

Meeting Title	Board of Directors		
Date	19 January 2023	Agenda item	Bo.1.23.22

## Code of Governance for NHS Provider Trusts and Guidance on Good Governance and Collaboration

Presented by	Laura Parsons, Associate Director of Corporate Governance/Board Secretary		
Author	Laura Parsons, Associate Director of Corporate Governance/Board Secretary / Jacqui Maurice, Head of Corporate Governance		
Lead Director	John Holden, Director of Strategy and Integration		
Purpose of the paper	To outline any new requirements and the actions required to ensure compliance with the updated Code of Governance for NHS Provider Trusts and new guidance on Good Governance and Collaboration		
Key control	N/A		
Action required	For decision		
Previously discussed at/informed by	ETM – 9 January 2023		
Previously approved at:	Committee/Group	Date	
	N/A		

### Situation, Background & Assessment

There are three documents which underpin the NHS [Provider Licence](#) which were published towards the end of October 2022 by NHS England (NHSE). These are:

- [Code of Governance for NHS Provider Trusts](#) (updated)
- [Guidance on Good Governance and Collaboration](#) (new)
- [Addendum to 'Your statutory Duties - Reference Guide for NHS Foundation Trust Governors](#) which covers 'system working and collaboration: role of foundation trust councils of governors' (new)

### Code of Governance

In summary, the Code of Governance ('the Code') sets out principles to help Trusts deliver effective corporate governance, and provisions with which Trusts must 'comply', or 'explain' how the principles have been met in other ways. Statutory requirements (where compliance is mandatory) are clearly indicated.

The new Code will apply from April 2023 and has been updated to reflect:

- Its application to NHS trusts (in addition to FTs), aligning with the proposed extension of the NHS Provider licence to all trusts
- Changes to the UK Corporate Governance Code in 2018
- The establishment of integrated care systems under the Health and Care Act 2022
- The evolving NHS System Oversight Framework, under which trusts will be treated similarly regardless of their constitution as an NHS trust or FT.

The key changes are as follows:

- Incorporation of the requirement for boards of directors to assess the trust's "contribution to the objectives of the Integrated Care Partnership (ICP) and Integrated Care Board (ICB), and place-based partnerships" as part of its assessment of its performance, and "system and place-based partners" are highlighted as key stakeholders throughout.
- The inclusion of the board's role in assessing and monitoring the culture of the organisation and

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taking corrective action as required, alongside “investing in, rewarding and promoting the wellbeing of its workforce”. The previous code only mentioned wellbeing in the context of the finances of the organisation.

- A new focus on equality, diversity and inclusion, among board members but also training in EDI should be provided for those undertaking director-level recruitment. The board should have a plan in place for the board and senior management of the organisation to reflect the diversity of the local community or workforce, whichever is higher.
- For foundation trusts, potentially greater involvement for NHSE in recruitment and appointment processes, including having representation from NHSE and/or the ICB on NED recruitment panels. When setting remuneration for NEDs, including the chair, foundation trusts should use the Chair and non-executive director remuneration structure.

The code is structured in five main sections containing the principles and provisions:

- A - Board leadership and purpose;
- B - Division of responsibilities;
- C - Composition, succession and evaluation (of the board);
- D - Audit, risk and internal control; and
- E - Remuneration.

The provisions are drawn together in a “disclosures” section: a checklist against which compliance can be self-assessed and which must be reported against in Trust Annual Reports.

Finally, there are three appendices which cover the role of the Trust Secretary, provisions relating to the Councils of Governors (for foundation trusts only), and the regulatory requirements related to the Code and Provider Licence.

## **BTHFT Compliance with the Code**

BTHFT has in place a template document used to assess compliance against the provisions within the Code on an annual basis. The Board is asked to note that for 2022/23, the current template will be used as in previous years to assess compliance against the previous FT Code of Governance. This report on compliance will be presented to the Executive Management Team on 3 April 2023. The document will then be presented to the Audit Committee on 18 April 2023 and then to the Board of Directors for approval on 11 May 2023. The reporting required in the Annual Report 2022/23 will be as prescribed in the published ARM for 2022/23.

From 2023/24, reporting will be against the updated Code. The full list of principles and provisions are outlined in Appendix 1, and any new or amended provisions are highlighted in green, amber or red to indicate whether we are currently fully, partially or non-compliant.

An action plan is attached at Appendix 2, outlining proposed actions to address areas of partial compliance.

We are non-compliant with one provision, relating to aligning NED pay with the national remuneration structure. The national structure has been considered by the Governors NRC and the Council of Governors in their decisions on remuneration and they have outlined their reasons for non-compliance. This will be considered again when NED pay is next reviewed in 2023.

## **Guidance on Good Governance and Collaboration**

This new guidance sets clear expectations of how providers should work and collaborate with partners via system and place-based partnerships, and provider collaboratives, and the governance

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arrangements that must be in place to support this, to comply with the governance conditions of the NHS provider licence. Trust boards must consider this guidance and ensure that their organisations have in place the governance arrangements to support effective collaboration.

This guidance was published on 27 October and became immediately applicable. It sets the expectation that providers collaborate with partners to agree shared objectives through Integrated Care Partnerships (ICPs) and deliver five-year joint plans and annual capital plans through collaborative arrangements. It links to the NHS Oversight Framework. The guidance includes a section explaining how NHSE will use this guidance in cases of non-compliance, noting that in the first instance Integrated Care Board (ICB) leaders should seek informal resolution of issues locally, with NHSE intervention following if required, and in discussion with ICB leaders.

The guidance details expectations on providers to consistently:

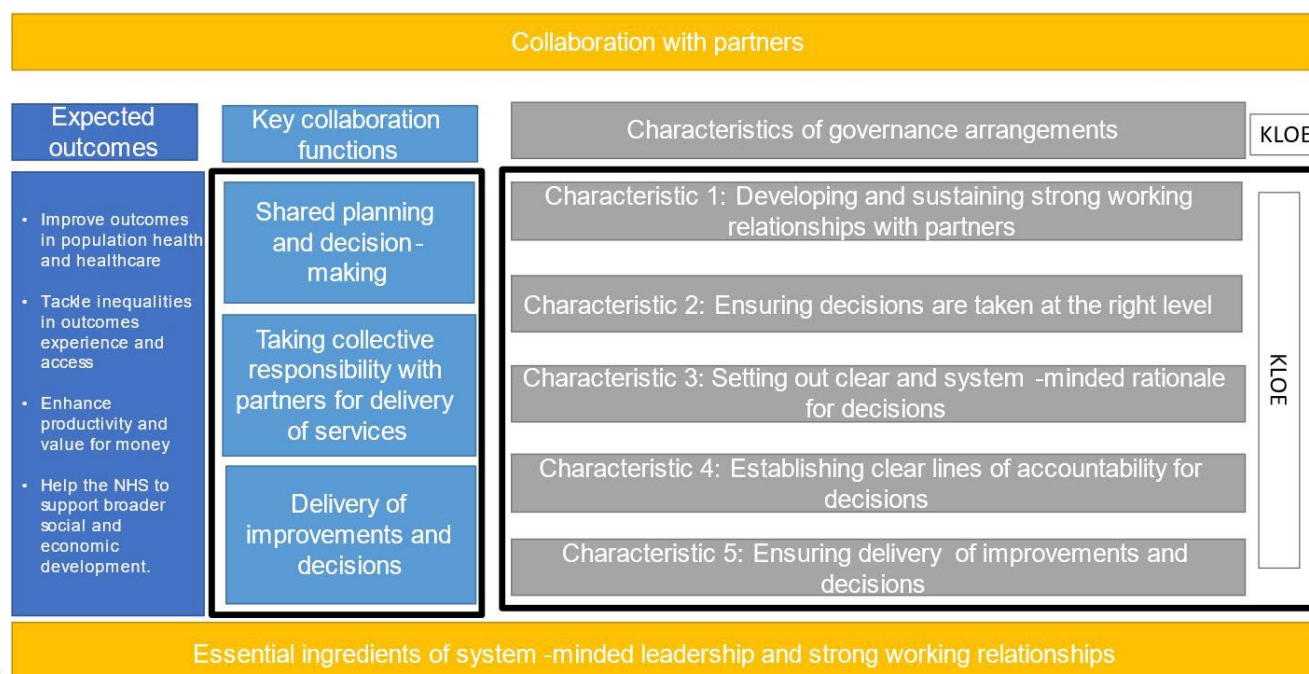
- engage in shared planning and decision-making
- take collective responsibility with partners for delivery of services across various footprints
- take responsibility for delivery of improvements and decisions agreed through any relevant forums.

Illustrative minimum behaviours are described in each case.

A table further describes five characteristics of governance arrangements to support effective collaboration, with key lines of enquiry (KLOEs) for each in the form of questions about providers' participation, engagement, dialogue, information-sharing and decision-making, among other things.

The five characteristics expected of providers are included in the graphic below:

Organisations need to have governance arrangements with five characteristics



## BTHFT Compliance with the Guidance on Good Governance and Collaboration

As this guidance has now been enacted the Trust will be required to review its compliance in relation to this guidance for 2022/23.

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The Corporate Governance Team suggests that for 2022/23 the illustrative minimum behaviours and KLOEs are added to the template the Trust has in place for seeking compliance with the Provider Licence (under condition FT4) and that the Executive Lead is identified as the Director of Strategy and Integration who would confirm the position statement with regard to each KLOE.

On initial review of the guidance, it may be useful to include a consideration of the 'triple aim' duty (better health and wellbeing for everyone, better quality of health services for all individuals and sustainable use of NHS resources) within our report template, so that we can clearly demonstrate that decisions are being made with regard to this.

### **Addendum to 'Your Statutory Duties – Reference Guide for NHS Foundation Trust Governors'**

The addendum supplements the existing guidance for governors and explains that governors' statutory duties have not changed: governors should not expect any material change to their day-to-day role. However, the context of system working and collaboration brings additional considerations for governors when undertaking their statutory duties. This guidance is now applicable.

*ETM is reminded that a detailed presentation regarding the addendum was received at the BTHFT Council of Governors meeting in July 2022. A joint session is currently being scheduled with Airedale NHS FT and Bradford District Care NHS FT to consider the implications of system working for governors. Healthwatch Bradford will be reporting to the BTHFT Council in January 2023 on the role of the Citizens Panel.*

### **Recommendations**

The Board is asked to:

- **Note** the publication of the Code of Governance, Guidance on Good Governance and Collaboration and Addendum to Governors' Statutory Duties;
- **Review** and **note** the assessment of compliance with the Code at Appendix 1;
- **Agree** the proposed actions to address areas of partial compliance with the Code and to receive an update on progress in July 2023;
- **Agree** the proposal to assess compliance with the Guidance on Good Governance and Collaboration as part of the review against the NHS Provider Licence; and
- **Agree** the proposal to include reference to the 'triple aim' duty within the report template.

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Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for patients, delivered with kindness						
To deliver our financial plan and key performance targets						
To be one of the best NHS employers, prioritising the health and wellbeing of our people and embracing equality, diversity and inclusion						
To be a continually learning organisation and recognised as leaders in research, education and innovation						
To collaborate effectively with local and regional partners, to reduce health inequalities and achieve shared goals						
The level of risk against each objective should be indicated. Where more than one option is available the level of risk of each option against each element should be indicated by numbering each option and showing numbers in the boxes.	Low		Moderate	High	Significant	
	Risk (*)					
Explanation of variance from Board of Directors Agreed General risk appetite (G)						

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

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

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

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