

# What are NHS foundation trusts?

**NHS foundation trusts provide healthcare according to core NHS principles: free care, based on need and not ability to pay.**

They are free from central government control and have the freedom to make decisions for themselves. Nevertheless, they are subject to statutory requirements and all have a duty to exercise their functions effectively, efficiently and economically.

At the heart of the NHS foundation trust model is local accountability, in relation to which governors perform a pivotal role. Governors consist of elected and appointed individuals who represent members and other stakeholder organisations through a Council of Governors. They are the individuals that bind a trust to its patients, service users, staff and stakeholders.

The 2006 Act gives governors various statutory responsibilities; it is primarily these legal powers and duties that this guide explores further.

## What is the governance structure of an NHS foundation trust?

**Each NHS foundation trust has its own governance structure. This is set out in the NHS foundation trust's constitution.**

The basic governance structure of all NHS foundation trusts includes:

1. The membership
2. The Council of Governors; and
3. The Board of Directors

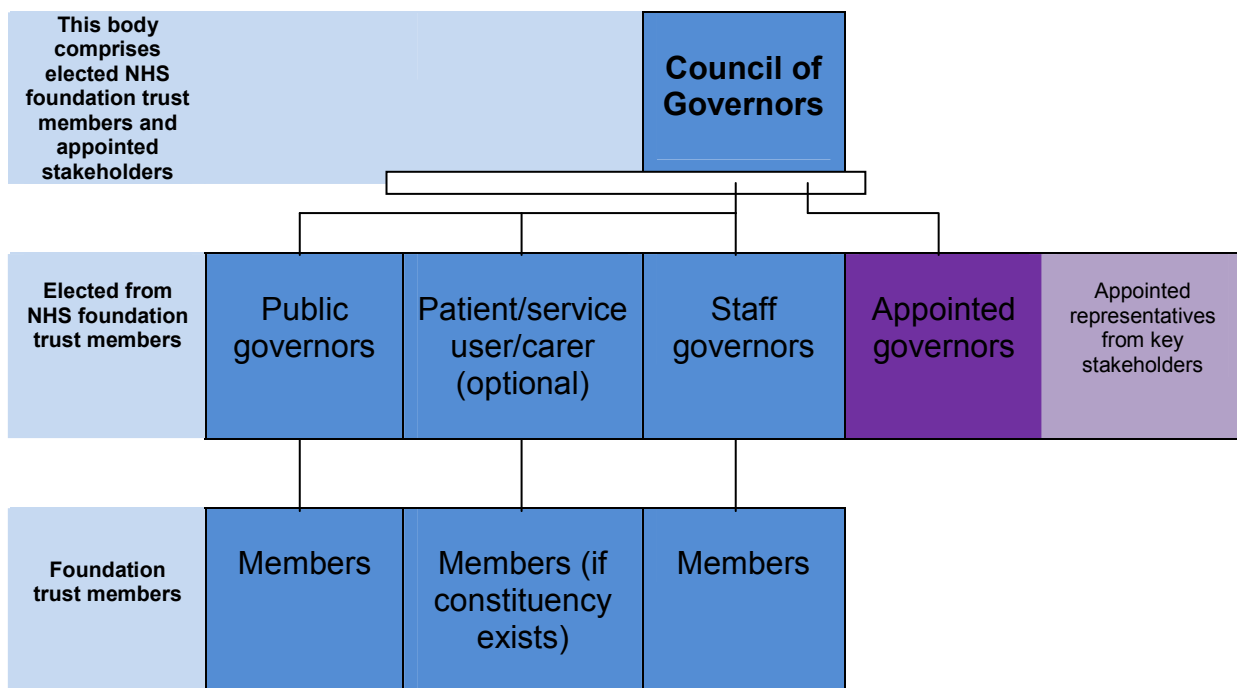
In addition to this basic structure, NHS foundation trusts will also make use of Board committees and working groups, comprising of both governors and directors, as a practical way of dealing with specific issues. Some committees (remuneration and audit) are required by legislation and others are referred to in the *Code of Governance* and elsewhere.

## Membership

The membership consists of staff, the general public and optionally, patients or service users and their carers. Members belong to various constituencies as defined in each NHS foundation trust's constitution. Members in the various constituencies vote to elect governors and can also stand for election themselves. An NHS foundation trust must have a public constituency, and may also have a patient or service users' constituency.

## Council of governors

The illustration below shows the composition of a typical Council of Governors. The council of governors of an NHS foundation trust consists of elected NHS foundation trust members and appointed individuals or representatives from other key stakeholders



The chair of the Board of Directors is also the chair of the Council of Governors. This is a legal requirement.

The legislation requires that the Council of Governors has appointed representatives from certain key stakeholders, such as primary care trusts that commissions services from the NHS foundation trust and a local authority.

In addition to the appointed governors referred to above, the NHS foundation trust's constitution will set out key stakeholders that are entitled to appoint representatives to the council of governors. Such stakeholders include, for example, local voluntary groups, trade unions or charities. There is no difference between the responsibilities of an elected and an appointed governor.

Several NHS foundation trusts have elected not to use the term "board of governors" and various alternatives are used including:

- Council of Governors
- Membership council
- Members' council; and
- Governors' body

## **Board of Directors**

The NHS foundation trust Board of Directors is responsible for all aspects of the performance of the NHS foundation trust. All the powers of the NHS foundation trust are exercisable by the Board of Directors on its behalf. The Board will have executive and non-executive directors and should include a balance of each.

## **Executive Directors**

The executive directors must include a chief executive (who is also the accounting officer) and a finance director.

In addition, one of the executive directors must be a registered medical practitioner or dentist and one must be a registered nurse or midwife.

## Other useful roles in the governance structure

In addition to the key statutory roles of the chair and the chief executive, there are other positions suggested in the *Code of Governance* and elsewhere as being highly significant to efficient and effective running of an NHS foundation trust.

### Deputy Chair

The deputy chair will be one of the NHS foundation trust's non-executive directors and should deputise for the chair as and when appropriate

### Senior Independent Director (SID)

One of the independent non-executive directors will be appointed by the Board of Directors as the "senior independent director" or "SID". This appointment should be made in consultation with the Council of Governors. The SID should act as the point of consultation if governors have concerns which contact through normal channels has failed to resolve or for which such normal contact is inappropriate.

Further details in relation to the role of the senior independent director and what "independent" means can be found in the *Code of Governance*

### Lead governor

Whilst it is not expected that there should be regular communications between Monitor, the Independent Regulator of NHS foundation trusts and governors in the ordinary course of business, there are a limited number of circumstances where there needs to be a means of doing so. The main circumstance would be if Monitor had concerns over the leadership of the trust therefore, NHS foundation trusts have been asked to provide contact details of their lead governor who should be nominated by the council of governors.

# What are the statutory powers and duties of the Council of governors?

The specific statutory powers and duties of the Council of Governors are to:

- Appoint and, if appropriate, remove the chair
- Appoint and, if appropriate, remove the other non-executive directors
- Decide the remuneration and allowances, and the other terms and conditions of office, of the chair and the other non-executive directors
- Approve the appointment of the chief executive
- Appoint and, if appropriate, remove the NHS foundation trust's auditor; and
- Receive the NHS foundation trust's annual accounts, any report of the auditor on them and the annual report.

In addition

- In preparing the NHS foundation trust's forward plan, the Board of Directors must have regard to the views of the Council of Governors.

## Quality Accounts and Governors

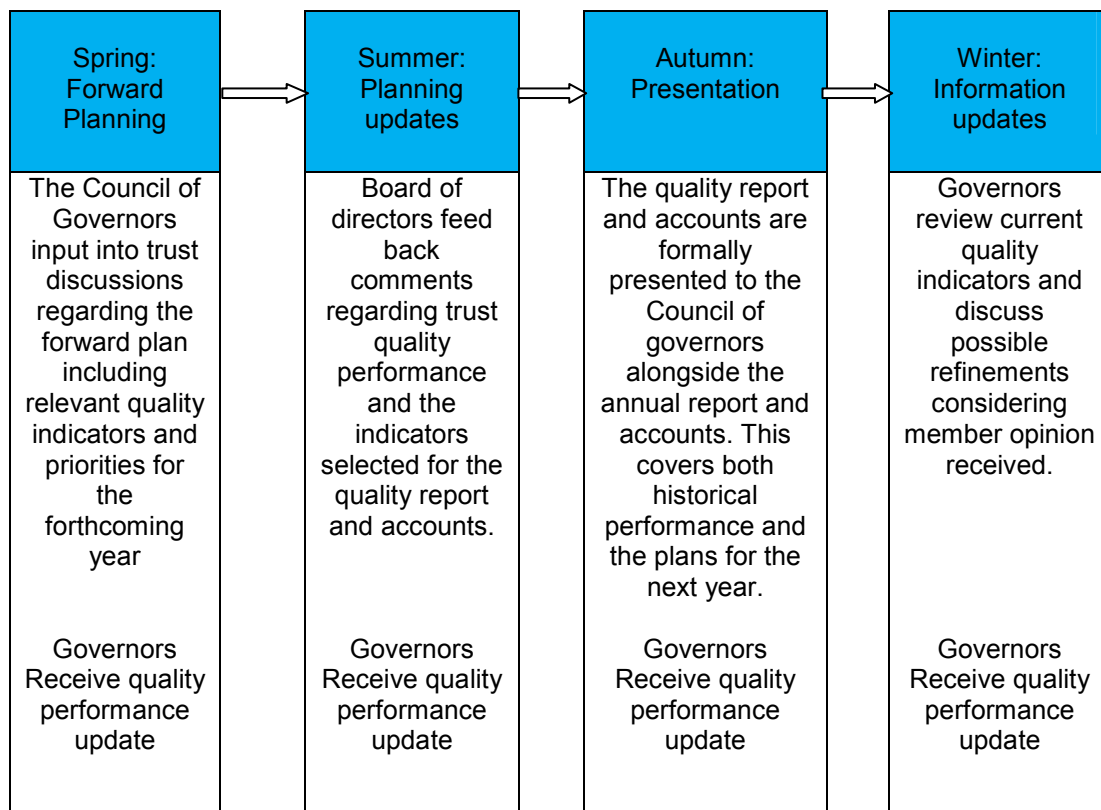
In 200-09 NHS foundation trusts included quality reports within their annual reports for the first time.

Whilst this initiative is at an early stage, it is still important to encourage governor participation in the:

- Identification and prioritisation of quality indicators and quality priorities for the NHS foundation trust in the forthcoming year (as part of governor involvement in the formulation of the forward plan); and
- Presentation of the final quality report or account after the financial year has ended (holding the Board of Directors to account for NHS foundation trust performance)

This may be a different approach to governor involvement in quality than previously occurred within NHS foundation trusts. As a guide, a potential timeframe highlighting where governor involvement can occur is provided below. This is likely to be flexed within the NHS foundation trusts to meet their own internal reporting timeframes but provides an overview of the main tasks governors may have with regards to the quality reports and accounts.

Governors may also wish to read the Foundation Trust Network publication *Making the Most of your Quality Accounts*.



# What it means to be a governor

In the *Code of Governance*, Monitor has provided best practice advice on what it means to be a governor. The key principles are as follows:

- Every NHS foundation trust will have a Council 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 Council of Governors should hold the Board of Directors collectively to account for the performance of the NHS foundation trust, including ensuring the Board of Directors acts so the NHS foundation trust does not breach the terms of its authorisation; and
- Governors are responsible for regularly feeding back information about the NHS foundation trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected them or appointed them.

## What a governor is not

Governors should acknowledge the overall responsibility of the Board of Directors for the running of the NHS foundation trust and should try not to use the powers of the Council of Governors to veto the decisions of the Board of Directors. Below sets out some options of how governors can hold the Board of Directors to accounts.

# Holding the Board of Directors to account

## Key principles

1. The overall responsibility for running an NHS foundation trust lies with the board of directors
2. The Council of Governors is the collective body through which the directors explain and justify their actions
3. Governors must act in the best interests of the NHS foundation trust and should adhere to its values and code of conduct

## Standard methods for governors to provide scrutiny and assistance

- a. Receiving the annual report and accounts
- b. Receiving the quality report and accounts
- c. Receiving in-year information updates from the board of directors
- d. Receiving performance appraisal information for the chair and other non-executive directors
- e. Inviting the chief executive or other executive and non-executive directors to attend Council of Governor meetings as appropriate

## Further methods available to governors

- a. Engagement with Board of Directors to share concerns
- b. Employment of statutory duties
- c. Dialogue with Monitor via the lead governor

## Other duties

Governors may also be usefully involved in many areas not covered by the legislation. Examples below illustrate some key areas where NHS foundation trusts have made great use of the skills and experience of their governors:

- Holding constituency meetings to communicate with members and understand members' views;
- Patient and service user liaison regarding patient experience;
- Providing governor perspective on trust performance such as the healthcare standards' declarations;
- Developing and reviewing the membership strategy, ensuring representation and engagement levels are maintained and increased as appropriate;
- Working with other representative bodies such as LINKs;
- Working with volunteers; and
- Giving talks to interested stakeholders.

Organisations such as the Foundation Trust Network and the Foundation Trust Governors' Association may provide additional support and advice in these areas.

# What other responsibilities are there?

**Best practice (as set out in the *Code of Governance and elsewhere*) means that governors should perform specific additional tasks in relation to the**

## Annual performance appraisal

Conducting performance appraisals and then reviewing the results will significantly assist the Council of Governors in performing its statutory duties, specifically when considering the potential re-appointment or removal of the chair.

Therefore, the Council of Governors should take the lead on determining a process for the evaluation of the chair. The senior independent director should lead the actual appraisal, although the lead governor can also have a significant role to play. The outcome of the evaluation should then be discussed and agreed with the Council of Governors. If an NHS foundation trust has already developed its own process for evaluation of the chair, the Council of Governors should periodically review the effectiveness of the process.

## Appointing a deputy chair

Where an NHS foundation trust's constitution makes provision for one, the governors should appoint a deputy chair from the other non-executive directors