# Contents

1 Introduction  
1.1 Why is there a code of governance for NHS foundation trusts?  
1.2 About this code  
1.3 Application of the code  

The NHS Foundation Trust Code of Governance  

A Directors  
A.1 The board of directors  
A.2 Chairman and chief executive  
A.3 Balance and independence of the board of directors  

B Governors  
B.1 The board of governors  

C Appointment, resignation and terms of office  
C.1 Appointment to the board of directors  
C.2 Re-appointment of directors and re-election of governors  
C.3 Resignation of directors  

D Information, development and evaluation  
D.1 Information and professional development  
D.2 Performance evaluation  

E Director remuneration  
E.1 The level and make-up of remuneration  
E.2 Procedure  

F Accountability and audit  
F.1 Financial, quality and operational reporting  
F.2 Internal control  
F.3 Audit committee and auditors  

G Relationships with stakeholders  
G.1 Dialogue with members, patients and the local community  
G.2 Co-operation with third parties with roles in relation to NHS foundation trusts  

Schedule A: Disclosure of corporate governance arrangements  
Appendix A: The role of the NHS foundation trust secretary  
Appendix B: The role of the nominated lead governor
1 Introduction

1.1 Why is there a code of governance for NHS foundation trusts?

Effective corporate governance is a fundamental cornerstone for the success of every NHS foundation trust.

NHS foundation trusts are created as legal entities in the form of public benefit corporations by the National Health Service Act 2006 (“the 2006 Act”). The legislation constitutes NHS foundation trusts with a new governance regime that is fundamentally different from NHS trusts. NHS foundation trust boards of directors have more autonomy to make financial and strategic decisions. They also have a framework of local accountability through members and a board of governors, which has replaced central control from the Secretary of State for Health.

In this regime, NHS foundation trust directors are ultimately and collectively responsible as a board for all aspects of the performance of the foundation trust. Therefore, they need to be able to deliver more focused strategic leadership and more effective scrutiny of the trust’s operations.

The purpose of the code is to assist NHS foundation trust boards in improving their governance practices by bringing together the best practice of public and private sector corporate governance. The code sets out a common overarching framework for the corporate governance of NHS foundation trusts and complements the statutory and regulatory obligations on them.
The NHS Foundation Trust Code of Governance (the code) was first published in 2006. Following reviews in 2008 and 2009 of its application, and also taking account of more recent developments in governance practices specific to NHS foundation trusts, we have updated the code. This updated version will apply from 1 April 2010.

Key aspects emphasised in the code are:

- the unitary nature of the board of directors and the collective responsibility for all aspects of the performance of the foundation trust, including financial performance, clinical and service quality, management and governance;
- a recommendation for at least 50% of board members to be independent non-executive directors;
- a recommendation to appoint a senior independent director;
- an emphasis on actively developing the effectiveness of the board of directors through performance evaluation of the board, its committees and individual directors;
- clarification on the committee structure of the board of directors and the roles of the remuneration, audit and nomination committees. This includes a recommendation for a clear nominations process;
- clarification of the need for good quality information tailored to the board’s duties and availability of access to external advice;
- a recommendation to appoint a secretary of the board of directors and the board of governors (see Appendix A);
- the role of a nominated lead governor (see Appendix B); and
- recommendations to be clear on the purpose and outcomes of the relationships of the NHS foundation trust with other stakeholders including members, patients, the local community, commissioners and other NHS and non-NHS bodies with an interest in the local health economy.

In developing the code, our approach has been to bring best practice from the private sector to the NHS foundation trust sector. The code builds on the principles and provisions of the Combined Code of Corporate Governance (the combined code), which is well established as the prime standard of corporate governance best practice for the private sector in the UK.

The combined code, which was last reviewed and updated in June 2008, is the product of multiple corporate governance development efforts in the UK over many years and encompasses recommendations from the following governance reviews:

- **The Cadbury Report (1992)** – established the basis of UK corporate governance;
The Smith Report (2003) and The Higgs Report (2003) – focused on the responsibilities of the audit committee and on the role of non-executive directors respectively, following high profile corporate governance failures in the US; and


A revised version of the combined code is expected to be published in mid 2010 following a period of consultation. The revised code will be known as the UK Corporate Governance Code.

Some amendments were required to adapt the principles and provisions of the combined code to the NHS foundation trust statutory and regulatory environment and to make the code consistent with the public service values of foundation trusts.

Governance in the public sector, and specifically in the NHS, is the subject of several reports, which might also be of interest:

Nolan Principles – covered in detail the standards of behaviour and principles in public life with particular focus on appointment on merit, with an independent element on all selection panels recommended as the way forward for public bodies;

The Intelligent Board (2006) – looked at board level information needs;

The Integrated Governance Handbook (2006) – looked in detail at the processes and information requirements of sound governance;

The Intelligent Board – modernising mental health services (2007) – focused on the board in mental health trusts; and

The Healthy NHS Board: Principles for Good Governance (2010) – sets out the principles of high quality governance, and is supported by a regularly updated digital compendium, which puts the principles in an operational context.
This code is best practice advice. It is not mandatory guidance and accordingly, non-compliance with the provisions of the code will not in itself give rise to a breach of condition 5(2) of the terms of authorisation (duty to comply with the principles of best practice on corporate governance). NHS foundation trusts are, however, strongly encouraged to take full account of the best practice provisions described in this code.

The code does impose some specific disclosure requirements upon NHS foundation trusts and these are set out in 2a and 2b below. NHS foundation trusts have been expected to observe in full the disclosure requirements of the code since March 2008.

This updated code was published in March 2010 and applies from 1 April 2010.

The code contains main and supporting principles and provisions. The UK Listing Authority requires listed companies to make a disclosure in two parts in relation to the combined code. Monitor requires the same of NHS foundation trusts in their annual report:

2a) in the first part of the disclosure, the trust must report on how it applies the main and supporting principles of the code. The form and content of this part of the statement are not prescribed, the intention being that trusts should have a free hand to explain their governance policies in the light of the principles, including any special circumstances applying to them which have led to a particular approach; and

2b) in the second part of the disclosure, the trust must confirm via a specific statement that it complies with the provisions of the code or – where it does not – to provide an explanation. This ‘comply or explain’ approach has been in operation for at least the last fifteen years in the private sector and the flexibility it offers companies has been widely welcomed by boards.

While it is expected that NHS foundation trusts will comply with the code’s provisions, it is recognised that departure from the provisions of the code may be justified in particular circumstances. Every trust should review each provision carefully and give a considered explanation if it departs from it.

Some trusts may decide that the provisions are disproportionate or less relevant in their case. Such trusts may nonetheless consider that it would be appropriate to adopt the approach in the code and they are encouraged to consider this.

Whilst recognising that governors are appointed and elected by members to whom the NHS foundation trust is accountable, it is important that all those responsible for ensuring effective governance should do so with common sense in order to promote partnership, transparency and trust, based on mutual understanding.

Schedule 7 to the 2006 Act sets out the various powers of and obligations upon governors of NHS foundation trusts. This code does not provide prescriptive guidance on the extent and interpretation of these powers and obligations. However, Monitor has described in section B of this code those areas of the governor’s role that NHS foundation trusts might see as relevant and might find helpful. In addition, in October 2009, Monitor published a separate document which examines how governors can deliver

Monitor will continue to oversee the effectiveness and applicability of the code and develop it, in consultation with NHS foundation trusts where appropriate, as governance best practice in the sector evolves.

The code includes references to other Monitor publications, which focus on audit and on internal control:

- NHS Foundation Trust Annual Reporting Manual (previously named the NHS Foundation Trust Financial Reporting Manual);
- NHS Foundation Trust Accounting Officer Memorandum;
- Audit Code for NHS Foundation Trusts; and

For reasons of clarity and consistency, the code overlaps with existing statutory and regulatory documents such as the NHS Foundation Trust Model Core Constitution and the Compliance Framework.
A.1 The board of directors

Main principle

Every NHS foundation trust should be headed by an effective board of directors, since the board is collectively responsible for the exercise of the powers and the performance of the NHS foundation trust.

Supporting principles

- The board of directors’ role is to provide effective and proactive leadership of the NHS foundation trust within a framework of processes, procedures and controls which enable risk to be assessed and managed.

- The board of directors is responsible for ensuring compliance by the NHS foundation trust with its terms of authorisation, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations.

- The board of directors should set the NHS foundation trust’s strategic aims at least annually, taking into consideration the views of the board of governors, ensuring that the necessary financial and human resources are in place for the NHS foundation trust to meet its main priorities and objectives and then periodically review progress and management performance.

- The board of directors as a whole is responsible for ensuring the quality and safety of healthcare services, education, training and research delivered by the NHS foundation trust and applying the principles and standards of clinical governance set out by the Department of Health, the Care Quality Commission, and other relevant NHS bodies.

- The board of directors should also ensure that the NHS foundation trust exercises its functions effectively, efficiently and economically.

- The board of directors should set the NHS foundation trust’s vision, values and standards of conduct and ensure that its obligations to its members, patients and other stakeholders are understood, clearly communicated and met.

- All directors must take decisions objectively in the interests of the NHS foundation trust.

- All members of the board of directors have joint responsibility for every decision of the board regardless of their individual skills or status. This does not impact upon the particular responsibilities of the chief executive as the accounting officer. The chief executive should refer to the latest guidance from Monitor on the responsibilities and obligations of the accounting officer (NHS Foundation Trust Accounting Officer Memorandum, April 2008).

- The concept of the unitary board refers to the fact that within the board of directors the non-executive directors and the executive directors share the same liability. All directors, executive and non-executive, have responsibility to constructively challenge the decisions of the board and help develop proposals on priorities, risk mitigation, values, standards and strategy.

- As part of their role as members of a unitary board, non-executive directors have a particular duty to ensure appropriate challenge is made. Non-executive directors should scrutinise the performance of the executive management in
meeting agreed goals and objectives, receive adequate information and monitor the reporting of performance. They should satisfy themselves as to the integrity of financial, clinical and other information, and that financial and clinical quality controls and systems of risk management and governance are robust and implemented. Non-executive directors are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing, and where necessary removing, executive directors, and in succession planning.

**Code provisions**

**A.1.1** The board of directors should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for decision by the board of directors. The schedule of matters reserved for the board of directors should be complemented with a clear statement detailing the roles and responsibilities of the board of governors (as described in B.1.4). There should also be a statement explaining how any disagreements between the board of governors and the board of directors will be resolved. The annual report should include a statement of how the board of directors and the board of governors operate, including a high-level statement of which types of decisions are to be taken by each of the boards and which decisions are to be delegated to the executive management by the board of directors. The developmental nature of the board of governors’ role would suggest that any agreements should be kept under review as the role evolves.

**A.1.2** The annual report should identify the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director (see A.3.3) and the chairmen and members of the nominations, audit and remuneration committees. A record should be kept of the number of meetings of the board of directors and the attendance of individual directors, and it should be supplied to the board of governors on request.

**A.1.3** The chairman should hold meetings with the non-executive directors without the executives present. Led by the senior independent director, the non-executive directors should meet without the chairman at least annually to evaluate the chairman’s performance, as part of a process which should be agreed with the board of governors, for appraising the chair and on such other occasions as are deemed appropriate.

**A.1.4** The board of directors should make available a statement of the objectives of the NHS foundation trust showing how it intends to balance the interests of patients, the local community and other stakeholders, and use this as the basis for its decision making and forward planning.

**A.1.5** The board of directors should ensure that adequate systems and processes are maintained to measure and monitor the NHS foundation trust’s effectiveness, efficiency and economy as well as the quality of its healthcare delivery. The board should regularly review the performance of the NHS foundation trust in these areas against regulatory and contractual obligations and approved plans and objectives.

The board of directors should ensure that relevant metrics, measures, milestones and accountabilities are developed and agreed so as to understand and assess progress and delivery of performance. Where appropriate, and in particular in high risk or complex areas, independent advice
should be commissioned by the board of directors to provide an adequate and reliable level of assurance.

A.1.6 The board of directors should report on its approach to clinical governance and its plan for the improvement of clinical quality in accordance with guidance set out by the Department of Health, the Care Quality Commission and Monitor.

A.1.7 Where the board or individual directors have concerns which remain unresolved, about the running of the NHS foundation trust or a proposed action, they should ensure that their concerns are recorded in the board minutes.

A.1.8 The chief executive, as the accounting officer, should follow the procedure set out by Monitor (NHS Foundation Trust Accounting Officer Memorandum, April 2008) for advising the board of directors and the board of governors, and for recording and submitting objections to decisions considered or taken by the boards in matters of propriety or regularity, and on issues relating to the wider responsibilities of the accounting officer for economy, efficiency and effectiveness.

A.1.9 The board of directors should establish the values and standards of conduct for the NHS foundation trust and its staff in accordance with NHS values and accepted standards of behaviour in public life, which include the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership (The Nolan Principles).

A.1.10 The board of directors should operate a code of conduct that builds on the values of the NHS foundation trust and reflect high standards of probity and responsibility. The board of directors should follow a policy of openness and transparency in its proceedings and decision making unless this conflicts with a need to protect the wider interests of the public or the NHS foundation trust (including commercial-in-confidence matters) and make clear how potential conflicts of interest are dealt with.

A.1.11 The NHS foundation trust should arrange appropriate insurance to cover the risk of legal action against its directors.

A.2 Chairman and chief executive

Main principle

There should be a clear division of responsibilities at the head of the NHS foundation trust between the chairing of the boards of directors and governors and the executive responsibility for the running of the NHS foundation trust’s business. No one individual should have unfettered powers of decision.

Supporting principles

- The chairman is responsible for leadership of the board of directors and the board of governors, ensuring their effectiveness on all aspects of their role and setting their agenda.
- The chairman is responsible for ensuring that the two boards work together effectively.
- The chairman is also responsible for ensuring that directors and governors receive accurate, timely and clear information that is appropriate for their respective duties.
The chairman should ensure effective and open communication with patients, clients, members, staff and other stakeholders.

The chairman should also facilitate the effective contribution of all executive and non-executive directors and ensure that constructive and productive relations exist between executive and non-executive directors, and between the board of directors and the board of governors.

Code provisions

A.2.1 The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board of directors.

A.2.2 The chairman should on appointment meet the independence criteria set out in A.3.1 below. A chief executive should not go on to be chairman of the same NHS foundation trust.

A.3 Balance and independence of the board of directors

Main principle

The board of directors should include a balance of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking.

All directors should be able to exercise one full vote, with the chairman having a second casting vote on occasions where a decision is tied.

Supporting principles

The board of directors should not be so large as to be unwieldy. The board of directors should be of sufficient size that the balance of skills and experience is appropriate for the requirements of the business and that changes to its composition can be managed without undue disruption.

To ensure that power and information are not concentrated in one or two individuals, there should be a strong presence on the board of both executive and non-executive directors.

The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding chairmanship and membership of committees.

Only the committee chairman and relevant members are entitled to be present at a meeting of the nominations, audit or remuneration committees, but others may attend by invitation of the relevant committee.

Code provisions

A.3.1 The board of directors should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board of directors should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:
• has been an employee of the NHS foundation trust within the last five years;

• has, or has had within the last three years, a material business relationship with the NHS foundation trust either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the NHS foundation trust;

• has received or receives additional remuneration from the NHS foundation trust apart from a director’s fee, participates in the NHS foundation trust’s performance-related pay scheme, or is a member of the NHS foundation trust’s pension scheme;

• has close family ties with any of the NHS foundation trust’s advisers, directors or senior employees;

• holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;

• has served on the board of the NHS foundation trust for more than six years from the date of their first appointment; or

• is an appointed representative of the NHS foundation trust’s university medical or dental school.

A.3.2 At least half the board of directors, excluding the chairman, should comprise non-executive directors determined by the board to be independent.

A.3.3 The board of directors should appoint one of the independent non-executive directors to be the senior independent director, in consultation with the board of governors. The senior independent director should be available to members and governors if they have concerns which contact through the normal channels of chairman, chief executive or finance director has failed to resolve or for which such contact is inappropriate. The senior independent director could be the deputy chairman.

A.3.4 The board of directors should include in its annual report a description of each director’s skills, expertise and experience. Alongside this in the annual report, the board should make a clear statement about its own balance, completeness and appropriateness to the requirements of the NHS foundation trust. Both statements should also be available on the NHS foundation trust’s website.

A.3.5 No individual should hold, at the same time, positions of director and governor of NHS foundation trusts.

A.3.6 Non-executive directors should receive the necessary information and feel able to raise appropriate challenge of recommendations or decisions of the board, in particular making full use of their skills and experience gained both as a director of the trust and also in other leadership roles. They should expect and apply similar standards of care and quality in their role as a non-executive director of an NHS foundation trust as they would in other similar roles.
Schedule 7 to the 2006 Act sets out the various powers of, and obligations upon, governors of NHS foundation trusts. The code does not provide prescriptive guidance on the extent and interpretation of these powers and obligations. However, Monitor has described in this section of the code those areas of the governor’s role that are relevant and which NHS foundation trusts might find helpful. In addition, in October 2009, Monitor published a separate document which examines how governors can deliver their duties: Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors.

Governors are responsible for regularly feeding back information about the trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected or appointed them.

Supporting principles

- Governors should discuss and agree with the board of directors how they will undertake these and any other additional roles, giving due consideration to the circumstances of the NHS foundation trust and the needs of the local community and emerging best practice.

- Governors should work closely with the board of directors and must be presented with, for consideration, the annual report and accounts and the annual plan at a general meeting. The governors can expect to be consulted on the development of forward plans for the trust and any significant changes to the delivery of the trust’s business plan.

Code provisions

B.1 The board of governors

Main principle

Every NHS foundation trust will have a board of governors which is responsible for representing the interests of NHS foundation trust members and partner organisations in the local health economy in the governance of the NHS foundation trust.

Governors must act in the best interests of the NHS foundation trust and should adhere to its values and code of conduct.

The board of governors should hold the board of 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 of the NHS foundation trust.

B.1.1 The board of governors should meet sufficiently regularly to discharge its duties. Typically the board of governors would be expected to meet as a full board at least four times per year. Governors should where practicable make every effort to attend the meetings of the board of governors. The NHS foundation trust should take appropriate steps to facilitate attendance.

B.1.2 The board of governors should not be so large as to be unwieldy. The board of governors should be of sufficient size for the requirements of its duties. The roles,
structure, composition, and procedures of the board of governors should be reviewed regularly as described in provision D.2.2.

B.1.3 The annual report should identify the members of the board of governors, including a description of the constituency or organisation that they represent, whether they were elected or appointed, and the duration of their appointments. The annual report should also identify the nominated lead governor. A record should be kept of the number of meetings of the board and the attendance of individual governors and it should be made available to members on request.

B.1.4 The roles and responsibilities of the board of governors should be set out in a written document. This statement should include a clear explanation of the responsibilities of the board of governors towards members and other stakeholders and how governors will seek their views and inform them.

B.1.5 The board of governors should receive and consider other appropriate information required to enable it to discharge its duties, for example, clinical and operational data.

B.1.6 The chairman is responsible for leadership of both boards (see A.2) but the governors also have a responsibility to make the arrangements work and should take the lead in inviting the chief executive to their meetings and inviting attendance by other executives and non-executives as appropriate. In these meetings other members of the board of governors may raise questions of the chairman or his/her deputy or any other director present at the meeting about the affairs of the NHS foundation trust.

B.1.7 The board of governors should establish a policy for engagement with the board of directors for those circumstances when they have concerns about the performance of the board of directors, compliance with the terms of authorisation or other matters related to the general wellbeing of the NHS foundation trust. The board of governors should consider the advantages of there being a senior independent director on the board of directors (see A.3.3).

B.1.8 The board of governors should ensure its interaction and relationship with the board of directors is appropriate and effective, in particular, by agreeing the availability and timely communication of relevant information, discussion and the setting in advance of meeting agendas and use, where possible, of clear, unambiguous language.

B.1.9 Governors should acknowledge the overall responsibility of the board of directors for running the NHS foundation trust and should not use the powers of the board of governors to veto the decisions of the board of directors or otherwise obstruct the implementation of agreed actions and strategies. Through the nominated lead governor, the board of governors should communicate directly with Monitor if the NHS foundation trust is at risk of significantly breaching the terms of its authorisation and if these concerns cannot be satisfactorily resolved.

B.1.10 The board of governors should only exercise its power to remove the chairman or any non-executive directors after exhausting all other means of engagement with the board of directors.
C
Appointment, resignation and terms of office

C.1 Appointment to the board of directors

Main principle

The 2006 Act sets out how appointments to the board of directors are made. There should be a formal, rigorous and transparent procedure for the appointment of directors.

Supporting principles

• Appointments to the board of directors should be made on merit and based on objective criteria.

• Care should be taken to ensure that new appointees have relevant skills and experience to complement other members of the board and enough time to devote to the job. This is particularly important in the case of chairmanships.

• The board of directors should also satisfy itself that plans are in place for orderly succession of appointments to the board so as to maintain an appropriate balance of skills and experience within the NHS foundation trust and on the board.

Code provisions

C.1.1 The nominations committee or committees, with external advice as appropriate, are responsible for the identification and nomination of executive and non-executive directors. The nominations committee should give full consideration to succession planning, taking into account the future challenges, risks and opportunities facing the NHS foundation trust and the skills and expertise required within the board of directors to meet them.

C.1.2 There may be one or two nominations committees. If there are two committees, one will be responsible for considering nominations for executive directors and the other for non-executive directors (including the chairman). The nominations committee(s) should regularly review the structure, size and composition of the board of directors and make recommendations for changes where appropriate. In particular, the nominations committee(s) should evaluate the balance of skills, knowledge and experience on the board of directors and, in the light of this evaluation, prepare a description of the role and capabilities required for appointment of both executive and non-executive directors, including the chairman.

C.1.3 The chairman or an independent non-executive director should chair the nominations committee(s).

C.1.4 The governors are responsible at a general meeting for the appointment, re-appointment and removal of the chairman and the other non-executive directors.

They should agree with the nominations committee a clear process for the nomination of a new chair and non-executive directors. Once suitable candidates have been identified the nominations committee should make recommendations to the board of governors.

C.1.5 Where an NHS foundation trust has two nominations committees, the nominations committee responsible for the appointment of non-executive directors should consist of a majority of governors.
If only one nominations committee exists, when nominations for non-executives, including the appointment of a chairman or a deputy chairman, are being discussed, there should be a majority of governors on the committee and also a majority governor representation on the interview panel.

**C.1.6** When considering the appointment of non-executive directors, the board of governors should take into account the views of the board of directors on the qualifications, skills and experience required for each position.

**C.1.7** For the appointment of a chairman, the nominations committee should prepare a job specification defining the role and capabilities required including an assessment of the time commitment expected, recognising the need for availability in the event of emergencies. A chairman’s other significant commitments should be disclosed to the board of governors before appointment and included in the annual report. Changes to such commitments should be reported to the board of governors as they arise, and included in the next annual report. No individual, simultaneously whilst being a chairman of an NHS foundation trust, should be the substantive chairman of another NHS foundation trust.

**C.1.8** The terms and conditions of appointment of non-executive directors should be made available for inspection. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board of governors before appointment, with a broad indication of the time involved and the board of governors should be informed of subsequent changes.

**C.1.9** The annual report should describe the process followed by the board of governors in relation to appointments of the chairman and non-executive directors.

**C.1.10** It is a requirement of the 2006 Act that the chairman, the other non-executive directors and – except in the case of the appointment of a chief executive – the chief executive, are responsible for deciding the appointment of executive directors. The nominations committee with responsibility for executive director nominations should identify suitable candidates to fill executive director vacancies as they arise and make recommendations to the chairman, the other non-executives directors and, except in the case of the appointment of a chief executive, the chief executive.

**C.1.11** It is for the non-executive directors to appoint and remove the chief executive. The appointment of a chief executive requires the approval of the board of governors.

**C.1.12** An independent external adviser should not be a member of or have a vote on the nominations committee(s).

**C.1.13** The board of directors should not agree to a full-time executive director taking on more than one non-executive directorship of an NHS foundation trust or another organisation of comparable size and complexity, nor the chairmanship of such an organisation.

**C.1.14** A separate section of the annual report should describe the work of the nominations committee(s), including the process it has used in relation to board appointments.
C.2
Re-appointment of directors and re-election of governors

Main principle
All non-executive directors and elected governors should be submitted for re-appointment or re-election at regular intervals. The performance of executive directors of the board should be subject to regular appraisal and review. The board of directors should ensure planned and progressive refreshing of the board.

Code provisions

C.2.1 Approval by the board of governors of the appointment of a chief executive should be a subject of the first general meeting after the appointment by a committee of the chairman and non-executive directors. All other executive directors should be appointed by a committee of the chief executive, the chairman and non-executive directors.

C.2.2 Non-executive directors, including the chairman, should be appointed by the board of governors for specified terms subject to re-appointment thereafter at intervals of no more than three years and to the 2006 Act provisions relating to the removal of a director. The chairman should confirm to the governors that, following formal performance evaluation, the performance of the individual proposed for re-appointment continues to be effective and to demonstrate commitment to the role. Any term beyond six years (e.g. two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may in exceptional circumstances serve longer than six years (e.g. two three-year terms following authorisation of the NHS foundation trust), but subject to annual re-appointment. Serving more than six years could be relevant to the determination of a non-executive director’s independence (as set out in provision A.3.1).

C.2.3 Elected governors must be subject to re-election by the members of their constituency at regular intervals not exceeding three years. The names of governors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable members to take an informed decision on their election. This should include prior performance information such as attendance records at governor meetings and other relevant events organised by the NHS foundation trust for governors.
Main principle

The board of directors is responsible for ensuring ongoing compliance by the NHS foundation trust with its terms of authorisation, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations. In so doing, it should ensure it retains the necessary skills within its board of directors, and puts in place appropriate succession planning.

Code provision

C.3.1 The board of directors should not agree to an executive member of the board leaving the employment of an NHS foundation trust, except in accordance with the terms of their contract of employment, including but not limited to service of their full notice period and/or material reductions in their time commitment to the role, without the board first having completed and approved a full risk assessment.
The board of directors and the board of governors should be supplied in a timely manner with relevant information in a form and of a quality appropriate to enable them to discharge their respective duties.

All directors and governors should receive appropriate induction on joining their respective boards and should regularly update and refresh their skills and knowledge.

Supporting principles

• The chairman is responsible for ensuring that the directors and governors receive accurate, timely and clear information. Management has an obligation to provide such information but directors and governors should seek clarification or amplification where necessary.

• The chairman should ensure that the directors and governors continually update their skills, knowledge and familiarity with the NHS foundation trust and its obligations, to fulfil their role both on their respective boards and on board committees. The NHS foundation trust should provide the necessary resources for developing and updating its directors’ and governors’ knowledge and capabilities.

• The responsibilities of the chairman include ensuring good information flows in the boards and their committees, between directors and governors, and between senior management and non-executive directors, as well as facilitating appropriate induction and assisting with professional development as required.

Code provisions

**D.1.1** The chairman should ensure that new directors and governors receive a full, formal and appropriate induction on joining their respective boards.

**D.1.2** The board should ensure that directors, especially non-executive directors, have access to independent professional advice, at the NHS foundation trust’s expense, where they judge it necessary to discharge their responsibilities as directors. Directors should also have access, at the NHS foundation trust’s expense, to training courses and/or materials that are consistent with their individual and collective development programme as described in provision D.2. Decisions to appoint an external adviser should be the collective decision of the majority of non-executive directors. The availability of independent external sources of advice should be made clear at the time of appointment.

Committees should be provided with sufficient resources to undertake their duties. The board of directors should also ensure that the board of governors is provided with sufficient resources to undertake its duties, with such arrangements agreed in advance.

**D.1.3** The board of directors and the board of governors should be provided with high quality information appropriate to the respective functions of the boards and relevant to the decisions they have to make. The board of directors and the board of governors should agree their respective
information needs with the executive directors. The information for the boards should be concise, objective, accurate and timely, and it should be accompanied by clear explanations of complex issues. The board of directors should have complete access to any information about the NHS foundation trust that it deems necessary to discharge its duties, including access to senior management and other employees.

D.1.4 The board of directors, and in particular non-executive directors, may reasonably wish to challenge assurances received from the executive management. They need not seek to appoint a relevant adviser for each and every subject area that comes before the board of directors, although they should wherever possible ensure that they have sufficient information and understanding to take decisions on an informed basis. When complex or high risk issues arise the first course of action should normally be to encourage further and deeper analysis to be carried out, in a timely manner, within the NHS foundation trust. On occasion, non-executives may reasonably decide that external assurance is appropriate.

D.1.5 Governors should canvass the opinion of their members, and for appointed governors the body they represent, on the NHS foundation trust’s forward plan, including its objectives, priorities and strategy, and their views should be communicated to the board of directors.

D.1.6 The board of directors should consider and take account of the views of the board of governors on the NHS foundation trust’s forward plan. Where appropriate, the board of directors should communicate to the board of governors where their views have been incorporated in the NHS foundation trust’s plans, and, if not, the reasons for this.

D.2 Performance evaluation

Main principles

The board of directors should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

The board of directors should state in the annual report how performance evaluation of the board, its committees and its individual directors including the chairman, has been conducted, bearing in mind the desirability for independent assessment, and the reason why the NHS foundation trust adopted a particular method of performance evaluation.

The outcomes of the evaluation of the executive directors should be reported to the board of directors. The chief executive should take the lead on the evaluation of the executive directors.

The board of governors, which is responsible for the appointment and re-appointment of non-executive directors, should take the lead on agreeing a process for the evaluation of the chairman and the non-executives, with the chairman and the non-executives. The outcomes of the evaluation of the chairman and the non-executive directors should be agreed by the governors. The governors should bear in mind the desirability of using the senior independent director to lead the non-executive directors in an evaluation of the chairman.

The board of governors should assess its own collective performance and its impact in the NHS foundation trust.
Supporting principles

- Individual evaluation of directors should aim to show whether each director continues to contribute effectively, to demonstrate commitment and has the relevant skills for the role (including commitment of time for board and committee meetings and any other duties) going forwards. The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board, identifying individual and collective development needs and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

- The focus of the chairman’s appraisal will be his/her performance as leader of the board of directors. The appraisal should carefully consider that performance against pre-defined objectives that support the design and delivery of the NHS foundation trust’s priorities and strategy described in its forward plan.

Code provisions

D.2.1 The chairman, with the assistance of the secretary of the boards if applicable, should use the performance evaluations as the basis for determining individual and collective professional development programmes for directors relevant to their duties as board members.

D.2.2 Led by the chairman, the board of governors should periodically assess their collective performance and they should regularly communicate to members details on how they have discharged their responsibilities, including their impact and effectiveness on:

- contributing to the development of forward plans of the NHS foundation trust; and
- communicating with their member constituencies and transmitting their views to the board of directors.

The board of governors should use this process to review its roles, structure, composition and procedures, taking into account emerging best practice. Further information can be found in Monitor’s publication: *Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors*.

D.2.3 There should be a clear policy and a fair process for the removal from the board of any governor who consistently and unjustifiably fails to attend the meetings of the board of governors or has an actual or potential conflict of interest which prevents the proper exercise of their duties. In addition removal from the board of governors may be appropriate where behaviours or actions by a governor or group of governors may be incompatible with the values and behaviours of the NHS foundation trust. Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise.
Director remuneration

E.1
The level and make-up of remuneration

Main principle

Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality and with the skills and experience required to lead the NHS foundation trust successfully, but an NHS foundation trust should avoid paying more than is necessary for this purpose.

Supporting principles

- The remuneration committee should decide if a proportion of executive directors’ remuneration should be structured so as to link reward to corporate and individual performance. The remuneration committee should judge where to position its NHS foundation trust relative to other NHS foundation trusts and comparable organisations. Such comparisons, however, should be used with caution to avoid any risk of an increase in remuneration levels with no corresponding improvement in performance.

- The remuneration committee should also be sensitive to pay and employment conditions elsewhere in the NHS foundation trust, especially when determining annual salary increases.

Code provisions

Remuneration policy

E.1.1 Any performance-related elements of the remuneration of executive directors should be designed to align their interests with those of patients, service users and taxpayers and to give these directors keen incentives to perform at the highest levels. In designing schemes of performance-related remuneration, the remuneration committee should follow the following provisions:

(i) The remuneration committee should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching and designed to match the long term interests of the public and patients.

(ii) Payouts or grants under all incentive schemes should be subject to challenging performance criteria reflecting the objectives of the NHS foundation trust. Consideration should be given to criteria which reflect the performance of the NHS foundation trust relative to a group of comparator trusts in some key indicators, and the taking of independent and expert advice where appropriate.

(iii) Performance criteria and any upper limits for annual bonuses and incentive schemes should be set and disclosed.

(iv) The remuneration committee should consider the pension consequences and associated costs to the NHS foundation trust of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement. In general, only basic salary should be pensionable.

E.1.2 Levels of remuneration for the chairman and other non-executive directors should reflect the time commitment and responsibilities of their roles.
Where an NHS foundation trust releases an executive director, for example to serve as a non-executive director elsewhere, the remuneration disclosures of the annual report should include a statement on whether or not the director will retain such earnings.

Service contracts and compensation

The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors’ terms of appointment would give rise to in the event of early termination. The aim should be to avoid rewarding poor performance. In an early termination, compensation should be reduced to reflect a departing director’s obligation to mitigate loss.

Main principle

There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

Supporting principles

- The remuneration committee should consult the chairman and/or chief executive about its proposals relating to the remuneration of other executive directors.
- The remuneration committee should also be responsible for appointing any independent consultants in respect of executive director remuneration.
- Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest.

Code provisions

The board of directors must establish a remuneration committee composed of non-executive directors which should include at least three independent non-executive directors. The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board of
directors. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the NHS foundation trust.

**E.2.2** The remuneration committee should have delegated responsibility for setting remuneration for all executive directors, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of senior management for this purpose should be determined by the board but should normally include the first layer of management below board level.

**E.2.3** The board of governors is responsible for setting the remuneration of non-executive directors and the chairman. The board of governors should consult external professional advisers to market-test the remuneration levels of the chairman and other non-executives at least once every three years and when they intend to make a material change to the remuneration of a non-executive.
Main principle

The board of directors should present a balanced and understandable assessment of the NHS foundation trust’s position and prospects.

Supporting principle

The responsibility of the board of directors to present a balanced and understandable assessment extends to all public statements and reports to regulators and inspectors, as well as information required to be presented by statutory requirements.

Code provisions

F.1.1 The directors should explain in the annual report their responsibility for preparing the accounts and there should be a statement by the external auditors about their reporting responsibilities.

F.1.2 The directors should report that the NHS foundation trust is a going concern, with supporting assumptions or qualifications as necessary.

F.1.3 (a) The board of directors must notify Monitor and the board of governors without delay, and should consider whether it is in the public interest to bring to the public attention, any major new developments in the NHS foundation trust’s sphere of activity which are not public knowledge which may lead, by virtue of their effect on its assets and liabilities or financial position or on the general course of its business, to a substantial change to the financial wellbeing, healthcare delivery performance or reputation and standing of the NHS foundation trust.

(b) The board of directors must notify Monitor and the board of governors without delay and should consider whether it is in the public interest to bring to public attention all relevant information which is not public knowledge concerning a material change:

- in the NHS foundation trust’s financial condition;
- in the performance of its business; and/or
- in the NHS foundation trust’s expectations as to its performance which, if made public, would be likely to lead to a substantial change to the financial wellbeing, healthcare delivery performance or reputation and standing of the NHS foundation trust.

F.1.4 At least annually, the board of directors should set out clearly its financial, quality and operating objectives for the NHS foundation trust and disclose sufficient information, both quantitative and qualitative, of the NHS foundation trust’s business and operations, including clinical outcome data, to allow members and governors to evaluate its performance. Further requirements are included in the NHS Foundation Trust Annual Reporting Manual (previously the NHS Foundation Trust Financial Reporting Manual).
Main principle

The board of directors should maintain a sound system of internal control to safeguard public and private investment, the NHS foundation trust’s assets, patient safety and service quality.

Monitor’s publications, *NHS Foundation Trust Annual Reporting Manual* and the latest *NHS Foundation Trust Accounting Officer Memorandum* provide further guidance.

Code provision

F.2.1 The board should conduct, at least annually, a review of the effectiveness of the NHS foundation trust’s system of internal control and should report to members that they have done so. The review should cover all material controls, including financial, clinical, operational and compliance controls and risk management systems.

F.3 Audit committee and auditors

Main principle

The board should establish formal and transparent arrangements for considering how it should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the NHS foundation trust’s auditors.


Code provisions

F.3.1 The board must establish an audit committee composed of non-executive directors which should include at least three independent non-executive directors. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

F.3.2 The main role and responsibilities of the audit committee should be set out in written terms of reference and should include details of how it will:

- monitor the integrity of the financial statements of the NHS foundation trust, and any formal announcements relating to the trust’s financial performance, reviewing significant financial reporting judgements contained in them;

- review the NHS foundation trust’s internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent directors, or by the board itself, review the trust’s internal control and risk management systems;

- monitor and review the effectiveness of the NHS foundation trust’s internal audit function;

- review and monitor the external auditor’s independence and objectivity and the
effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;

• develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and

• report to the board of governors, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

F.3.3 The terms of reference of the audit committee, including its role and the authority delegated to it by the board of directors and by the board of governors, should be made publicly available. A separate section of the annual report should describe the work of the committee in discharging those responsibilities.

F.3.4 The board of governors should take the lead in agreeing with the audit committee the criteria for appointing, reappointing and removing external auditors.

F.3.5 The audit committee should make a report to the board of governors in relation to the performance of the external auditor, including detail such as the quality and value of the work, and the timeliness of reporting and fees, to enable the board of governors to consider whether or not to reappoint them. The audit committee should also make recommendations to the board of governors in relation to the appointment, re-appointment and removal of the external auditor and approve the remuneration and terms of engagement of the external auditor.

If the board of governors does not accept the audit committee’s recommendation, the board of directors should include in the annual report a statement from the audit committee explaining the recommendation and should set out reasons why the board of governors has taken a different position.
F.3.6 The NHS foundation trust should appoint an external auditor for a period of time which allows the auditor to develop a strong understanding of the finances, operations and forward plans of the NHS foundation trust. The current best practice is for a three to five year period of appointment.

F.3.7 When the board of governors ends an external auditor’s appointment in disputed circumstances, the chairman should write to Monitor informing it of the reasons behind the decision.

F.3.8 The annual report should explain to members how, if the external auditor provides non-audit services, auditor objectivity and independence is safeguarded.

F.3.9 The audit committee should review arrangements by which staff of the NHS foundation trust may raise, in confidence, concerns about possible improprieties in matters of financial reporting and control, clinical quality, patient safety or other matters. The audit committee’s objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.
Relationships with stakeholders

G.1 Dialogue with members, patients and the local community

Main principle

The board of directors should appropriately consult and involve members, patients and the local community. Notwithstanding the complementary role of the governors in this consultation, the board of directors as a whole has responsibility for ensuring that regular and open dialogue with its stakeholders takes place.

Supporting principles

- The board of directors should keep in touch with the opinion of members, patients and the local community in whatever ways are most practical and efficient. There should be a members’ meeting at least annually.
- The chairman (and the senior independent director and other directors as appropriate) should maintain regular contact with governors to understand their issues and concerns.

Code provisions

G.1.1 The board of directors should make available a public document that sets out its policy on the involvement of members, patients and the local community at large, including a description of the kind of issues it will consult on.

G.1.2 The board of directors should clarify in writing how the public interests of patients and the local community will be represented, including its approach for addressing the overlap and interface between governors and any local consultative forums already in place (e.g. Local Involvement Networks, the Overview and Scrutiny Committee, the local League of Friends, and staff groups).

G.1.3 The chairman should ensure that the views of governors and members are communicated to the board as a whole. The chairman should discuss the affairs of the NHS foundation trust with governors. Non-executive directors should be offered the opportunity to attend meetings with governors and should expect to attend them if requested by governors. The senior independent director should attend sufficient meetings with governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of governors.

G.1.4 The board of directors should ensure that the NHS foundation trust provides effective mechanisms for communication between governors and members from its constituencies. Contact procedures for members who wish to communicate with governors and/or directors should be made clearly available to members on the NHS foundation trust’s website and in the annual report.

G.1.5 The board of directors should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of governors and members about the NHS foundation trust, for example through attendance at meetings of the board of governors, direct face-to-face contact, surveys of member opinion and consultations.
G.1.6 The board of directors should monitor how representative the NHS foundation trust’s membership is and the level and effectiveness of member engagement. This information should be used to review the trust’s membership strategy, taking into account any emerging best practice from the sector.

G.2 Co-operation with third parties with roles in relation to NHS foundation trusts

Main principle

The board of directors is responsible for ensuring that the NHS foundation trust co-operates with other NHS bodies, local authorities and other relevant organisations with an interest in the local health economy.

Supporting principle

- The board of directors should enter a dialogue at an appropriate level with a range of third party stakeholders and other interested organisations with roles in relation to NHS foundation trusts based on the mutual understanding of objectives.

Code provisions

G.2.1 The board of directors should maintain a schedule of the specific third party bodies in relation to which the NHS foundation trust has a duty to co-operate (refer to Monitor’s Compliance Framework for a generic non-exhaustive list of third party bodies). The board of directors should be clear of the form and scope of the co-operation required with each of these third party bodies in order to discharge their statutory duties.

G.2.2 The board of directors should ensure that effective mechanisms are in place to co-operate with relevant third party bodies and that collaborative and productive relationships are maintained with relevant stakeholders at appropriate levels of seniority in each. Periodically, the board of directors should review the effectiveness of these processes and relationships and, where necessary, take proactive steps to improve them.
Schedule A: Disclosure of corporate governance arrangements

For ease of reference, the specific requirements in the code for disclosure are set out below.

The directors’ report should contain a statement either confirming compliance with each of the provisions of the code or, where appropriate, an explanation in each case why the trust has departed from the code.

The directors’ report contained within the NHS foundation trust’s annual report should record:

- a statement of how the board of directors and the board of governors operate, including a high-level statement of which types of decisions are to be taken by each of the boards and which are to be delegated to management by the board of directors (A.1.1);
- the names of the chairman, the deputy chairman (where there is one), the chief executive, the senior independent director and the chairmen and members of the nominations, audit and remuneration committees (A.1.2);
- the number of meetings of the board of directors and those committees and individual attendance by directors (A.1.2);
- the names of the non-executive directors whom the board determines to be independent, with reasons where necessary (A.3.1);
- a description of each director’s expertise and experience (A.3.4);
- a clear statement about the board of directors’ balance, completeness and appropriateness (A.3.4);
- the names of the governors and details on their constituency, whether they are elected or appointed and the duration of their appointments, together with details of the nominated lead governor (B.1.3);
- the number of meetings of the board of governors and individual attendance by governors and directors (B.1.3);
- the other significant commitments of the chairman and any changes to them during the year (C.1.7);
- a separate section describing the work of the nominations committee, including the process it has used in relation to board appointments and an explanation if neither external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director (C.1.14);
- how performance evaluation of the board of directors, its committees and its directors has been conducted (D.2);
- as part of the remuneration disclosures of the annual report, where an executive director serves as a non-executive director elsewhere, whether or not the director will retain such earnings (E.1.3);
- an explanation from the directors of their responsibility for preparing the accounts and a statement by the auditors about their reporting responsibilities (F.1.1);
- a statement from the directors that the business is a going concern, with supporting assumptions or qualifications as necessary (F.1.2);
- a report that the board has conducted a review of the effectiveness of the group’s system of internal controls (F.2.1);
• a separate section describing the work of the audit committee in discharging its responsibilities (F.3.3);

• where the board of governors does not accept the audit committee’s recommendation on the appointment, reappointment or removal of an external auditor, a statement from the audit committee explaining the recommendation and the reasons why the board of governors has taken a different position (F.3.5);

• an explanation of how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded (F.3.8);

• contact procedures for members who wish to communicate with governors and/or directors (G.1.4); and

• the steps the board has taken to ensure that members of the board, and in particular the non-executive directors, develop an understanding of the views of governors and members about their NHS foundation trust (G.1.5).

The following information should be made available (which may be met by making it available on request and making the information available on the NHS foundation trust’s website):

• a statement of the priorities and objectives of the NHS foundation trust and an explanation of how interests of patients, the local community and other stakeholders will be balanced (A.1.4);

• a description of each director’s expertise and experience, with a clear statement about the board of directors’ balance, completeness and appropriateness (A.3.4);

• the terms and conditions of appointment of non-executive directors (C.1.8);

• where remuneration consultants are appointed, a statement of whether they have any other connection with the NHS foundation trust (E.2.1);

• the terms of reference of the nominations, remuneration and audit committees, explaining their role and the authority delegated to them by the boards (E.2.1 and F.3.3);

• the policy on the involvement of members, patients and the local community at large, including a description of the kind of issues on which they will be consulted (G.1.1); and

• contact procedures for members who wish to communicate with governors and/or directors (G.1.4).

The board should set out to governors in the papers accompanying a resolution to re-appoint a non-executive director:

• confirmation from the chairman that, following formal performance evaluation, the individual’s performance continues to be effective and they continue to demonstrate commitment to the role, including commitment of time for board and committee meetings and any other duties (C.2.2).

The board should set out to members in the papers accompanying a resolution to elect or re-elect a governor:

• sufficient biographical details and other relevant information, including any prior performance information, to enable members to take an informed decision on their election or re-election of governors (C.2.3).
Appendix A:
The role of the NHS foundation trust secretary

The NHS foundation trust secretary has a significant role to play in the administration of corporate governance. In particular, the trust secretary would normally be expected to:

- ensure good information flows within the board of directors and its committees and between senior management, non-executive directors and the governors;

- ensure that board procedures of both the board of directors and the board of governors are complied with;

- advise the board of directors and the board of governors (through the chairman) on all governance matters; and

- be available to give advice and support to individual directors, particularly in relation to the induction of new directors and assistance with professional development.

Accordingly, the NHS foundation trust should give careful consideration to the appointment of a trust secretary in view of the clear benefits of the role. A trust secretary is normally employed by the NHS foundation trust. All directors and governors would have access to the advice and services of the trust secretary. Both the appointment and removal of the trust secretary would be a matter for the chief executive and chairman jointly.
Appendix B:
The role of the nominated lead governor

The lead governor has a role to play in facilitating direct communication between Monitor and the NHS foundation trust’s board of governors. This will be in a limited number of circumstances and in particular where it may not be appropriate to communicate through the normal channels, which in most cases will be via the chairman or the trust secretary, if one is appointed.

It is not anticipated that there will be regular direct contact between Monitor and the board of governors in the ordinary course of business. Where this is necessary, it is important that it happens quickly and in an effective manner. To this end a lead governor should be nominated and contact details provided to Monitor, and then updated as required. The lead governor may be any of the governors, including the deputy chairman of the governors.

The main circumstances where Monitor will contact a lead governor are where Monitor has concerns as to board leadership provided to an NHS foundation trust, and those concerns may in time lead to the use by Monitor’s Board of its formal powers to remove the chairman or non-executive directors. The board of governors appoints the chairman and non-executive directors, and it will usually be the case that Monitor will wish to understand the views of the governors as to the capacity and capability of these individuals to lead the trust, and to rectify successfully any issues, and also for the governors to understand Monitor’s concerns.

Monitor does not, however, envisage direct communication with the governors until such time as there is a real risk that an NHS foundation trust may be in significant breach of its terms of authorisation. Once there is a risk that this may be the case, and the likely issue is one of board leadership, Monitor will often wish to have direct contact with the NHS foundation trust’s governors, but at speed and through one established point of contact, the trust’s nominated lead governor. The lead governor should take steps to understand Monitor’s role, the available guidance and the basis on which Monitor may take regulatory action. The lead governor will then be able to communicate more widely with other governors.

Similarly, where individual governors wish to contact Monitor, this would be expected to be through the lead governor.

The other circumstance where Monitor may wish to contact a lead governor is where, as the regulator, we have been made aware that the process for the appointment of the chairman or other members of the board, or elections for governors, or other material decisions, may not have complied with the NHS foundation trust’s constitution, or alternatively, whilst complying with the trust’s constitution, may be inappropriate.

In such circumstances, where the chairman, other members of the board of directors or the trust secretary may have been involved in the process by which these appointments or other decisions were made, a lead governor may provide a point of contact for Monitor.

Accordingly, the NHS foundation trust should nominate a lead governor, and to continue to update Monitor with their contact details as and when these change.