

Appendix 1 - Principles and provisions extracted from the new Code of Governance (effective from 2023/24).

New or amended provisions where we are compliant are highlighted in **GREEN**. New or amended provisions where we are partially compliant are highlighted in **AMBER**. New or amended provisions where the Trust is non-compliant are highlighted in **RED**.

For completeness, the unchanged provisions are included and are highlighted in **BLUE**. We are compliant with all of these provisions.

Section A: Board Leadership and Purpose. *To note the majority of the provisions within section A are new and reflect a focus on responsibilities with regard to system working*

1. Principles

- 1.1 Every trust should be led by an effective and diverse board that is innovative and flexible, and whose role it is to promote the long-term sustainability of the trust as part of the ICS and wider healthcare system in England, generating value for members in the case of foundation trusts, and for all trusts, patients, service users and the public.
- 1.2 The board of directors should establish the trust's vision, values and strategy, ensuring alignment with the ICP's integrated care strategy and ensuring decision-making complies with the triple aim duty of better health and wellbeing for everyone, better quality of health services for all individuals and sustainable use of NHS resources. The board of directors must satisfy itself that the trust's vision, values and culture are aligned. All directors must act with integrity, lead by example and promote the desired culture.
- 1.3 The board of directors should give particular attention to the trust's role in reducing health inequalities in access, experience and outcomes.
- 1.4 The board of directors should ensure that the necessary resources are in place for the trust to meet its objectives, including the trust's contribution to the objectives set out in the five-year joint plan and annual capital plan agreed by the ICB and its partners, and measure performance against them. The board of directors should also establish a framework of prudent and effective controls that enable risk to be assessed and managed. For their part, all board members – and in particular non-executives whose time may be constrained – should ensure they collectively have sufficient time and resource to carry out their functions.
- 1.5 For the trust to meet its responsibilities to stakeholders, including patients, staff, the community and system partners, the board of directors should ensure effective engagement with them, and encourage collaborative working at all levels with system partners.
- 1.6 The board of directors should ensure that workforce policies and practices are consistent with the trust's values and support its long-term sustainability. The workforce should be able to raise any matters of concern. The board is responsible for ensuring effective workforce planning aimed at delivering high quality of care.

Provisions under Section A. Board Leadership and Purpose

| Provisions | Evidence in place / Actions required | Compliant? |
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| 2.1 The board of directors should assess the basis on which the trust ensures its effectiveness, efficiency and economy, as well as the quality of its healthcare delivery over the long term, and contribution to the objectives of the ICP and ICB, and place-based partnerships. | Academy structure in place, risks managed through BAF and high level risk register. | Compliant |
| The board of directors should ensure the trust actively addresses opportunities to work with other providers to tackle shared challenges through entering into partnership arrangements such as provider collaboratives. | The Trust works in partnership across the ICS, Bradford District and Craven and as part of | |

| Provisions | Evidence in place / Actions required | Compliant? |
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| The trust should describe in its annual report how opportunities and risks to future sustainability have been considered and addressed, and how its governance is contributing to the delivery of its strategy. | WYAAT. To be included in annual report – risk management arrangements in place, strategy linked into Academy work plans, board agendas and BAF. | |
| 2.2 The board of directors should develop, embody and articulate a clear vision and values for the trust, with reference to the ICP's integrated care strategy and the trust's role within system and place-based partnerships, and provider collaboratives. This should be a formally agreed statement of the organisation's purpose and intended outcomes, and the behaviours used to achieve them. It can be used as a basis for the organisation's overall strategy, planning, collaboration with system partners and other decisions. | Corporate Strategy approved in 2022 – reference to ICP/system throughout and specifically under 'Our Place' and 'Our Partners'. | Compliant |
| 2.3 The board of directors should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the trust's vision, values and strategy, it should seek assurance that management has taken corrective action. The annual report should explain the board's activities and any action taken, and the trust's approach to investing in, rewarding and promoting the wellbeing of its workforce. | Further consideration required as to how the board assesses and monitors culture. To be included in annual report. Regular updates to board on looking after our people and part of People Academy remit. | Partial compliance |
| 2.4 The board of directors should ensure that adequate systems and processes are maintained to measure and monitor the trust's effectiveness, efficiency and economy, the quality of its healthcare delivery, the success of its contribution to the delivery of the five-year joint plan for health services and annual capital plan agreed by the ICB and its partners (This may also include working to deliver the financial duties and objectives the trust is collectively responsible for with ICB partners, and improving quality and outcomes and reducing unwarranted variation and inequalities across the system), and that risk is managed effectively. The board should regularly review the trust's performance in these areas against regulatory and contractual obligations, and approved plans and objectives, including those agreed through place-based partnerships and provider collaboratives. | Systems and processes established through regular reporting to Academies and the Board (e.g. monthly finance reports, capital updates, system finance reports (place and ICS), performance reports, quality oversight and assurance profile, dashboards). | Compliant |
| 2.5 In line with principle 1.3, 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 performance, ensuring performance reports are disaggregated by ethnicity and deprivation where relevant. Where appropriate and particularly in high risk or complex areas, the board of directors should commission independent advice, e.g. from the internal audit function, to provide an adequate and reliable level of assurance. | Initial waiting list analysis presented to the board in July 2022. Update due in March 2023. Health inequalities workstream led by Director of Strategy & Integration – update presented to Quality & Patient Safety Academy in November 2022 (bi-annual updates included on work plan). | Compliant |
| 2.6 The board of directors should report on its approach to clinical governance and its plan for the improvement of clinical quality in the context of guidance set out by the Department of Health and Social Care (DHSC), NHS England and the Care Quality Commission (CQC). The board should record where in the structure of the organisation clinical | The Trust's approach to Clinical Governance is set out in the terms of reference for the Quality and Patient Safety Academy the purpose of | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| governance matters are considered. | which is to seek assurance, learn and drive improvement in relation to all aspects of quality within the Trust in line with the NHS Patient Safety Strategy and national quality standards. The Non-Executive Director Co-Chairs of the Academy report to the Board on those matters covered by the terms of reference through a regular written report. The minutes of the Academy are also submitted to the Board for information and assurance. The Chair of the Academy draws to the attention of the Board any issues that require disclosure, or may require executive action. The Academy presents a written annual report to the Board summarising the work carried out during the financial year and outlining its work plan for the future year. | |
| 2.7 The chair and board should regularly engage with stakeholders, including patients, staff, the community and system partners, in a culturally competent way, to understand their views on governance and performance against the trust's vision. Committee chairs should engage with stakeholders on significant matters related to their areas of responsibility. The chair should ensure that the board of directors as a whole has a clear understanding of the views of all stakeholders including system partners. NHS foundation trusts must hold a members' meeting at least annually. Provisions regarding the role of the council of governors in stakeholder engagement are contained in Appendix B. | <p>Engagement activity includes:</p> <ul style="list-style-type: none"> • Monthly Community Engagement meetings. • Examples of engagement through Maternity Voices Partnership. This approach is being widened across all areas. A mapping exercise has taken place to identify areas of good practice and areas for improvement. MVP are part of the OMS steering group. • Patient Safety Partners at Place will be implemented as part of the national Patient Safety Strategy work. • It is planned to revise and refresh the patient engagement strategy by the end of Q4 22/23. • Department Specific engagement events to be rolled out across specialties (first event AED in September 22). • Our Membership Plan includes a section on engagement. Progress is reported to the board on a six monthly basis. <p>Representatives from the Trust Joint AGM and AMM held in October 2022.</p> | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| | BTHFT is well represented across the various Boards and enabling groups across Bradford District and Craven and the West Yorkshire Integrated Care System. | |
| 2.8 The board of directors should describe in the annual report how the interests of stakeholders, including system and place-based partners, have been considered in their discussions and decision-making, and set out the key partnerships for collaboration with other providers into which the trust has entered. The board of directors should keep engagement mechanisms under review so that they remain effective. | To be included in annual report. Engagement mechanisms to be monitored through the Patient Engagement Strategy. | Compliant |
| 2.9 The workforce should have a means to raise concerns in confidence and – if they wish – anonymously. The board of directors should routinely review this and the reports arising from its operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action. | <ul style="list-style-type: none"> Freedom to Speak Up arrangements / whistleblowing policy in place. Freedom to Speak Up quarterly review undertaken at People Academy. Freedom to Speak Up Annual Report reviewed by People Academy, Audit Committee and Board of Directors. | Compliant |
| 2.10 The board of directors should take action to identify and manage conflicts of interest and ensure that the influence of third parties does not compromise or override independent judgement (directors are required to declare any business interests, position of authority in a charity or voluntary body in the field of health and social care, and any connection with bodies contracting for NHS services. The trust must enter these into a register available to the public in line with Managing conflicts of interest in the NHS: Guidance for staff and organisations . In addition, NHS foundation trust directors have a statutory duty to manage conflicts of interest. In the case of NHS trusts, certain individuals are disqualified from being directors on the basis of conflicting interests). | <ul style="list-style-type: none"> Conflicts of Interest policy in place. Quarterly report reviewed by ETM. Annual Report reviewed by ETM and Audit Committee. Director and Governor declarations are reviewed routinely at CofG meetings and Board of Director meetings. Academy and Committee meetings have a standing item on declarations of interest. NED terms of engagements make clear disqualifications for the role. | Compliant |
| 2.11 Where directors have concerns about the operation of the board or the management of the trust that cannot be resolved, these should be recorded in the board minutes. If on resignation a non-executive director has any such concerns, they should provide a written statement to the chair, for circulation to the board. | This situation has not arisen but concerns would be recorded in minutes should this be required. | Compliant |

Section B: Division of responsibilities

1. Principles

1.1 The chair leads the board of directors and, for foundation trusts, the council of governors, and is responsible for its overall effectiveness in leading and directing the trust. They should demonstrate objective judgement throughout their tenure and promote a culture of honesty, openness, trust and debate. In addition, the

chair facilitates constructive board relations and the effective contribution of all non-executive directors, and ensures that directors and, for foundation trusts, governors receive accurate, timely and clear information.

- 1.2 Responsibilities should be clearly divided between the leadership of the board and the executive leadership of the trust's operations. No individual should have unfettered powers of decision.
- 1.3 Non-executive directors should have sufficient time to meet their board responsibilities. They should provide constructive challenge and strategic guidance, offer specialist advice and lead in holding the executive to account.
- 1.4 The board of directors should ensure that it has the policies, processes, information, time and resources it needs to function effectively, efficiently and economically.
- 1.5 The board is collectively responsible for the performance of the trust.
- 1.6 The board of directors as a whole is responsible for ensuring the quality and safety of the healthcare services, education, training and research delivered by the trust, and applying the principles and standards of clinical governance set out by DHSC, NHS England, the CQC and other relevant NHS bodies.
- 1.7 All members of the board of directors have joint responsibility for every board decision regardless of their individual skills or status. This does not impact on the particular responsibilities of the chief executive as the accounting officer.

Provisions under Section B: Division of responsibilities

| Provisions | Evidence in place / Actions required | Compliant? |
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| 2.1 The chair is responsible for leading on setting the agenda for the board of directors and, for foundation trusts, the council of governors, and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. | Chair approves agendas for board and COG. | Compliant |
| 2.2 The chair is also responsible for ensuring that directors and, for foundation trusts, governors receive accurate, timely and clear information that enables them to perform their duties effectively. A foundation trust chair should take steps to ensure that governors have the necessary skills and knowledge to undertake their role | Chair ensures accurate, timely and clear information is presented at meetings. Governors undertake a comprehensive induction and skills/knowledge are assessed on an annual basis and additional support/training is provided as required. | Compliant |
| 2.3 The chair should promote a culture of honesty, openness, trust and debate by facilitating the effective contribution of non-executive directors in particular, and ensuring a constructive relationship between executive and non-executive directors. | Led by the Chair. | Compliant |
| 2.4 A foundation trust chair is responsible for ensuring that the board and council work together effectively. | Led by the Chair. Session being arranged for NEDs and governors to build relationships and ensure their respective roles are clear. | Compliant |
| 2.5 The chair should be independent on appointment when assessed against the criteria set out in provision 2.6 below. The roles of chair and chief executive must not be exercised by the same individual. A chief executive should not become chair of the same trust. The board should identify a deputy or vice chair who could be the senior independent director. The chair should not sit on the audit committee. The chair of the audit committee, ideally, should not be the deputy or vice chair or senior independent director. | All provisions met. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| <p>2.6 The board of directors should identify in the annual report each non-executive director it considers to be independent. Circumstances that are likely to impair, or could appear to impair, a non-executive director's independence include, but are not limited to, whether a director:</p> <ul style="list-style-type: none"> • has been an employee of the trust within the last two years • has, or has had within the last two years, a material business relationship with the trust either directly or as a partner, material shareholder, director or senior employee of a body that has such a relationship with the trust • has received or receives remuneration from the trust apart from a director's fee, participates in the trust's performance-related pay scheme or is a member of the trust's pension scheme • has close family ties with any of the trust's advisers, directors or senior employees • holds cross-directorships or has significant links with other directors through involvement with other companies or bodies • has served on the trust board for more than six years from the date of their first appointment • is an appointed representative of the trust's university medical or dental school. <p>Where any of these or other relevant circumstances apply, and the board of directors nonetheless considers that the non-executive director is independent, it needs to be clearly explained why.</p> | Included in annual report. NED independence considered by the board on an annual basis. | Compliant |
| 2.7 At least half the board of directors, excluding the chair, should be non-executive directors whom the board considers to be independent. | NED independence considered by the board on an annual basis. | Compliant |
| 2.8 No individual should hold the positions of director and governor of any NHS foundation trust at the same time. | No directors hold the position of governor. | Compliant |
| <p>2.9 The value of ensuring that committee membership is refreshed and that no undue reliance is placed on particular individuals should be taken into account in deciding chairship and membership of committees.</p> <p>For foundation trusts, the council of governors should take into account the value of appointing a non-executive director with a clinical background to the board of directors, as well as the importance of appointing diverse non-executive directors with a range of skill sets, backgrounds and lived experience.</p> | <p>NED Appraisal process to be reviewed to ensure this is captured.</p> <p>Diversity is taken into account by the Governors when making NED appointments. The Leeds University NED brings a clinical background.</p> | Partial compliance |
| 2.10 Only the committee chair and committee members are entitled to be present at nominations, audit or remuneration committee meetings, but others may attend by invitation of the particular committee. | The Terms of Reference for Academies and Committees reflect this provision. | Compliant |
| 2.11 In consultation with the council of governors, NHS foundation trust boards should appoint one of the independent non-executive directors to be the senior independent director: to provide a sounding board for the chair and serve as an intermediary for the other directors when necessary. Led by the senior independent director, the foundation trust non-executive directors should meet without the chair present at least annually to appraise the chair's performance, and on other occasions as necessary, and seek input from other key stakeholders. For NHS trusts the process is the same but the appraisal is overseen by NHS England as set out in the Chair appraisal framework. | Julie Lawreniuk appointed as SID. The SID has met with the NEDs, in year, without the Chair being present. The SID has also conducted objectives setting with the Chair in line with the Chair Appraisal Process approved by the Council of Governors and consulted with the NEDs in this regard. | Compliant |
| 2.12 Non-executive directors have a prime role in appointing and removing executive directors. They should scrutinise and hold to account the performance of management and individual executive directors against agreed performance objectives. The chair should hold meetings with the non-executive directors without the executive directors present. | <p>NEDs appoint directors through the (Board) Nominations and Remuneration Committee.</p> <p>Execs are held to account through Committee/Academy and Board meetings.</p> | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| | The chair regularly holds meetings with the NEDs without EDs present. | |
| 2.13 The responsibilities of the chair, chief executive, senior independent director if applicable, board and committees should be clear, set out in writing, agreed by the board of directors and publicly available. The annual report should give the number of times the board and its committees met, and individual director attendance. | <p>Chair and CEO responsibilities were agreed in 2020, SID responsibilities were agreed in 2021.</p> <p>All responsibilities referred to are currently not available in one place on the website and it is suggested that they are presented for review on an annual basis.</p> <p>Board and committee responsibilities are agreed through the TOR.</p> <p>Information is routinely included in the annual report as described.</p> | Partial compliance |
| 2.14 When appointing a director, the board of directors should take into account other demands on their time. Prior to appointment, the individual should disclose their significant commitments with an indication of the time involved. They should not take on material additional external appointments without prior approval of the board of directors, with the reasons for permitting significant appointments explained in the annual report. Full-time executive directors should not take on more than one non-executive directorship of another trust or organisation of comparable size and complexity, and not the chairship of such an organisation. | <p>Addressed through appointment process.</p> <p>No additional material external appointments have been requested.</p> <p>No executive directors are a NED of more than one organisation or hold any chairships.</p> | Compliant |
| 2.15 All directors should have access to the advice of the company secretary, who is responsible for advising the board of directors on all governance matters. | The job description for the company secretary reflects these responsibilities. | Partial compliance |
| Both the appointment and removal of the company secretary should be a matter for the whole board. | Appointment of the company secretary is not currently a matter for the whole board. | |
| 2.16 All directors, executive and non-executive, have a responsibility to constructively challenge during board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy. In particular, non-executive directors should scrutinise the performance of the executive management in meeting agreed goals and objectives, request further information if necessary, and monitor the reporting of performance. They should satisfy themselves as to the integrity of financial, clinical and other information, and make sure that financial and clinical quality controls, and systems of risk management and governance, are robust and implemented. | <ul style="list-style-type: none"> • Board, Committee and Academy Meetings • Board Effectiveness Review • Executive / NED Appraisal Processes | Compliant |
| 2.17 The board of directors should meet sufficiently regularly to discharge its duties effectively. A schedule of matters should be reserved specifically for its decisions. For foundation trusts, this schedule should include a clear statement detailing the roles and responsibilities of the council of governors. This statement should also describe how any disagreements between the council of governors and the board of directors will be resolved. The annual report should include this schedule of matters or a summary statement of how the board of directors and the council of governors operate, including a summary of the types of decisions to be taken by the board, the council of governors, board | The board meets formally at least 6 times per year in addition to 5 development sessions. The 'Reservation of Powers to the Board and Scheme of Delegation' (SoD) were reviewed and approved by the AC in February 2022 and ratified by the Board in March 2022. The | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| committees and the types of decisions that are delegated to the executive management of the board of directors. | required statements are included. | |

Section C: Composition, succession and evaluation

1. Principles

- 1.1 Appointments to the board of directors should follow a formal, rigorous and transparent procedure, and an effective succession plan should be maintained for board and senior management. Appointments should be made solely in the public interest, with decisions based on integrity, merit, openness and fairness. Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, disability, and cognitive and personal strengths (for more information refer to the Equality Act 2010, The NHS' successive Equality Delivery Systems (EDS) and the NHS Workforce Race Equality Standard (WRES)). In particular, the board should have published plans for how it and senior managers will in percentage terms at least match the overall black and minority composition of its overall workforce, or its local community, whichever is the higher.
- 1.2 The board of directors and its committees should have a diversity of skills, experience and knowledge. The board should be of sufficient size for the requirements of its duties, but should not be so large as to be unwieldy. Consideration should be given to the length of service of the board of directors as a whole and membership regularly refreshed.
- 1.3 Annual evaluation of the board of directors should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively.

Provisions under Section C: Composition, succession and evaluation

| Provisions | Evidence in place / Actions required | Compliant? |
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| 2. NHS foundation trusts board appointments | | |
| 2.1 The nominations committee or committees of foundation trusts, 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 trust, and the skills and expertise required within the board of directors to meet them. Best practice is that the selection panel for a post should include at least one external assessor from NHS England and/or a representative from a relevant ICB, and the foundation trust should engage with NHS England to agree the approach. | Decision required at the Governors NRC and then from the Council of Governors on the 'best practice' proposed with regard to NED/Chair appointments. Decision required from the Board NRC on its position with regard to the 'best practice' proposed with regard to executive appointments. | Partial compliance |
| 2.2 There may be one or two nominations committees. If there are two, one will be responsible for considering nominations for executive directors and the other for non-executive directors (including the chair). The nominations committee(s) should regularly review the structure, size and composition of the board of directors and recommend changes where appropriate. In particular, the nominations committee(s) should evaluate, at least annually, the balance of skills, knowledge, experience and diversity on the board of directors and, in the light of this evaluation, describe the role and capabilities required for appointment of both executive and non-executive directors, including the chair. | Two Nominations and Remuneration Committees are in place. All requirements are addressed as part of the remit of the Committees. An annual evaluation of the balance of skills, knowledge, experience and diversity on the board of directors is undertaken. | Compliant |
| 2.3 The chair or an independent non-executive director should chair the nominations committee(s). At the discretion of the committee, a governor can chair the committee in the case of appointments of non-executive directors or the chair. | Terms of Reference for both Nominations Committees are in line with this. | Compliant |
| 2.4 The governors should agree with the nominations committee a clear process for the nomination of a new chair | Appointment Process for Chair and Non- | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| and non-executive directors. Once suitable candidates have been identified, the nominations committee should make recommendations to the council of governors. | Executive Directors are reviewed annually by the Council of Governors | |
| 2.5 Open advertising and advice from NHS England's Non-Executive Talent and Appointments team is available for use by nominations committees to support the council of governors in the appointment of the chair and non-executive directors. If an external consultancy is engaged, it should be identified in the annual report alongside a statement about any other connection it has with the trust or individual directors. | On the annual review of the Governors NED/Chair appointment process the code of governance recommendation will be included. Any associated narrative will be included within the Annual Report where required. | Partial compliance |
| 2.6 Where an NHS foundation trust has two nominations committees, the nominations committee responsible for the appointment of non-executive directors should have governors and/or independent members in the majority. If only one nominations committee exists, when nominations for non-executives, including the appointment of a chair or a deputy chair, are being discussed, governors and/or independent members should be in the majority on the committee and also on the interview panel. | Terms of Reference for the (Governors) Nominations and Remuneration Committee are in line with this. | Compliant |
| 2.7 When considering the appointment of non-executive directors, the council of governors should take into account the views of the board of directors and the nominations committee on the qualifications, skills and experience required for each position. | Terms of Reference for the Governors Nominations and Remuneration Committee include this requirement. | Compliant |
| 2.8 The annual report should describe the process followed by the council of governors to appoint the chair and non-executive directors. The main role and responsibilities of the nominations committee should be set out in publicly available written terms of reference. | Included in the annual report. TOR for the NRC are published on the Trust's website. | Compliant |
| 2.9 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 make an informed decision on their election. This should include prior performance information | The Constitution indicates as such except for 'prior performance information'. Update required to the Constitution to reflect this. Nominations materials for governor elections will make this requirement clear. | Partial compliance |
| 2.10 A requirement of the National Health Service Act 2006 as amended (the 2006 Act) is that the chair, 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 chair, the other non-executives directors and, except in the case of the appointment of a chief executive, the chief executive. | The committee operates in line with the requirement of the 2006 Act. | Compliant |
| 2.11 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 council of governors. | These requirements are applied. | Compliant |
| 2.12 The governors are responsible at a general meeting for the appointment, re-appointment and removal of the chair and other non-executive directors. | The Council of Governors operates in line with this requirement. | Compliant |
| 2.13 Non-executive directors, including the chair, should be appointed by the council of governors for the specified terms subject to re-appointment thereafter at intervals of no more than three years and subject to the 2006 Act provisions relating to removal of a director. | Practice is in line with the above which is included in the Constitution. | Compliant |
| 2.14 The terms and conditions of appointment of non-executive directors should be made available to the council of governors. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to do what is expected of them. Their other significant commitments should be disclosed to the council of governors before appointment, with a broad indication of the time involved, and | Disclosures made to council of governors in line with requirements. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| the council of governors should be informed of subsequent changes. | | |
| 3. Provisions for NHS trust board appointments – Not applicable to FTs | | |
| 4. Board appointments: provisions applicable to both NHS foundation trusts and NHS trusts | | |
| 4.1 Directors on the board of directors and, for foundation trusts, governors on the council of governors should meet the 'fit and proper' persons test described in the provider licence. For the purpose of the licence and application criteria, 'fit and proper' persons are defined as those having the qualifications, competence, skills, experience and ability to properly perform the functions of a director. They must also have no issues of serious misconduct or mismanagement, no disbarment in relation to safeguarding vulnerable groups and disqualification from office, be without certain recent criminal convictions and director disqualifications, and not bankrupt (undischarged). Trusts should also have a policy for ensuring compliance with the CQC's guidance Regulation 5: Fit and proper persons: directors . | The Trust abides by regulatory requirements. Prospective Governors not confirmed in post until DBS is completed. | Compliant |
| 4.2 The board of directors should include in the annual report a description of each director's skills, expertise and experience. Alongside this, the board should make a clear statement about its own balance, completeness and appropriateness to the requirements of the trust. Both statements should also be available on the trust's website. | Statement as required will be included in the annual report. Board profiles are posted on the website. | Compliant |
| 4.3 Chairs or NEDs should not remain in post beyond nine years from the date of their first appointment to the board of directors and any decision to extend a term beyond six years should be subject to rigorous review. To facilitate effective succession planning and the development of a diverse board, this period of nine years can be extended for a limited time, particularly where on appointment a chair was an existing non-executive director. The need for all extensions should be clearly explained and should have been agreed with NHS England. A NED becoming chair after a three-year term as a non-executive director would not trigger a review after three years in post as chair. | <p>The previous Code required that appointments beyond six years should be subject to rigorous review and should be subject to annual reappointment. The Trust complied with this provision.</p> <p>The new Code suggests that terms of 9 years are now acceptable, but should still be subject to rigorous review after 6 years (and could also be seen to impact on independence). The Governors NRC and Council of Governors will be made aware of this revised wording when considering NED reappointments.</p> | Compliant |
| 4.4 Elected foundation trust governors must be subject to re-election by the members of their constituency at regular intervals not exceeding three years. The governor names submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable members to make an informed decision on their election. This should include prior performance information. Best practice is that governors do not serve more than three consecutive terms to ensure that they retain the objectivity and independence required to fulfil their roles | Our constitution stipulates three consecutive three year terms maximum. | Compliant |
| 4.5 There should be a formal and rigorous annual evaluation of the performance of the board of directors, its committees, the chair and individual directors. For NHS foundation trusts, the council of governors should take the lead on agreeing a process for the evaluation of the chair and non-executive directors. The governors should bear in mind that it may be desirable to use the senior independent director to lead the evaluation of the chair. NHS England leads the evaluation of the chair and non-executive directors of NHS trusts. | Annual effectiveness review undertaken for Audit Committee, Academies and the Board. Individual director performance is assessed through appraisals. Governors agree the appraisal process for the chair and NEDs. The SID leads the chair appraisal. | Compliant |
| 4.6 The chair should act on the results of the evaluation by recognising the strengths and addressing any | PDPs identified as part of appraisals. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| weaknesses of the board of directors. Each director should engage with the process and take appropriate action where development needs are identified. | Actions taken forward from Committee/Academy/Board effectiveness reviews. | |
| 4.7 All trusts are strongly encouraged to carry out externally facilitated developmental reviews of their leadership and governance using the <u>Well-led framework</u> every three to five years, according to their circumstances. The external reviewer should be identified in the annual report and a statement made about any connection it has with the trust or individual directors or governors. | Externally facilitated development review to be scheduled during 2023. | Partial compliance |
| 4.8 Led by the chair, foundation trust councils of governors should periodically assess their collective performance and regularly communicate to members and the public how they have discharged their responsibilities, including their impact and effectiveness on: <ul style="list-style-type: none"> holding the non-executive directors individually and collectively to account for the performance of the board of directors communicating with their member constituencies and the public and transmitting their views to the board of directors contributing to the development of the foundation trust's forward plans. The council 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 Your statutory duties: a reference guide for NHS foundation trust governors and an Addendum to Your statutory duties – A reference guide for NHS foundation trust governors | The collective performance of the Council of Governors as described above is assessed at the quarterly meeting held in April. Joint NED/Governor sessions continue. Governors have a rolling programme of attendance at Board meetings and at the Audit committee and the academies. | Compliant |
| 4.9 The council of governors should agree and adopt a clear policy and a fair process for the removal of any governor who consistently and unjustifiably fails to attend its meetings or has an actual or potential conflict of interest that prevents the proper exercise of their duties. This should be shared with governors. | Covered in Standing Orders for the Council of Governors and the Governors' Code of Conduct. | Compliant |
| 4.10 In addition, it may be appropriate for the process to provide for removal from the council of governors if a governor or group of governors behaves or acts in a way that may be incompatible with the values and behaviours of the NHS foundation trust. NHS England's model core constitution suggests that a governor can be removed by a 75% voting majority; however, trusts are free to stipulate a lower threshold if considered appropriate. Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties should be asked to consider the evidence and determine whether or not the proposed removal is reasonable. NHS England can only use its enforcement powers to require a trust to remove a governor in very limited circumstances: where it has imposed an additional condition relating to governance in the trust's licence because the governance of the trust is such that the trust would otherwise fail to comply with its licence and the trust has breached or is breaching that additional condition. It is more likely that NHS England would have cause to require a trust to remove a director under its enforcement powers than a governor. | This provision has been expanded and now suggests that Councils can lower the threshold for voting majority to remove a Governor or Group of Governors from the Council. Voting majority decision to be considered by the Council of Governors during their review of the Council standing orders in July 2023. | Compliant (but consideration required) |
| 4.11 The board of directors should ensure it retains the necessary skills across its directors and works with the council of governors to ensure there is appropriate succession planning. | Addressed through the Nomination and Remuneration Committees. | Compliant |
| 4.12 The remuneration committee should not agree to an executive member of the board leaving the employment of the trust except in accordance with the terms of their contract of employment, including but not limited to serving their full notice period and/or material reductions in their time commitment to the role, without the board first completing and approving a full risk assessment. | A risk assessment would be carried out prior to any agreement around full notice not being served. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
|---|---|---------------------|
| <p>4.13 The annual report should describe the work of the nominations committee(s), including:</p> <ul style="list-style-type: none"> the process used in relation to appointments, its approach to succession planning and how both support the development of a diverse pipeline how the board has been evaluated, the nature and extent of an external evaluator's contact with the board of directors, governors and individual directors, the outcomes and actions taken, and how these have or will influence board composition the policy on diversity and inclusion, including in relation to disability, its objectives and linkage to trust strategy, how it has been implemented and progress on achieving the objectives the ethnic diversity of the board and senior managers, with reference to indicator nine of the NHS Workforce Race Equality Standard and how far the board reflects the ethnic diversity of the trust's workforce and communities served the gender balance of senior management and their direct reports. | To be included in annual report. | Compliant |
| 5. Development, information and support | | |
| 5.1 All directors and, for foundation trusts, governors should receive appropriate induction on joining the board of directors or the council of governors, and should regularly update and refresh their skills and knowledge. Both directors and, for foundation trusts, governors should make every effort to participate in training that is offered. | An induction programme remains in place for both Governors and Non-Executive Directors. | Compliant |
| 5.2 The chair should ensure that directors and, for foundation trusts, governors continually update their skills, knowledge and familiarity with the trust and its obligations for them to fulfil their role on the board, the council of governors and committees. Directors should also be familiar with the integrated care system(s) that commission material levels of services from the trust. The trust should provide the necessary resources for its directors and, for foundation trusts, governors to develop and update their skills, knowledge and capabilities. Where directors or, for foundation trusts, governors are involved in recruitment, they should receive appropriate training, including on equality, diversity and inclusion, and unconscious bias. | <ul style="list-style-type: none"> Board Development Sessions in place Governor learning and development sessions routinely scheduled in year. Governor briefings/bulletins provided on regular basis Access to training and development opportunities provided to Directors and Governors through range of providers including NHS Providers. Equality, diversity and inclusion, and unconscious bias training is required for those involved in recruitment. | Compliant |
| 5.3 To function effectively, all directors need appropriate knowledge of the trust and access to its operations and staff. Directors and governors also need to be appropriately briefed on values and all policies and procedures adopted by the trust. | Addressed through induction and ongoing training. | Compliant |
| 5.4 The chair should ensure that new directors and, for foundation trusts, governors receive a full and tailored induction on joining the board or the council of governors. As part of this, directors should seek opportunities to engage with stakeholders, including patients, clinicians and other staff, and system partners. Directors should also have access at the trust's expense to training courses and/or materials that are consistent with their individual and collective development programme. | <ul style="list-style-type: none"> Induction programme for NEDs to include engagement with system partners. Induction programme in place for Governors. | Partially compliant |
| 5.5 The chair should regularly review and agree with each director their training and development needs as they relate to their role on the board. | The chair fulfils this role for the NEDs and CEO. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
|---|---|------------|
| | The Chair will liaise directly with the CEO on the training and development needs of the EDs as they relate to their role on the Board of Directors. | |
| 5.6 A foundation trust board has a duty to take steps to ensure that governors are equipped with the skills and knowledge they need to discharge their duties appropriately. | Learning and development opportunities continue to be addressed through internal bespoke sessions and Governwell (national training programme) courses. | Compliant |
| 5.7 The board of directors and, for foundation trusts, the council of governors should be given relevant information in a timely manner, form and quality that enables them to discharge their respective duties. Foundation trust governors should be provided with information on ICS plans, decisions and delivery that directly affect the organisation and its patients. Statutory requirements on the provision of information from the foundation trust board of directors to the council of governors are provided in Your statutory duties: a reference guide for NHS foundation trust governors . | Information provided at <ul style="list-style-type: none"> Board of Director Meetings Council of Governor meetings | Compliant |
| 5.8 The chair is responsible for ensuring that directors and governors receive accurate, timely and clear information. Management has an obligation to provide such information but directors and, for foundation trusts, governors should seek clarification or detail where necessary. | Chair ensures accurate, timely and clear information is presented at meetings. | Compliant |
| 5.9 The chair's responsibilities include ensuring good information flows across the board and, for foundation trusts, across the council of governors and their committees; between directors and governors; and for all trusts, between senior management and non-executive directors; as well as facilitating appropriate induction and assisting with professional development as required. | Information referred between Academies/Committees and the Board and the Council of Governors as appropriate. Agendas include consideration of any matters to share or escalate. | Compliant |
| 5.10 The board of directors and, for foundation trusts, the council of governors should be provided with high-quality information appropriate to their respective functions and relevant to the decisions they have to make. The board of directors and, for foundation trusts, the council of governors should agree their respective information needs with the executive directors through the chair. The information for boards should be concise, objective, accurate and timely, and complex issues should be clearly explained. The board of directors should have complete access to any information about the trust that it deems necessary to discharge its duties, as well as access to senior management and other employees. | The board and governor annual self-assessments take account of views on information and support provided. Where required, actions are put in place to address. | Compliant |
| 5.11 The board of directors and in particular non-executive directors may reasonably wish to challenge assurances received from the executive management. They do not need to appoint a relevant adviser for each and every subject area that comes before the board of directors, but should ensure that they have sufficient information and understanding to enable challenge and 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 within the trust in a timely manner. On occasion, non-executives may reasonably decide that external assurance is appropriate. | Non-Executive Directors are advised that if they wish to seek external assurance they may do so. | Compliant |
| 5.12 The board should ensure that directors, especially non-executive directors, have access to the independent professional advice, at the trust's expense, where they judge it necessary to discharge their responsibilities as directors. The decision 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. | Non-Executive Directors are advised that if they wish to seek external advice they may do so. | Compliant |
| 5.13 Committees should be provided with sufficient resources to undertake their duties. The board of directors of | Support provided by the Corporate | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
|---|---|------------|
| foundation trusts should also ensure that the council of governors is provided with sufficient resources to undertake its duties with such arrangements agreed in advance. | Governance Team and other teams where required (e.g. Quality Team), with agreed budget to support meetings, training etc. | |
| 5.14 Non-executive directors should consider whether they are receiving the necessary information in a timely manner and feel able to appropriately challenge board recommendations, in particular by making full use of their skills and experience gained both as a director of the trust and in other leadership roles. They should expect and apply similar standards of care and quality in their role as a non-executive director of a trust as they would in other similar roles. | The Non-Executive Directors Chair the Board Committees and Academies and approve their terms of reference and work programmes. NEDs are able to request additional information where required. They are all subject to an annual appraisal which includes the recording of their personal development/learning needs. | Compliant |
| 5.15 Foundation trust governors should canvass the opinion of the trust's members and the public, 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. The annual report should contain a statement as to how this requirement has been undertaken and satisfied. | Governors are supported to engage with members and the public and new resources are being developed to enhance this. Governors were asked to canvass views on the Corporate Strategy during its development. | Compliant |
| 5.16 Where appropriate, the board of directors should in a timely manner take account of the views of the council of governors on the forward plan, and then inform the council of governors which of their views have been incorporated in the NHS foundation trust's plans, and explain the reasons for any not being included. | Following the late publication of operational planning guidance for the 2022/23 planning round a stand-alone session was held with the Council (in April 2022) to discuss the draft plan prior to its submission as a Place based plan to NHSE/I in May 2022. | Compliant |
| 5.17 The board of directors must have regard to the council of governors' views on the NHS foundation trust's forward plan. | See above | Compliant |
| 5.18 NHS Resolution's Liabilities to Third Parties Scheme includes liability cover for trusts' directors and officers. Assuming foundation trust governors have acted in good faith and in accordance with their duties, and proper process has been followed, the potential for liability for the council should be negligible. While there is no legal requirement for trusts to provide an indemnity or insurance for governors to cover their service on the council of governors, where an indemnity or insurance policy is given, this can be detailed in the trust's constitution. | Governors are indemnified under the same scheme as Trusts' Directors. A statement with regard to indemnity is included within our Constitution. | Compliant |

Section D: Audit, risk and internal control

1. Principles

- 1.1 The board of directors should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions, and satisfy itself on the integrity of financial and narrative statements.
- 1.2 The board of directors should present a fair, balanced and understandable assessment of the trust's position and prospects.

- 1.3 The board of directors should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks the trust is willing to take to achieve its long-term strategic objectives.
- 1.4 Organisations should also refer to [Audit and assurance: a guide to governance for providers and commissioners](#).

Provisions under Section D: Audit, risk and internal control

| Provisions | Evidence in place / Actions required | Compliant? |
|---|---|------------|
| 2.1 The board of directors should establish an audit committee of independent non-executive directors, with a minimum membership of three or two in the case of smaller trusts. The chair of the board of directors should not be a member and the vice chair or senior independent director should not chair the audit committee. The board of directors should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole should have competence relevant to the sector in which the trust operates. | Trust has an Audit Committee in place. Four NEDs are members. Membership rules as listed are satisfied. | Compliant |
| 2.2 The main roles and responsibilities of the audit committee should include: <ul style="list-style-type: none"> • monitoring the integrity of the financial statements of the trust and any formal announcements relating to the trust's financial performance, and reviewing significant financial reporting judgements contained in them • providing advice (where requested by the board of directors) on whether the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for stakeholders to assess the trust's position and performance, business model and strategy • reviewing the trust's internal financial controls and internal control and risk management systems, unless expressly addressed by a separate board risk committee composed of independent non-executive directors or by the board itself • monitoring and reviewing the effectiveness of the trust's internal audit function or, where there is not one, considering annually whether there is a need for one and making a recommendation to the board of directors • reviewing and monitoring the external auditor's independence and objectivity • reviewing the effectiveness of the external audit process, taking into consideration relevant UK professional and regulatory requirements • reporting to the board of directors on how it has discharged its responsibilities. | AC main roles and responsibilities included within the AC Terms of Reference. | Compliant |
| 2.3 A trust should change its external audit firm at least every 20 years. Legislation requires an NHS trust to newly appoint its external auditor at least every five years. An NHS foundation trust should re-tender its external audit at least every 10 years and in most cases more frequently than this. These timeframes are not affected by an NHS trust becoming a foundation trust. | Prior guidance set the best practice limit at 10 years with tenders undertaken at most every 5 years. The Trust includes the Council in the appointment process to support their statutory duty to approve the appointment of the External Auditor. | Compliant |
| 2.4 The annual report should include: <ul style="list-style-type: none"> • the significant issues relating to the financial statements that the audit committee considered, and how these issues were addressed • an explanation of how the audit committee (and/or auditor panel for an NHS trust) has assessed the independence and effectiveness of the external audit process and its approach to the appointment or reappointment of the external auditor; length of tenure of the current audit firm, when a tender was last conducted and advance notice of any retendering plans • an explanation of how auditor independence and objectivity are safeguarded if the external auditor provides non-audit services. | Included in annual report. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| 2.5 Legislation requires an NHS trust to have a policy on its purchase of non-audit services from its external auditor. An NHS foundation trust's audit committee should develop and implement a policy on the engagement of the external auditor to supply non-audit services. The council of governors is responsible for appointing external auditors. | Policy is in place at BTHFT. | Compliant |
| 2.6 The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for stakeholders to assess the trust's performance, business model and strategy. | Included in annual report. | Compliant |
| 2.7 The board of directors should carry out a robust assessment of the trust's emerging and principal risks. The relevant reporting manuals will prescribe associated disclosure requirements for the annual report. | The trust consults with the Annual Reporting Manual and includes the required information in the Annual Report | Compliant |
| 2.8 The board of directors should monitor the trust's risk management and internal control systems and, at least annually, review their effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls. The board should report on internal control through the annual governance statement in the annual report. | Reported through the AGS in the annual report. | Compliant |
| 2.9 In the annual accounts, the board of directors should state whether it considered it appropriate to adopt the going concern basis of accounting when preparing them and identify any material uncertainties regarding going concern. Trusts should refer to the DHSC group accounting manual and NHS foundation trust annual reporting manual , which explain that this assessment should be based on whether a trust anticipates it will continue to provide its services in the public sector. As a result, material uncertainties over a going concern are expected to be rare | Reporting is provided within the Annual Report as specified. | Compliant |

Section E: Remuneration

1. Principles

- 1.1 Levels of remuneration should be sufficient to attract, retain and motivate directors of quality, with the skills and experience required to lead the trust successfully, and collaborate effectively with system partners. Trusts should avoid paying more than is necessary for this purpose and should consider all relevant and current directions relating to contractual benefits such as pay and redundancy entitlements. Trusts should follow NHS England's Guidance on pay for very senior managers in NHS trusts and foundation trusts and NHS trusts should also follow Guidance on senior appointments in NHS trusts.
- 1.2 Any performance-related elements of executive directors' remuneration should be transparent, stretching and designed to promote the long-term sustainability of the NHS foundation trust. They should also take as a baseline for performance any required competencies specified in the job description for the post.
- 1.3 The remuneration committee should decide if a proportion of executive directors' remuneration should be linked 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 should be used with caution to avoid any risk of an increase in remuneration despite no corresponding improvement in performance.
- 1.4 The remuneration committee should also be sensitive to pay and employment conditions elsewhere in the NHS, especially when determining annual salary increases.
- 1.5 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 their own remuneration.

- 1.6 The remuneration committee should take care to recognise and manage conflicts of interest when receiving views from executive directors or senior management, or consulting the chief executive about its proposals (for further information on conflicts of interest see Managing conflicts of interest in the NHS: Guidance for staff and organisations).
- 1.7 The remuneration committee should also be responsible for appointing any independent consultants in respect of executive director remuneration.
- 1.8 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.
- 1.9 NHS trusts should wait for notification and instruction from NHS England before implementing any cost of living increases.

Provisions under Section E: Remuneration

| Provisions | Evidence in place / Actions required | Compliant? |
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| <p>2.1 Any performance-related elements of executive directors' remuneration 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 consider the following provisions.</p> <ul style="list-style-type: none"> Whether the directors should be eligible for annual bonuses in line with local procedures. If so, performance conditions should be relevant, stretching and designed to match the long-term interests of the public and patients. Payouts or grants under all incentive schemes should be subject to challenging performance criteria reflecting the objectives of the trust. Consideration should be given to criteria that reflect the performance of the trust against some key indicators and relative to a group of comparator trusts, and the taking of independent and expert advice where appropriate. Performance criteria and any upper limits for annual bonuses and incentive schemes should be set and disclosed, and must be limited to the lower of £17,500 or 10% of basic salary. For NHS foundation trusts, non-executive terms and conditions are set by the trust's council of governors. The remuneration committee should consider the pension consequences and associated costs to the trust of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement. | <p>Performance based salary claw back provisions are in contracts where an Exec has had a starting salary over £150k.</p> <p>All salaries are now on a 'spot rate' so there are no other performance based elements.</p> <p>No bonuses or incentives are in place.</p> | Compliant |
| <p>2.2 Levels of remuneration for the chair and other non-executive directors should reflect the Chair and non-executive director remuneration structure.</p> | <p>The Chair's salary is within the range expected for Chairs of Trusts within group 4 and as such the Trust is compliant with regard to the Chair remuneration.</p> <p>NED annual remuneration at BTHFT is £13,785 and has been set at this level since 2011. The annual remuneration cap set by NHSE is £13,000 (with an additional £6,000 permitted to be allocated for special responsibilities). Since the publication of the guidance in 2019 the Council has annually</p> | <p>Compliant</p> <p>Not compliant</p> |

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| | maintained its position that there should be no changes to previously agreed remuneration. At the Council meeting held in October 2022 the Governors confirmed no changes to NED remuneration at the current time, pending the publication of updated guidance from NHSE which is expected by the end of 22/23. <u>The Trust is not compliant with regard to NED remuneration</u> and an explanation will be provided within the annual report. | |
| 2.3 Where a trust releases an executive director, eg to serve as a non-executive director elsewhere, the remuneration disclosures in the annual report should include a statement as to whether or not the director will retain such earnings. | Not applicable | Compliant |
| 2.4 The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointments would give rise to in the event of early termination. The aim should be to avoid rewarding poor performance. Contracts should allow for compensation to be reduced to reflect a departing director's obligation to mitigate loss. Appropriate claw-back provisions should be considered where a director returns to the NHS within the period of any putative notice. | Claw back would be applied where a director was to return to the NHS. Our contracts don't allow for compensation to be reduced if a director was to leave early however there are some immediate dismissal clauses. Legal advice would be required prior to changing director contracts. Director of HR to take legal advice and then present to NRC for decision. | Partial compliance |
| 2.5 Trusts should discuss any director-level severance payment, whether contractual or non-contractual, with their NHS England regional director at the earliest opportunity (severance payment includes any payment whether included in a settlement agreement or not, redundancy payment, a secondment arrangement, pay in lieu of notice, garden leave and pension enhancements). | Would be agreed in principle at Nomination & Remuneration Committee. Discussion would then take place with the NHSE regional director should a severance payment be proposed. | Compliant |
| 2.6 The board of directors should establish a remuneration committee of independent non-executive directors, with a minimum membership of three. The remuneration committee should make its terms of reference available, explaining its role and the authority delegated to it by the board of directors. The board member with responsibility for HR should sit as an advisor on the remuneration committee. Where remuneration consultants are appointed, a statement should be made available as to whether they have any other connection with the trust. | Remuneration Committee of NEDs is in place in line with the requirements. TOR are published on the Trust's website. | Compliant |

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| 2.7 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 board should define senior management for this purpose and this should normally include the first layer of management below board level. | Remuneration Committee sets remuneration for executive directors only. Senior managers are covered by Agenda for Change terms and conditions. | Compliant |
| 2.8 The council of governors is responsible for setting the remuneration of a foundation trust's non-executive directors and the chair. | Remuneration for NEDs and the Chair is set by the Council of Governors. | Compliant |

Appendix B: Council of governors and role of the nominated lead governor

1. Principles

- 1.1 The powers and obligations of governors of NHS foundation trusts are set out in the 2006 Act, as amended by the 2012 Act. This appendix describes the relevant areas of the governors' role. In addition, [Your statutory duties: A reference guide for NHS foundation trust governors](#) (August 2013) examines how governors can deliver their duties and an addendum to this document, [System working and collaboration: The role of foundation trust councils of governors](#) (October 2022) clarifies how governors can continue to perform their duties within the context of system working.
- 1.2 The council of governors has a duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors. This includes ensuring the board of directors acts so that the foundation trust does not breach the conditions of its licence. 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.
- 1.3 The council of governors is responsible for representing the interests of NHS foundation trust members, the public at large, and staff 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.
- 1.4 To discharge their duty to represent the public, councils of governors are required to take account of the interests of the public at large. This includes the population of the local system of which the trust is part and the whole population of England as served by the wider NHS.
- 1.5 Governors are responsible for regularly feeding back information about the trust, its vision and its performance to members, the public at large, and the stakeholder organisations that either elected or appointed them. The trust should ensure governors have appropriate support to help them discharge this duty.
- 1.6 Governors should discuss and agree with the board of directors how they will undertake these and any additional roles, giving due consideration to the circumstances of the NHS foundation trust and the needs of the system and wider NHS and emerging best practice.
- 1.7 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 must be consulted on the development of forward plans for the trust and any significant changes to the delivery of the trust's business plan.
- 1.8 Governors should use their voting rights to hold the non-executive directors individually and collectively to account and act in the best interest of patients, members and the public at large. If the council of governors does withhold consent for a major decision, it must justify its reasons to the chair and the other non-executive directors, bearing in mind that its decision is likely to have a range of consequences for the NHS foundation trust, the system and the wider NHS. The council of governors should take care to ensure that reasons are considered, factual and within the spirit of the Nolan principles

Provisions under Appendix B: Council of governors and role of the nominated lead governor

| Provisions | Evidence in place / Actions required | Compliant? |
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| 2.1 The council of governors should meet sufficiently regularly to discharge its duties. Typically the council of governors would be expected to meet as a full council at least four times a year. Governors should make every effort to attend these meetings. The NHS foundation trust should take appropriate steps to facilitate attendance. | Council of Governors met formally on 5 occasions (including the virtual AGM/AMM). | Compliant |
| 2.2 The council of governors should not be so large as to be unwieldy. The council of governors should be of sufficient size for the requirements of its duties. The roles, structure, composition and procedures of the council of governors should be reviewed regularly. | Governors undertake annual reviews of their ToRs and SOs. The Council has undertaken a review in April 2022 where it was confirmed that the council, comprising 20 members was of sufficient size. | Compliant |
| 2.3 The annual report should identify the members of the council 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 council and the attendance of individual governors and it should be made available to members on request. | All information required is included within the Annual Report 2021/22. A record is kept of the attendance of individual governors at meetings of the Council. | Compliant |
| 2.4 The roles and responsibilities of the council of governors should be set out in a written document. This statement should include a clear explanation of the responsibilities of the council of governors towards members and other stakeholders and how governors will seek their views and keep them informed. | The information is provided on the Trust's website at the 'Foundation Trust Membership' pages. | Compliant |
| 2.5 The chair is responsible for leadership of both the board of directors and the council of governors but the governors also have a responsibility to make the arrangements work and should take the lead in inviting the chief executive and other executives and non-executives, as appropriate, to their meetings. In these meetings other members of the council of governors may ask the chair or their deputy, or any other relevant director present at the meeting, questions about the affairs of the NHS foundation trust. | All NEDs and EDs including the CEO routinely attend meetings of the Council of Governors. | Compliant |
| 2.6 The council of governors should establish a policy for engagement with the board of directors for those circumstances where they have concerns about the performance of the board of directors, compliance with the provider licence or other matters related to the overall wellbeing of the NHS foundation trust and its collaboration with system partners. The council of governors should input to the board's appointment of a senior independent director. | The Engagement Policy is in place and was reviewed by the Board in September 2021 and reviewed and approved by the Council in October 2021. The Council of Governors has had input into the appointment of the SID via the NRC which has delegated authority from the Council of Governors to act on the Council's behalf in this matter. | Compliant |
| 2.7 The council 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, where possible, using clear, unambiguous language. | The Chair routinely meets with the Governors. The Chair routinely holds joint meetings with the NEDs and Governors to support effective and appropriate interaction and, to support the development of agendas for the Council of Governor meetings and Governors learning and development sessions. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| 2.8 The council of governors should only exercise its power to remove the chair or any non-executive directors after exhausting all means of engagement with the board of directors. The council should raise any issues with the chair with the senior independent director in the first instance. | The requirement to take this action has not arisen. A process for the removal of a Chair/NED is in development. | Compliant |
| 2.9 The council of governors should receive and consider other appropriate information required to enable it to discharge its duties, eg clinical statistical data and operational data. | The Council of Governors meets quarterly with the Chairman and other NEDs. At these sessions and the Council of Governors meetings the Governors are in receipt of information to support the discharge of their duties. In particular, with regard to, for example, clinical statistical data and operational data; this is included within the Academy and Committee Chair reports received at Council meetings and, the more detailed reports presented at Board. | Compliant |
| 2.10 The chair (and the senior independent director and other directors as appropriate) should maintain regular contact with the governors to understand their issues and concerns | The Chair meets with the governors on a quarterly basis, and the Chair and NEDs also meet the governors on a quarterly basis prior to COG meetings. | Compliant |
| 2.11 Governors should seek the views of members and the public on material issues or changes being discussed by the trust. Governors should provide information and feedback to members and the public at large regarding the trust, its vision, performance and material strategic proposals made by the trust board. | Governors are supported to engage with members and the public to seek their views, for example a governor recently attended a meeting of a local PPG and has fed back to the Trust. When the Corporate Strategy was reviewed, members were provided with details of a public survey seeking views and were asked to share this with members and the public. | Compliant |
| 2.12 It is also incumbent on the board of directors to ensure governors have the mechanisms in place to secure and report on feedback that enables them to fulfil their duty to represent the interests of members and the public at large. | See above. | Compliant |
| 2.13 The chair should ensure that the views of governors and members are communicated to the board as a whole. The chair 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 to do so by governors. The senior independent director should attend sufficient meetings with governors to hear their views and develop a balanced understanding of their issues and concerns. | The Chair has ensured that the views of the Council and members are shared with the Board of Directors and that they are taken account of as required as evidenced through: <ul style="list-style-type: none"> the chair's reports to both board and Governors, through the learning and development sessions scheduled with Governors, | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| | <ul style="list-style-type: none"> the quarterly sessions between the Chair and Governors and, the joint quarterly sessions between the Chair, non-executive directors and governors. | |
| 2.14 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 clear and made available to members on the NHS foundation trust's website and in the annual report. | Contact details are available online and are included in the annual report. | Compliant |
| 2.15 The board of directors should state in the annual report the steps it has 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, eg through attendance at meetings of the council of governors, direct face-to-face contact, surveys of members' opinions and consultations. | <p>The Board of Directors actively engages with the Council of Governors and the respective public stakeholders in the reporting of the financial and performance management of the Foundation Trust and in the management of risks which impact on them.</p> <p>The Council meets five times per year (including the AMM/AGM) and receives reports on performance, quality and safety.</p> | Compliant |
| 3. Additional statutory requirements | | |
| 3.1 The council of governors has a statutory duty to hold the non-executive directors individually and collectively to account for the performance of the board of directors. | Governors attend meetings of the Board of Directors and Board Committees as observers. In addition, the Council of Governors and the Non-Executive Directors hold regular quarterly joint sessions. Governors are in routine receipt of the Board agendas and minutes. The Council is also approves the appraisal process for the Chair and the Non-Executive Directors and is in receipt of annual reports on the outcomes of the Chair Appraisal and the Non-Executive Directors Appraisal. Governors actively contribute to the appraisals of the Chair and Non-Executive Directors. The Council is in receipt of the Annual Report and Accounts and receives the report from the External Auditor on these. The Council is also in receipt of the Quality Account. | Compliant |
| 3.2 The 2006 Act, as amended, gives the council of governors a statutory requirement to receive the following documents. These documents should be provided in the annual report as per the NHS foundation trust annual reporting manual: | These documents are received by the Governors at the Annual Members Meeting, and they are available on the Foundation Trust's website. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| (a) the annual accounts (b) any report of the auditor on them (c) the annual report. | | |
| 3.3 The directors must provide governors with an agenda prior to any meeting of the board, and a copy of the approved minutes as soon as is practicable afterwards. There is no legal basis on which the minutes of private sessions of board meetings should be exempted from being shared with the governors. In practice, it may be necessary to redact some information, eg for data protection or commercial reasons. Governors should respect the confidentiality of these documents. | The agenda and approved minutes for open meetings are circulated to the Governors. | Compliant |
| 3.4 The council of governors may require one or more of the directors to attend a meeting to obtain information about the trust's performance of its functions or the directors' performance of their duties, and to help the council of governors decide whether to propose a vote on the trust's or directors' performance. | Both Executive and non-Executive Directors routinely attend meetings of the Council of Governors and provide appropriate information. | Compliant |
| 3.5 Governors should use their rights and voting powers from the 2012 Act to represent the interests of members and the public at large on major decisions taken by the board of directors. These voting powers require: <ul style="list-style-type: none"> • More than half the members of the board of directors who vote and more than half the members of the council of governors who vote to approve a change to the constitution of the NHS foundation trust. • More than half the governors who vote to approve a significant transaction. • More than half the governors to approve an application by a trust for a merger, acquisition, separation or dissolution. • More than half the governors who vote to approve any proposal to increase the proportion of the trust's income earned from non-NHS work by 5% a year or more. For example, governors will be required to vote where an NHS foundation trust plans to increase its non-NHS income from 2% to 7% or more of the trust's total income. • Governors to determine together whether the trust's non-NHS work will significantly interfere with the trust's principal purpose, which is to provide goods and services for the health service in England, or its ability to perform its other functions. | All new powers have been covered in the Foundation Trust's Constitution since September 2013. | Compliant |
| 3.6 NHS foundation trusts are permitted to decide themselves what constitutes a 'significant transaction' and may choose to set out the definition(s) in the trust's constitution. Alternatively, with the agreement of the governors, trusts may choose not to give a definition, but this would need to be stated in the constitution. | Definition of 'significant transaction' stated within the Constitution. | Compliant |
| 3.7 In taking decisions on significant transactions, mergers, acquisitions, separations or dissolutions, governors need to be assured that the process undertaken by the board was appropriate, and that the interests of the public at large were considered. A council may disagree with the merits of a particular decision of the board on a transaction, but still give its consent because due diligence has been followed and assurance received. To withhold its consent, the council of governors would need to provide evidence that due diligence was not undertaken. | Governors would be advised of this provision should a significant transaction be required. | Compliant |

| Provisions | Evidence in place / Actions required | Compliant? |
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| 3.8 The external auditors of a foundation trust must be appointed or removed by the council of governors at a general meeting of the council. | Practice is in place. | Compliant |
| 4. Lead governor | | |
| 4.1 The lead governor has a role in facilitating direct communication between NHS England and the NHS foundation trust's council 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 chair or the trust secretary, if one is appointed. | Lead Governor is appointed. | Compliant |
| 4.2 It is not anticipated that there will be regular direct contact between NHS England and the council 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 NHS England, and then updated as required. Any of the governors may be the lead governor. | Lead Governor is appointed. | Compliant |
| 4.3 The main circumstances where NHS England will contact a lead governor are where we have concerns about the board leadership provided to an NHS foundation trust, and those concerns may in time lead to our use of our formal powers to remove the chair or non-executive directors. The council of governors appoints the chair and non-executive directors, and it will usually be the case that we 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 our concerns. | Lead Governor is appointed. | Compliant |
| 4.4 NHS England 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 breach of its licence. Once there is a risk that this may be the case, and the likely issue is one of board leadership, we will often wish to have direct contact with the NHS foundation trust's governors, but quickly and through one established point of contact, the trust's nominated lead governor. The lead governor should take steps to understand our role, the available guidance and the basis on which we 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 us, this would be expected to be through the lead governor. | Lead Governor is appointed. | Compliant |
| 4.5 The other circumstance where NHS England 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 chair 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, while complying with the trust's constitution, may be inappropriate. In such circumstances, where the chair, 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 us with a point of contact. | Lead Governor is appointed. | Compliant |