencies, they are also expected to represent the interests of the members of the trust as a whole and the public at large.

Chapter 4, section 4.2 of the guide for governors gives a complete description of this duty.

Updated considerations for governors to discuss with their trust's board regarding system working

1. Each ICB will be expected to build a range of engagement approaches into its activities at every level, and to prioritise engaging with groups affected by health inequalities in access, experience and outcomes, in a culturally competent way. This will be supported by a legal duty for each ICB to make arrangements to involve patients, unpaid carers and the public in planning and commissioning arrangements, and by a continuation of existing foundation trust duties relating to patient and public involvement, including the role of foundation trust governors.
2. Councils of governors are not restricted to representing the interests of a narrow section of the public served by the NHS foundation trust – that is, patients and the

¹⁰ [Your statutory duties – a reference guide for governors](#), p31.

public within the vicinity of the trust or those who form governors' own electorates. To discharge this statutory duty, councils of governors are required to take account of the interests of the 'public at large'. This includes the population of the local system of which the trust is part.

3. **There is no expectation that the way governors undertake this duty should materially change.** However, councils of governors should be assured that their trust is engaging widely, and when engaging with the public themselves, councils of governors need not limit their engagement to the public and patients in their electorate or personal networks. They may also work with their board to consider how best to engage with other bodies and organisations in their system that represent the interests of the public at large (such as voluntary sector organisations and Healthwatch). Governors must also adhere to their trust's communications or media policies when engaging and communicating with the public.
4. In some cases, councils of governors will need to consider the interests of patients and the public in other parts of their system and beyond their own ICS. This can be because the trust:
 - a. is located within a large ICS or is geographically distant from other system partners
 - b. has a specialist service footprint
 - c. is near a geographical boundary and may provide services to members and patients from other ICSs

Governors should work with their board to consider how to represent the interests of the public across a wide geographical footprint or in other ICSs.

Illustrative scenario 2: An NHS foundation trust and its council of governors work together to strengthen mechanisms by which the council of governors can consider the views of the wider public

The council of governors may already have various ways through which it engages with members and the public. These may include governor drop-in events where members and the public can meet governors, a dedicated page on the foundation trust's website to share information and surveys to gather members' and the public's views. The council of governors may also have agreed routes for feeding views back to the board, such as regular reports or presentations at council meetings.

To strengthen mechanisms to consider the views of the wider public, the council of governors should take additional steps:

1. Working with the trust to use technology to engage with members and the public. This could include adding to face-to-face interactions with virtual engagement via online events, which could improve accessibility for some patient cohorts and the public.
2. Considering how it can engage with other stakeholders that have a role in promoting the interests of patients and the public, eg local branches of Healthwatch and voluntary sector organisations. Governors may also work with their trust to build relationships with organisations that can help gather the views of seldom heard groups.
3. Asking for information on how the trust intends to address health inequalities in both its own plan and contributing to that for the wider system. This could be supplemented as appropriate with the population health data (eg demographics and deprivation data) that underpins the ICB's planning, including the identification of unmet need. This helps the council of governors understand the impact of action taken by the trust to address health inequalities.
4. If the trust's footprint is wide, or even extends beyond its ICS (because it sits in a large ICS, provides specialist services or sits on a geographical boundary), the council of governors might work with its board to consider how best to represent the interests of members and the public; for example, by:

- a. being aware of how the trust's services are used and accessed
- b. being assured that the trust has considered the impact of any changes or decisions on the public using its services, irrespective of what system they are in
- c. being assured that the trust has assessed the impact of its decisions on the care being provided to patients across the ICS.

2.2 Taking decisions on significant transactions, mergers, acquisitions, separations and dissolutions (Chapter 10 of the guide for governors)

c. Approving significant transactions, mergers, acquisitions, separations or dissolutions

Chapter 10 of the guide for governors explains what a 'significant transaction' is.

It may also be helpful to refer to Appendix 10: Legal and regulatory requirements for transactions of the [Transactions guidance](#)¹¹ for a more detailed and operational definition.

What are the legal requirements?

Under the 2012 Act:

- **More than half the members of the full council of governors of the trust voting** need to approve the foundation trust entering into any significant transaction, as specified in the trust's constitution. This means more than half the governors who are in attendance at the meeting and who vote at that meeting.
- **More than half the members of the full council of governors** must approve any application by the foundation trust to merge with or acquire another trust, to separate the trust into two or more new NHS foundation trusts or to dissolve the trust. This means more than half the total number of governors, not just half the number who attend the meeting at which the decision is taken. If the other party

¹¹ Assuring and supporting complex change: Statutory transactions, including mergers and acquisitions

to the proposed transaction is also an NHS foundation trust, more than half the governors of that foundation trust must also approve the transaction.¹²

What are councils of governors asked to take a decision on?

The 2006 Act states that the foundation trust's constitution "must provide for all the powers of the organisation to be exercisable by the board of directors on its behalf".¹³ As such it is the board of directors that must decide whether a transaction should proceed.

Councils of governors are responsible for assuring themselves that the board of directors has been thorough and comprehensive in reaching its decision to undertake a transaction (that is, has undertaken due diligence), and that it has appropriately considered the interests of members and the public as part of the decision-making process.¹⁴ As long as they are appropriately assured of this, governors should not unreasonably withhold their consent for a proposal to go ahead.¹⁵ They should consider the implications of withholding consent in terms of the key risks the transaction was designed to address.

Given councils of governors have no power of delegation, they can only make decisions in full council. Hence, they should attempt to reach a consensus based on the broad views of the council members. In common with boards of directors, they should not allow themselves to be unduly influenced by the views of individuals, but instead should attempt to ensure that all voices are heard and considered.

The council of governors must obtain sufficient information from the board of directors on the proposed significant transaction, merger, acquisition, separation or dissolution to make an informed decision.¹⁶

Chapter 10 of the guide for governors gives a more complete description of this duty.

¹² [Your statutory duties – a reference guide for governors](#), p60.

¹³ Paragraph 15(2) of Schedule 7 to the [NHS Act 2006](#).

¹⁴ [Your statutory duties – a reference guide for governors](#), p63–4.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

Updated considerations for governors to discuss with their trust's board regarding system working

1. Governors need to be assured that the process undertaken by the board in reaching its decision was appropriate, and that the interests of the 'public at large' were considered. A council can disagree with the merits of a particular decision of the board on a transaction, but still give its consent because due diligence has been followed and assurance received. To withhold its consent, the council of governors would need to establish that appropriate due diligence was either not undertaken or properly factored into decision-making.
2. All transaction proposals need to demonstrate a clear case for change to meet NHS England's assurance requirements, including how they will result in material improvements to the quality of services. Benefits arising from the transaction could be for the patients served by the trust or the wider public, eg by impacting patients of other providers or reducing health inequalities across the population. In the context of the NHS' new way of working, this means that councils of governors may well be expected to consent to decisions that benefit the broader public interest while not being of immediate advantage to or creating some level of risk for their NHS foundation trust. Consent should not be given for decisions that benefit the NHS foundation trust without regard to the effect on other NHS organisations, or the overall position of a wider footprint such as an ICS.

Illustrative scenario 3: A council of governors approves a significant transaction that may not immediately benefit the individual trust but overall does benefit the population of the wider ICS

The council of governors provides consent because the board has adequately assured it that the appropriate process has been followed.

This significant transaction may not immediately benefit the individual NHS foundation trust but overall is expected to benefit the population of the wider ICS. Some governors disagreed with the merits of the board's proposed transaction, but the full

council gave consent because all processes have been followed, the interests of the public at large have been considered and assurance has been received.

To reach this decision:

1. The board provided the council of governors with appropriate information on the proposed transaction, including the benefits for patients and the public in the wider ICS, and the impact on quality of services, system performance and the system's financial position.
2. The board was open about any risks and opportunities for the NHS foundation trust and how these would be addressed.
3. The board provided evidence that the interests of the public were appropriately considered, and effective engagement processes were followed. The council of governors was given the opportunity to challenge the processes and to ask the non-executive directors questions around any key areas of concern.

3. Working with the board

This section contains suggested approaches to support better working between the council of governors and the board, along with examples of developmental activities already underway across trusts.

3.1 Building relationships and understanding roles

Key relationships

- Trust secretary/membership manager and governor liaison role
- Trust chair
- Trust non-executive directors
- Trust chief executive officer
- Trust board and/executive directors
- Foundation trust members

Practical tips

Governors will receive an induction from their organisation. They should familiarise themselves with the following documents, along with any others their trust secretary, membership manager or anyone in a governor liaison role signposts them to:

- trust's constitution
- Code of Conduct
- confidentiality and data protection policies
- conflict of interest policies
- communications policy
- Nolan principles.

These documents help governors understand the principles and processes by which their trust is governed, outline the composition and general duties of the board, and set out expectations of governor conduct.

It is important that trust boards and their governors act in line with the Nolan principles and are open and transparent with one another. Doing so creates a better environment for challenging conversations.

For more information please refer to Chapter 2 of [Your statutory duties: A reference guide for NHS foundation trust governors](#) which outlines the governance structure of NHS foundation trusts. Please also see your trust's own constitution for information that is specific to your own organisation.

3.2 Supporting governors to fulfil the duties of a council of governors

Key relationships

- Trust secretaries/membership manager and governor liaison role
- Trust chair
- Trust non-executive directors
- Trust chief executive officer
- Trust board/executive directors

Expectations: communications and engagement

Governors can expect to attend a variety of meetings organised by the trust, which intend to help inform their decision-making, and to support governors in fulfilling their duties. Formally, this will include council of governor meetings and annual members meetings. Governors should also be encouraged to attend public trust board meetings. The trust may also organise other meetings or forms of engagement such as:

- informal meetings such as Q&As with the chief executive or chair, and workshops with the non-executive directors or board
- regular briefings to members and governors from the chief executive or chair
- ad-hoc briefings or dissemination of information as an issue arises
- non-executive director updates at council of governor meetings.

The board should engage early with the governors about transaction plans. From the outset directors and governors should agree a process for engagement on the transaction, to include:

- the content and timing of information to be provided to governors and any training needs
- how the views of members will be sought and stakeholders kept informed
- how governors can get involved with developing the future governance model, eg by working on the constitution for the post-transaction foundation trust.¹⁷

3.3 Supporting governors to understand their duties in the context of ICSs and system working

Key relationships

- Trust chair
- Trust chief executive officer
- Trust board secretary/membership manager and governor liaison role

Expectations: communications and engagement

- The trust's chair should facilitate engagement between the ICB, the ICP and the trust's council of governors.

¹⁷ Assuring and supporting complex change: Statutory transactions, including mergers and acquisitions

- The trust should also ensure governors are updated in a timely way on system plans, decisions and delivery.
- The trust should ensure governors receive information on the ICP's integrated care strategy and the ICB' five-year forward plan, as decisions and aspects of delivery that directly affect the trust and its patients.
- The council of governors should consider how it can support its board to engage with patients and the community across the geography of the ICS.

There is no agreed way that a trust should do this. Suggestions based on existing examples are:

- Attending public trust board meetings to listen to the discussion on ICS arrangements. This should also indicate whether the board is acting in the wider public interest and provides an opportunity to hear the types of questions non-executive directors are asking in this respect.
- Board members providing ICS updates at council meetings to ensure that governors are well informed and have an opportunity to ask questions.
- Governor engagement sessions arranged by the ICB or ICP to update on progress in the delivery of system plans.
- The chair cascading key messages after an ICP or ICB meeting.

Practical tips

Your trust should work with governors to understand the following:

- What is the foundation trust's ICS footprint?
- Who are the key partners in the system?
- What is the membership of the ICP?
- What is the membership of the board and committees of the ICB?
- How is the trust contributing to the ICS, and what is the impact of the ICS on existing trust plans?
- How is the trust's decision-making complying with the triple aim duty of better health and wellbeing for everyone, better quality of health services for all individuals and sustainable use of NHS resources?
- How can the council of governors support the trust in leading in or contributing to its ICS?

- How can the council of governors best communicate the ICS plans to the trust members and public?

4. Further information

For national context:

- [NHS Long Term Plan](#)
- [Integration and innovation: working together to improve health and social care for all](#)
- [Integrated care systems: design framework](#)

Relevant NHS England guidance:

- [Statutory transactions guidance](#)
- [Guidance on pay for very senior managers in NHS trusts and foundation trusts](#)
- [NHS Oversight Framework 2022/23](#)
- [Guidance on good governance and collaboration](#)

Other resources for governors:

- Govern Well – [NHS providers' national training programme for governors](#)

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This publication can be made available in a number of alternative formats on request.