

Meeting Title	Board of Directors		
Date	11 May 2023	Agenda item	Bo.5.23.21b

Non-Executive Director Independence Test

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

Background

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

Section B.1.1 of the Code specifies that:

The board of directors should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. *The board of directors should state its reasons if it determines that a director is independent despite the existence of relationships or circumstances which may appear relevant to its determination*, including if the director:

- has been an employee of the NHS foundation trust within the last five years;
- has, or has had within the last three years, a material business relationship with the NHS foundation trust either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the NHS foundation trust;
- has received or receives additional remuneration from the NHS foundation trust apart from a director's fee, participates in the NHS foundation trust's performance-related pay scheme, or is a member of the NHS foundation trust's pension scheme;
- has close family ties with any of the NHS foundation trust's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- has served on the board of the NHS foundation trust for more than six years from the date of their first appointment; or
- is an appointed representative of the NHS foundation trust's university medical or dental school.

Section B.1.2 specifies that:

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

Meeting Title	Board of Directors		
Date	11 May 2023	Agenda item	Bo.5.23.21b

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

- The Board is asked to refer to the current Board member declarations of interest as attached at agenda item Bo.5.23.2. Declarations of interest continue to be refreshed in year or at least annually where required, and are presented at Board and Committee meetings under a distinct agenda item. They are also available as part of the [public register of declarations](#) on the Trust website.
- The Board is asked to note the the outcome of the Corporate Governance review presented at Appendix 1 on the key questions posed within the Code regarding independence checks. Although two Non-Executive Directors have declared that they “have close family ties with the Trust’s advisers, Directors or senior employees” and, one director declared that they are “an appointed representative of the Trust’s university medical/dental school”, it is not considered that these have had an impact on the independence of the NEDs concerned as the Board considers the interests of Board members in all its business. Where conflicts have or do arise mitigations are applied and recorded.

Recommendations

The Board is asked to discuss and confirm if it agrees that the Non-Executive Directors (including the Chair) do demonstrate the required independence. Where the Board does agree then the Board is asked to confirm that the following statement is included within the Annual Report 2022/23:

“The Board of Directors has considered the independence of the Board and confirms that it considers all the Non-Executive directors (including the Chair) to be independent in character and judgement.

The Board has considered the declarations made by Ms Julie Lawreniuk and Mr Barrie Senior with regard to ‘close family ties with any of the trust’s advisers, directors or senior employees’ and, considered the declaration made by Professor Janet Hirst who is ‘an appointed representative of the Trust’s university medical/dental School’.

The Board has assured itself that there are no relationships or circumstances which could affect or appear to affect, the directors’ judgment.”

Meeting Title	Board of Directors		
Date	11 May 2023	Agenda item	Bo.5.23.21b

Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for our patients, delivered with kindness			g			
To deliver our financial plan and key performance targets			g			
To be one of the best NHS employers, prioritising the health and wellbeing of our people and embracing equality, diversity and inclusion					g	
To be a continually learning organisation and recognised as leaders in research, education and innovation				g		
To collaborate effectively with local and regional partners, to reduce health inequalities and achieve shared goals					g	
<i>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.</i>	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 type="checkbox"/>
Is there any other national benchmarking data relevant to the content of this paper?	<input type="checkbox"/>	<input type="checkbox"/>	<input 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 type="checkbox"/>

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

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

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