

Roles and Responsibilities for Trust Governors

This guidance provides a brief overview of the legal, oversight and governance roles all Governors have to play, and should be considered in conjunction with the regulators document *Your statutory duties: A reference guide for NHS Foundation Trust Governors*.

Governors are expected to act in the best interest of The Rotherham NHS Foundation Trust. They have strategic stewardship responsibilities and must ensure that the organisation is complying with its Terms of Authorisation. They represent the interests of NHS foundation trust members and hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors.

'The Council of Governors should hold the Non-Executive Directors to account for the performance of the trust, including ensuring the Board of Directors acts so that the foundation trust does not breach the terms of its authorisation. It remains the responsibility of the Board of Directors to design and then implement agreed priorities, objectives and the overall strategy'

The Council of Governors is comprised of representatives elected from, and by, the public and the staff membership, as well as those appointed from local partner organisations. The Board of Directors and Council of Governors are led by a single Non-Executive Director chair, who acts as the link between the Directors (Executive and Non-Executive) and Governors.

The Council of Governors is responsible for providing appropriate oversight, governance and representation to The Rotherham NHS Foundation Trust in the pursuit of its strategies to provide effective and high quality healthcare services.

The Governors Role

The Council of Governors have various statutory roles and responsibilities outlined in law through the National Health Service Act 2006 and amended by the Health and Social Care Act 2012.

The Council of Governors key statutory duties are:

- To hold the Non-Executive Directors, individually and collectively to account for the performance of the Board of Directors
- To represent the interest of the members of the trust as a whole and the interests of the public
- To appoint and, if appropriate, remove the Chair
- To appoint and, if appropriate, remove the other Non-Executive directors
- To decide the remuneration and allowances and other terms and conditions of office of the Chair and other Non-Executive directors
- To approve (or not) any new appointment of a Chief Executive

- To appoint and , if appropriate, remove the NHS foundation trust's auditor
- In preparing the NHS Foundation Trust's forward plan, the Board of Directors must have regard to the views of the Council of Governors
- To receive the NHS Foundation Trust's annual accounts, any report of the auditor on them and the annual report at a general meeting of the Council of Governors
- To approve "significant transactions"
- To approve an application by the Trust to enter into a merger, acquisition, separation or dissolution.
- To decide whether the Trust's non-NHS work would significantly interfere with its principal purpose, which is to provide goods and services for the health service in England or performing its other functions
- To approve amendments to the Trust's Constitution
- The Council of Governors may require one or more of the directors to attend a governors meeting to obtain information about performance of the Trust's functions or directors performance of duties, and to help the Council of Governors to decide whether to propose a vote on the Trust's or Directors performance.

Other activities

In addition to the areas listed above which are the statutory duties for Governors, they may become involved in other areas. However, it should be remembered that Governors do not have an operational role within the Trust. While as a Trust we may have chosen to involve Governors in hospital visits, Governors do not have a right to inspect Trust property or services nor a duty to meet patients and conduct quality reviews.

Some activities undertaken at the Trust will/may include:

- Holding constituency meetings to communicate with members and understand their views
- Engaging with members, and other stakeholders, so that information is both given and received by way of comments, concerns, news and views, including forward plans and service reconfigurations
- Provide a Governors perspective on aspects of Trust performance
- Developing and reviewing membership strategy
- Giving talks to interested stakeholders
- Promoting membership, and governorship, of The Rotherham NHS Foundation Trust

What Governors can't do

Overall responsibility for running the Trust lies with the Board of Directors. There are therefore some things that you cannot do as a Governors:

- You are not to be involved in the day to day running of the Trust, e.g. setting budgets, staff pay and any other operational matters.
- You cannot veto or over-rule decisions made by the Board of Directors
- You don't play a part in considering the appointment or dismissal, appraisal, pay levels or conditions of service of Executive Directors

- You should not raise complaints on behalf of individuals, or act as advocates
- Inspect the Trust's services (this task is carried out by the Care Quality Commission)
- Represent the interests of single pressure groups.

Person Specification/Qualities

Each governor should display a range of skills and attributes in the following, but not necessarily all, of the areas listed below:

- a passion for their local health community
- a high level of understanding and interest in healthcare issues
- a commitment to NHS values and principles of NHS foundation trusts
- business and financial acumen
- committee experience
- highly developed interpersonal and communication skills
- sound, independent judgement, common sense and diplomacy
- the ability to grasp relevant issues and understand relationships between interested parties
- clear understanding of the different legal duties, liabilities and responsibilities of governors and Non-Executive directors
- knowledge of corporate governance
- sufficient time and commitment to fulfil the role

Fit and Proper Person Requirement

The fit and proper person requirement outlines what NHS providers should do to make it clear that directors are responsible for the overall quality and safety of care.

The duty of candour explains what they should do to make sure they are open and honest with people when something goes wrong with their care and treatment.

The two regulations – *Regulation 5: Fit and proper persons: directors*, and *Regulation 20: Duty of candour* – came into force for NHS bodies on 27 November 2014.

The regulation in relation to Fit and Proper Person requires providers to ensure that directors:

- are of good character.
- have the necessary qualifications, skills and experience.
- are able to perform the work that they are employed for.
- can supply information, such as certain checks and a full employment history. The requirement means that directors should not have been involved or complicit in any serious misconduct, mismanagement or failure of care in carrying on a regulated activity. This includes bankruptcy, sequestration and insolvency, appearing on barred lists and being prohibited from holding directorships under other laws.

While the new regulations specifically relate to Directors they are equally important for Governors.

Standards of Conduct

Governors are expected to adhere to the Nolan Principles Governing Conduct of Public Office Holders whose definitions were reviewed and updated in 2013 by The Committee of Standards in Public Life.

The seven principles are:

- **Selflessness** - Holders of public office should act solely in terms of the public interest;
- **Integrity** – Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests or relationships;
- **Objectivity** – Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias;
- **Accountability** – Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this;
- **Openness** – Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so;
- **Honesty** – Holders of public office should be truthful;
- **Leadership** - Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Governors' Liability

The 2006 Act, as amended, does not make explicit reference to governors' liability. Governors' duty to "hold the Non-Executive directors, individually and collectively, to account for the performance of the board of directors" does not mean that governors are responsible for decisions taken by the board of directors on behalf of the NHS foundation trust.

Assuming the governors have acted in good faith and in accordance with their duties as set out in the Act (and proper process has been followed), the potential for liability should be negligible.

As additional comfort, governors may have the benefit of an indemnity and/or insurance from the trust. While there is no legal requirement for trusts to provide an indemnity or insurance for governors to cover their service on the council of governors, where an indemnity or insurance policy is given, it is likely to be detailed in the trust's constitution.