

Meeting Title	Council of Governors		
Date	27 April 2023	Agenda item	CGo.4.23.10

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

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Governance responsibility	Director of Strategy & Integration		
Purpose of the paper	To present the updated Code of Governance for NHS Provider Trusts and new Guidance on Good Governance and Collaboration		
Action required	For information		
Previously discussed at/informed by	N/A		
Previously approved at:	Committee/Group	Date	

### Summary

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. 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.

The Board has agreed an action plan to address the areas where we are partially or non-compliant.

We are currently 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 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

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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:

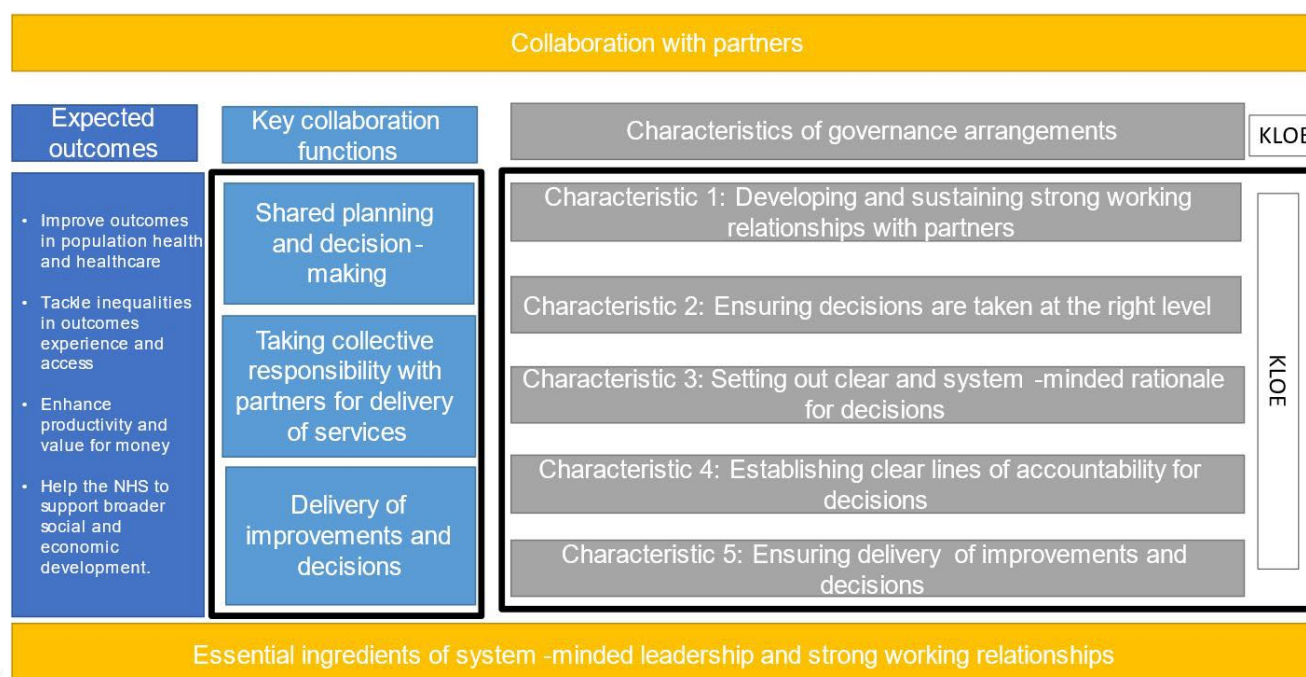
- engage in shared planning and decision-making
- take collective responsibility with partners for delivery of services across various footprints
- take responsibility for delivery of improvements and decisions agreed through any relevant forums.

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. Compliance has been reviewed and will be reported to the Board on 11 May 2023. There are no areas where we are reporting non-compliance.

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### **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.

*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 also reported to the BTHFT Council in January 2023 on the role of the Citizen Panel.*

### **Recommendation/s**

The Council of Governors is asked to receive this report for information.