

# COVID-19

## 3 August 2020

## Governors and boards

The NHS Constitution commits the NHS actively to encourage feedback from the public, patients and staff, to welcome it and use it to improve services. For foundation trusts, the council of governors plays a crucial role to support the feedback loop but also to oversee the work of non-executive directors (NEDs).

Governors have always had a difficult role and the pandemic has only made it more challenging. Keeping governors in the loop might seem to a busy executive director one task too many. But a well-run council of governors could be the wisest investment a chairman and board secretary can make.

Understanding the distinction and role difference between governors and NEDs is essential. Governors are not accountable for the performance of the foundation trust and have no legal liability for their actions but public, patients, service users and carer governors rely on democracy to approve of what they do.

The job of director on a unitary board is clearly definable; holding NEDs to account for the performance of the board is trickier to define and discharge. Observation, inclusion, involvement, opportunity and providing information to enable governors to ask questions are the tried and tested ways of helping them to discharge their responsibilities.

### Changing role

Even before the pandemic, the move to population health and place-based focus was set to change what governors do. It even threatens to undermine their authority as trusts become part of a wider collaborative. This may be without legal form, but it will be set real targets – financial, performance and strategic – to deliver over a wider geography than a single foundation trust. There is an alignment of interests between trust directors and governors in that they both have the interests of their sovereign body at heart even though the directors alone remain accountable to parliament for their performance.

It is also worth remembering that governor approval is needed for significant transactions. These are defined as having a major impact on the finances of the trust so are likely to be limited to mergers and acquisitions and some commercial joint ventures. Despite the inevitable preference for all such negotiations to be conducted under a veil of strict privacy, they are unlikely to be approved unless governors are convinced they will be for the good of patients and the public.

Foundation trusts need to be able to rely on their governors, to help move forward on system and place-based collaborations, and support major transactions – which seem likely to increase. Their support is also going to be needed to deal with the existential threat that legislation may have for foundation trusts, and ensure boards make the right recovery decisions as we emerge from the pandemic.

### Have you invested enough?

Given that boards may need to rely on the support of their governors, now might be a good time to ask the question: have we invested enough time and money in our council? Public, patient, service user, carer and staff governors are all elected. They have constituencies who they should be talking to about plans and to find out their views. While hiring a hall, putting an ad in the paper and hoping for attendees may work, talking to governors about what they think their community would respond to may be more effective.

Making sure the lead governor has a speaking slot in your annual public meeting gives governors visibility and credibility and if your investment of time into the governors has been effective, is more likely to deliver the future the board is planning. Staff governors can also be a useful supplementary barometer to gauge the views of your staff.

COVID-19 has underlined the importance and power of local communities in making decisions – often more relevant than those that come from the centre. Acting as a link between local communities and the centre could increase the importance of the governor's role over time. Improved accountability and transparency and better representation of the views of the community will benefit foundation trust accountability and support decision-making processes. Building on existing structures should help to maintain the authenticity of the public voice.

### Questions for boards

- Do directors and governors understand their respective roles and duties, especially in the light of the changing delivery structures, significant transactions and re-establishing services post-pandemic?
- Does your trust provide governors with adequate training and support?
- Has your board considered how to harness the power of governors to promote the interests of the public as a whole in your area as the changes envisaged come into being?

### Call to action

This is a time of change, which could include the very future of foundation trusts and the role of governors. Foundation trust boards should ensure that they have the right governance processes in place to make full use of governors and their expertise.

If you have any questions or comments about this briefing, please call us on 07732 681120 or email [advice@good-governance.org.uk](mailto:advice@good-governance.org.uk)

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