

## Respective roles of Non Executive Directors and the Council of Governors

The role of the foundation trust Council of Governors was extended as a result of the Health and Social Care Act 2012. The changes set out in the act prompted comment that the role of governors is becoming more akin to the role of non-executive directors. While there are some superficial similarities in the roles, these are greatly outweighed by differences that make each role distinctive.

**Directors** (executive and non-executive) have both individual and collective rights and liabilities. As a **Board**, directors agree strategy, supervise the management of the foundation trust and shape organisational culture, but each director has a duty to satisfy themselves that the board is undertaking these duties efficiently, effectively and in keeping with the organisations values and to challenge executive directors to justify performance in the areas for which they are responsible.

**Governors** have no standing as individuals and only as a Council of Governors do they have rights. In contrast to directors, governors have no legal liabilities and cannot be held to account for the performance of the foundation trust.

The role of the **Council of Governors** is to represent the interests of FT members and of the public. One of the primary ways that they will do this is by holding the board of directors to account through the non-executive directors. The process of accountability<sup>1</sup> is distinct and different from the process by which NEDs obtain assurance. While councils of governors will have right to call one or more directors to a meeting, this right does not extend to individual governors. It is anticipated that this power will need to be used infrequently.

In carrying out their duties it is important that governors have regard to advice given to them by the chair, or where appropriate by the senior independent director as well as to routine advice provided by the trust secretary.

Respective roles in some key areas:

Non-Executive Directors (NEDs)	Council of Governors
<ul style="list-style-type: none"> <li>Have <u>individual and collective rights and liabilities</u> defined by the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and defined by the Companies Act 2006</li> </ul>	<ul style="list-style-type: none"> <li>Have <u>collective rights</u> defined by the National Health Service Act 2006 as amended by the Health and Social Care Act 2012</li> </ul>

<sup>1</sup> 'The Foundations of Good Governance a compendium of best practice' defines accountable as:

- To be responsible for the delivery of a specific task or outcome; to be liable to explain and justify to another party; to be subject to judgement and possible sanction or reward.

So to hold to account is to receive an account or explanation and a justification for actions taken or not taken; to test the account through questioning, to form a judgement and to feedback

<b>Non-Executive Directors (NEDs)</b>	<b>Council of Governors</b>
<ul style="list-style-type: none"> <li>• <u>Appoint the Chief Executive and executive directors and where necessary remove executive directors</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Appoint the Chair and NEDS and where necessary remove the chair or NEDs</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Set appropriate levels of remuneration for the Chief Executive and the executive directors</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Set appropriate levels of remuneration for the Chair and NEDs</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Participate in the work of the Audit Committee and auditors</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Appoint the auditor and where necessary remove the auditor</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Approve the Annual Report and Accounts</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Receive the Annual Report and Accounts</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Set the strategy/forward plans</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Provide views on the content of the forward plan and contribute to strategy development.</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Scrutinise the performance of executive directors in meeting agreed goals</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Hold the non-executive directors individually and collectively to account for the performance of the board of directors.</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Give account to the Council of Governors for the performance of the FT.</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Question the NEDs and Board to ensure that the Board is accountable.</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Scrutinise performance reports and accounts at each board meeting.</u></li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>
<ul style="list-style-type: none"> <li>• <u>Provide an independent perspective to the board</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Represent the interests of the members of the corporation as a whole and the interests of the public.</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>As a Board approve amendments to the constitution.</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>As a Council approve amendments to the constitution.</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>As a Board agree mergers, acquisitions and other significant transactions to meet the strategic plans of the FT.</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>As a Council approve the decisions of the Board in respect of mergers, acquisitions and other significant transactions where significant transactions are defined in the constitution.</u></li> </ul>
<p><b>NEDs: good practice</b></p>	<p><b>Governors: good practice</b></p>
<ul style="list-style-type: none"> <li>• <u>Support the Chair and Chief Executive in promoting a positive organisational culture</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Support and promote the organisational culture.</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Challenge constructively in the boardroom and ensure appropriate challenge in all circumstances</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Question NEDs on how they scrutinise performance in meeting goals.</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Develop proposals on priorities, risk mitigations and standards</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Comment on proposals</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Participate in the appraisal of executive directors, the Chair and Non-Executive directors</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Participate in the appraisal of the Chair and the NEDs</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Participate in succession planning</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>Participate in succession planning for</u></li> </ul>

Non-Executive Directors (NEDs)	Council of Governors
for key executive posts	<u>Chair and NED</u> roles.
<ul style="list-style-type: none"> <li>• <u>Monitor</u> information quality and triangulate information</li> </ul>	<ul style="list-style-type: none"> <li>• Provide a reality check on information quality and provide an outside perspective</li> </ul>
<ul style="list-style-type: none"> <li>• <u>Seek assurance</u> on achievability/progress of strategy</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Help ensure assurance is well founded</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Seek assurance</u> on performance</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Help ensure assurance is well founded</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>Seek assurance</u> that risks are identified and managed</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Help ensure assurance is well founded</u></li> </ul>