

Meeting Title	Board of Directors		
Date	20 May 2021	Agenda item	Bo.5.21.17

Non-Executive Director Independence Test

Presented by	John Holden, Director of Strategy and Integration		
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Purpose of the paper	To ensure compliance with code B1.1 and B1.2 of the Foundation Trust Code of Governance. To comply with the Code a declaration is required to be made in the Annual Report with regard to the independence of the Non-Executive members of the Board of Directors.		
Key control	This paper is a key control for the governance associated with each strategic objective		
Action required	For approval		
Previously discussed at/ informed by	N/A		
Previously approved at:	Committee/Group	Date	
	N/A		

Background

The NHS Foundation Trust Code of Governance (the Code) was first published in 2006, revised in 2010, and further updated in 2014 as a result of the Health and Social Care Act 2012.

Section B.1.1 of the Code specifies that:

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 despite 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.

Section B.1.2 specifies that:

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

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To support the Board in making its determinations regarding the independence of the Non-Executive Directors, in line with the requirement within the Code (B.1.1 and B1.2):

- The Board is asked to refer to the current Board member declarations of interest as attached at agenda item Bo.5.21.2. Declarations of interest continue to be refreshed in year or at least annually where required, and are now presented at Board and Committee meetings under a distinct agenda item. They are also available as part of the public register of declarations on the Trust website.
- The Board is asked to note the the outcome of the Corporate Governance review presented at Appendix 1 on the key questions posed within the Code regarding independence checks. Although two Non-Executive Directors have declared that they have close family ties with the Trust's advisers, Directors or senior employees, it is not considered that these have an impact on the independence of the NEDs concerned.

Recommendations

The Board is asked to discuss and confirm if it agrees that the Non-Executive Directors (including the Chair) do demonstrate the required independence. Where the Board does agree then the Board is asked to confirm that the following statement is included within the Annual Report 2020/21;

"The Board of Directors has considered the independence of the Board and confirms that it considers all the Non-Executive directors (including the Chair) to be independent in character and judgement and that the Board has assured itself that there are no relationships or circumstances which could affect or appear to affect, the director's judgment."

Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for patients			g			
To deliver our financial plan and key performance targets			g			
To be in the top 20% of NHS employers					g	
To be a continually learning organisation				g		
To collaborate effectively with local and regional partners					g	
The level of risk against each objective should be indicated. Where more than one option is available the level of risk of each option against each element should be indicated by numbering each option and showing numbers in the boxes.	Low		Moderate	High	Significant	
	Risk (*)					
Explanation of variance from Board of Directors Agreed General risk appetite (G)						

Benchmarking implications (see section 4 for details)	Yes	No	N/A
Is there Model Hospital data relevant to the content of this paper?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there any other national benchmarking data relevant to the content of	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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this paper?			
Is the Trust an outlier (positive or negative) for any benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Risk Implications (see section 5 for details)	Yes	No
Corporate Risk register and/or Board Assurance Framework Amendments	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Quality implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Resource implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Legal/regulatory implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Diversity and Inclusion implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Performance Implications	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Regulation, Legislation and Compliance relevance	
NHS Improvement: (please tick those that are relevant)	
<input type="checkbox"/> Risk Assessment Framework	<input checked="" type="checkbox"/> Quality Governance Framework
<input checked="" type="checkbox"/> Code of Governance	<input checked="" type="checkbox"/> Annual Reporting Manual
Care Quality Commission Domain: Well Led	
Care Quality Commission Fundamental Standard: Good Governance	
NHS Improvement Effective Use of Resources: Choose an item.	
Other (please state):	

Relevance to other Board of Director's Committee: (please select all that apply)			
People	Quality	Finance & Performance	Other (please state)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> AAC

Appendices

Appendix 1: NED independence test (key questions prescribed by the FT Code of Governance)