

Executive Summary
Report to the Council of Governors
Being Held on 20 June 2023

Subject	National Policy and Guidance Update
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Status¹	Note and Support

PURPOSE OF THE REPORT

To present to the Council of Governors an overview of the new NHS England Guidance: Addendum to your statutory duties – Reference guide for NHS foundation Trust governors and to raise awareness of other recent publications and associated actions.

KEY POINTS

In April 2023 three new publications came into force:

- [NHSE Guidance on Good Governance and Collaboration](#)
- [Code of Governance for NHS provider trusts](#)
- [NHSE Guidance: Addendum to your statutory duties – Reference guide for NHS foundation Trust governors](#)

The CEO Office has undertaken a comprehensive review of the new publications and where relevant are taking forward actions to ensure that Trust practice aligns with the guidance. Given the breadth of these documents the next review of the Trust Constitution and supporting documents will most likely include proposed changes to ensure alignment with the publications.

The attached slide deck provides a summary overview of the NHS England Guidance: Addendum to your statutory duties which builds on the existing current guidance – [Your statutory duties a reference guide for NHS foundation trust governors](#).

The last three slides provide suggestions regarding the next steps in terms of best practice for holding to account and representation.

IMPLICATIONS²

Aim of the STHFT Corporate Strategy		✓ Tick as appropriate
1	Deliver the Best Clinical Outcomes	✓
2	Provide Patient Centred Services	✓
3	Employ Caring and Cared for Staff	✓
4	Spend Public Money Wisely	✓
5	Create a Sustainable Organisation	✓
6	Deliver Excellent Research, Education and Innovation	✓

RECOMMENDATIONS

The Council of Governors is asked to:

- NOTE** the new guidance published by NHS England.
SUPPORT the development of the next steps outlined in the presentation.

NHSE Guidance: Addendum to your statutory duties – Reference guide for NHS foundation Trust governors

Council of Governors
Sandi Carman
June 2023



Key Points

- No change to CoG's statutory duties in the 2006 Act.
- Addendum is based on the existing statutory duties and the principles of collaboration and system working. It addresses:

- 1. Holding Non-executive Directors to account.**
- 2. Representing interests of Trust members and the public - in support of collaboration**
CoG should now form a rounded view of the interests of the 'public at large'.
- 3. Approving significant transactions.**

1. Statutory duties of CoG – Holding the NEDs to account

- The legal requirement is for CoG to hold the NEDs individually and collectively to account for the performance of the Board of Directors.
- The Board is responsible for running the Trust, explaining and justifying their actions to CoG. Holding to account is not performance managing the Board or individual directors.
- The role of governors remains one of assurance of the performance of the Board, with CoG assessing what it believes are the key areas of enquiry and providing appropriate challenge.
- The Trust is expected to provide CoG with appropriate information and ensure governors have opportunities to meet with the Board to raise questions about the Trust's role in the system.

Holding to account: current approach

To provide appropriate challenge the current approach is:

- During CoG meetings there is the opportunity to receive feedback and raise questions with NED colleagues.
- There is the opportunity to observe NED contributions at Board in public, CoG and other meetings with governors.
- Governors obtain further information via representation on Trust groups, participation in Out and About visits and governor briefings.
- Governors have the opportunity to review the quality report, annual report and accounts and question NEDs on the content.

Holding to account: updated considerations

- Increasingly the Trust will be judged against its contribution to the objectives of the ICS, with the Board's performance being linked to its contribution to system-wide delivery of plans; its collaboration with partners and other providers.
- In holding NED's to account for the Board's performance CoG should consider:
 - Whether the interests of the **public at large** have been factored into decision-making and seek assurance on the Board's performance in the context of the whole system and as part of the wider provision of health and social care.
 - How the Board's decision making complies with the **Triple Aim duty** of better health and wellbeing for everyone; better quality of health services for all; sustainable use of NHS resources; as well as the role the Trust is playing in reducing health inequalities.

2. Statutory duties of CoG – Representing the interests of Trust members and the public

- The 2006 Act provides a duty for CoG to represent the interests of members of the Trust and the public.
- To do this :
 - CoG should interact regularly with members of the Trust and the public to ensure it understands their views and to communicate information on Trust and system performance and planning.
 - CoG should be mindful of other bodies and organisations, eg Healthwatch, who also represent public interest, and seek to work collaboratively.
 - Governors representing specific constituencies are also expected to represent the interests of Trust members as a whole and the public at large, including the population of the local system of which the Trust is part.

Representing the interests of members and the public: current approach

The current approach is:

- Inviting members to observe at CoG and BoD in public.
- Inviting members to an Annual Members' Meeting.
- Sharing information with members via the members' magazine.

Representing the interests of members and the public: future considerations

CoG could work with the Trust to strengthen mechanisms for considering the views of the wider public through:

- Building relationships with constituents and seldom heard groups.
- Understanding the impact of the system and the Trust's actions to address health inequalities.
- Seeking assurance that the Trust has considered the impact of any changes on the public using its services irrespective of what system they are part of.
- Seeking assurance that the Trust has assessed the impact of its decisions on the care being provided to patients across the ICS.

3. Statutory duties of CoG – Approving significant transactions, mergers, acquisitions, separations or dissolutions

Under the 2012 Act, and specified in the Trust's constitution, more than half of the members of the full CoG need to approve the Trust entering into any significant transactions or any application by the Trust to merge with or acquire another Trust, to separate the Trust into two or more new Trusts or to dissolve the Trust.

The Board is empowered to decide whether to proceed. CoG is responsible for assuring itself that the interests of the public at large were considered, via sufficient information from the Board, that the Board has been thorough in reaching its decision prior to giving approval. As long as they are appropriately assured governors should not unreasonably withhold consent.

Approving significant transactions, mergers etc: future considerations

Governors will 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.

All transaction proposals need to demonstrate a clear case for change to meet NHS England's assurance requirements in the context of new ways of working **benefiting the broader public interest**.

Next Steps? – Holding to account

- CoG Meetings:
 - Continue to maximise NED contributions at CoG and ensure opportunities for Governors' questions.
 - Seek assurance on the Board's performance in the context of the whole system – demonstrate that the interests of **public at large** are factored into decision-making.
 - Seek assurance that Board decision-making complies with **Triple Aim duty** - better health services for all; sustainable use of NHS resources, reducing health inequalities.

Next Steps? – Holding to account

Consider sharing:

- ICS's integrated care strategy
- ICB's five-year joint plan
- Information on ICB's performance eg ICB Board meeting and minutes

Review:

- Governors' training - including holding to account
- Content of new governor induction
- Constitution and CoG Terms of Reference update

Next Steps? – Representing interests of Trust members and the public

- Progress the **Membership Engagement Plan**.
- Review methods of engagement:
 - Wider reach
 - Two-way engagement
- Agree what System-wide collaboration/engagement would look like.