

DATE OF MEETING	22 December 2015
REPORT FOR	Trust Board of Directors – Public
REPORT FROM	Wendy Booth, Director of Performance Assurance & Trust Secretary
CONTACT OFFICER	As above
SUBJECT	Division of Responsibilities
BACKGROUND DOCUMENT (IF ANY)	None
REPORT PREVIOUSLY CONSIDERED BY & DATE(S)	N/A
EXECUTIVE COMMENT (INCLUDING KEY ISSUES OF NOTE OR, WHERE RELEVANT, CONCERN AND / OR NED CHALLENGE THAT THE BOARD NEED TO BE MADE AWARE OF)	The report provides the updated division of responsibilities between the Chairman and Chief Executive, following changes to Monitor's Risk Assessment Framework
HAVE THE STAFF SIDE BEEN CONSULTED ON THE PROPOSALS?	N/A
HAVE THE RELEVANT SERVICE USERS/CARERS BEEN CONSULTED ON THE PROPOSALS?	N/A
ARE THERE ANY FINANCIAL CONSEQUENCES ARISING FROM THE RECOMMENDATIONS?	NO
IF YES, HAVE THESE BEEN AGREED WITH THE RELEVANT BUDGET HOLDER AND DIRECTOR OF FINANCE, AND HAVE ANY FUNDING ISSUES BEEN RESOLVED?	N/A
ARE THERE ANY LEGAL IMPLICATIONS ARISING FROM THIS PAPER THAT THE BOARD NEED TO BE MADE AWARE OF?	NO
WHERE RELEVANT, HAS PROPER CONSIDERATION BEEN GIVEN TO THE NHS CONSTITUTION IN ANY DECISIONS OR ACTIONS PROPOSED?	YES
WHERE RELEVANT, HAS PROPER CONSIDERATION BEEN GIVEN TO SUSTAINABILITY IMPLICATIONS (QUALITY & FINANCIAL) & CLIMATE CHANGE?	YES
THE PROPOSAL OR ARRANGEMENTS OUTLINED IN THIS PAPER SUPPORT THE ACHIEVEMENT OF THE TRUST OBJECTIVE(S) AND COMPLIANCE WITH THE REGULATORY STANDARDS LISTED	Ensures compliance with statutory requirements and the requirements of good governance
ACTION REQUIRED BY THE BOARD	The Board is asked to note the report

Chief Executive

DIVISION OF RESPONSIBILITIES BETWEEN THE CHAIRMAN AND THE CHIEF EXECUTIVE

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Northern Lincolnshire and Goole NHS Foundation Trust actively seeks to promote equality of opportunity. The Trust seeks to ensure that no employee, service user, or member of the public is unlawfully discriminated against for any reason, including the "protected characteristics" as defined in the Equality Act 2010. These principles will be expected to be upheld by all who act on behalf of the Trust, with respect to all aspects of Equality.

1 INTRODUCTION

Within the 'NHS Foundation Trust Code of Governance' (published September 2006 and updated March 2010 and July 2014), it is recommended best practice that "there should be a clear division of responsibilities at the head of the NHS Foundation Trust between the chairing of the Board of Directors and the Council of Governors and the executive responsibility for the running of the NHS Foundation Trust's business. No one individual should have unfettered powers of decision" (Main Principle A.2).

Further, it is recommended that the division of responsibilities between the Chairman and the Chief Executive should be clearly established, set out in writing, and agreed by the Board of Directors (Code Provision A.2.1).

The purpose of this document is to set out the division of responsibilities between the Chairman and the Chief Executive. In doing so particular reference has been made to:

- The NHS Foundation Trust Code of Governance (Monitor)
- NLG Trust Constitution
- Risk Assessment Framework (Monitor) (updated August 2015)
- NHS Foundation Trust Accounting Officer Memorandum (Monitor) (updated August 2015 in light of changes to the Risk Assessment Framework to strengthen the requirement to consider value for money)
- The Foundations of Good Governance: A Compendium of Best Practice

2 RESPONSIBILITIES OF THE CHAIRMAN

The discrete responsibilities of the Chairman can be summarised as follows:

- 2.1 Reports to the Board of Directors.
- 2.2 Other than the Chief Executive, no Executive reports to the Chair.
- 2.3 The effective running of the Board of Directors and Council of Governors.
- 2.4 Ensuring that the Board of Directors as a whole pays a full part in the development and determination of the Trust's strategy and overall objectives.
- 2.5 The guardian of the Board of Directors' decision making processes.
- 2.6 General leadership of the Board of Directors and the Council of Governors.
- 2.7 Ensuring that the Board of Directors and Council of Governors work together effectively and enjoy constructive working relationships (including the resolution of any disagreements).
- 2.8 Ensuring that Board of Directors' and Council of Governors' agendas take full account of the important issues facing the Foundation Trust.
- 2.9 Ensuring compliance with the Board of Director's approved procedures.
- 2.10 Arranging informal meetings of the Directors, to ensure that sufficient time and consideration are given to complex, contentious or sensitive issues.

- 2.11 Proposing a schedule of matters reserved to the Board of Directors, Terms of Reference for each Board Sub-Committee and other Board Policies and Procedures.
- 2.12 Facilitating the effective contribution of all members of the Board of Directors and the Council of Governors to ensure that constructive relations exist between Executive and Non-Executive members of the Board of Directors, elected and appointed members of the Council of Governors and between the Board of Directors and the Council of Governors.
- 2.13 Chairing the Remuneration Committee, and initiating change and succession planning in the Board and the appointment of effective and suitable members and Chairs of Board Sub-Committees.
- 2.14 Contributing to the agreement of the membership of Board Sub-Committees and proposing their Chairs.
- 2.15 Taking the lead in providing a properly constructed induction programme for new Non-Executive Directors.
- 2.16 Appraising the performance of Non-Executive Directors, and reporting on the outcome of the appraisal to the Council of Governors as appropriate.
- 2.17 Taking the lead in identifying and seeking to continually update their skills and knowledge, and meet the ongoing development needs both of individual Non-Executive Directors and of the Board of Directors as a whole.
- 2.18 Ensuring periodic meeting take place with Non-Executive Directors in the absence of Executive Directors.
- 2.19 Ensure that members of the Council of Governors have the skills, knowledge and familiarity with the Foundation Trust to fulfil their role
- 2.20 Ensuring that the performance of the Board of Directors and Council of Governors as a whole, their committees, and individual members of both are periodically assessed.
- 2.21 Promoting the highest standards of integrity, probity and corporate governance throughout the organisation and particularly at Board of Directors level.
- 2.22 Ensuring good information from and between the Board of Directors, Committees, Council of Governors and member of both and between Senior Management and Non-Executive Directors, members of the Council of Governors and Senior Management.

3 RESPONSIBILITIES OF THE CHIEF EXECUTIVE

The discrete responsibilities of the Chief Executive can be summarised as follows:

- 3.1 Reports to the Chair and to the Board of Directors directly.
- 3.2 All members of the management structure report either directly or indirectly, to the Chief Executive.

- 3.3 Executive responsibility for running the Trust's business.
- 3.4 Acting as the Accounting Officer for the Trust as set out in the 'NHS Foundation Trust Accounting Officer Memorandum', which is attached at **Appendix A**.
- 3.5 Ensuring that the Trust and its staff meets all relevant statutory requirements and service obligations including as set out in the **NHS Provider Licence** and making sure that the Trust's governance framework and associated structures and processes are 'fit for purpose'.
- 3.6 In conjunction with the Board of Directors and the Council of Governors, responsible for creating, developing and promoting the Trust's strategy, taking account the needs of key stakeholders and enabled by a robust strategy for delivery of the Trust's overall objectives.
- 3.7 Provision of information and support to the Board of Directors and Council of Governors and ensuring that the decisions of the Board of the Directors and its Committees are implemented.
- 3.8 Providing input to the Board of Directors' agenda from themselves and other members of the Executive Team.
- 3.9 Ensuring the Chair is aware of the important issues facing the Trust and proposing agendas which reflect these.
- 3.10 Ensuring that the Executive Team provides reports to the Board of Directors which contain accurate, timely and clear information.
- 3.11 Ensuring that they and the Executive Team comply with the Board of Directors' approved procedures.
- 3.12 Ensuring that the Chair is alerted to forthcoming complex, contentious or sensitive issues affecting the Trust.
- 3.13 Providing input on appropriate changes to the schedule of matters reserved to the Board of Directors and Committee Terms of Reference.
- 3.14 Supporting the Chair in their tasks of facilitating effective contributions and sustaining constructive relations between Executive and Non-Executive members of the Board of Directors, elected and appointed members of the Council of Governors and between the Board of Directors and the Council of Governors.
- 3.15 Providing information and advice on succession planning, to the Chair, the Remuneration Committee(s), and other members of the Board of Directors, particularly in respect of Executive Directors.
- 3.16 If so appointed by the Board of Directors, serving on any committee.
- 3.17 Maintaining and strengthening effective working relationships and communications with stakeholders including staff and patients.

- 3.18 Maximising the potential of the Trust's organisation and people by ensuring an appropriate and effective Trust culture, organisation and leadership, supported by effective strategies and systems to manage and develop the Trust's human and physical resources.
- 3.19 Contributing to induction programmes for new Executive and Non-Executive Directors and ensuring that appropriate management time is made available for the process.
- 3.20 Providing leadership and development of the Executive Directors and other Senior Management reporting to him / her and ensuring that the Trust has the capacity, capability and the effective management systems to deliver on the Trust's objectives.
- 3.21 Ensuring that performance reviews are carried out at least once a year for each of the Executive Directors. Providing input to the wider Board of Directors and Council of Governors evaluation process and to the Remuneration Committee as appropriate.
- 3.22 Promoting and conducting the affairs of the Trust with the highest standards of integrity, probity and corporate governance.
- 3.23 Maintaining and enhancing the Trust's reputation and profile with stakeholders and with the community which the Trust serves.
- 3.24 Provision of effective information and communication systems.

4 **SHARED RESPONSIBILITIES OF THE CHAIRMAN AND CHIEF EXECUTIVE**

There are a number of areas where the Chairman and the Chief Executive carry a joint or shared responsibility, often because there is an inter-dependence between the two roles for a responsibility to be fulfilled. These areas of shared responsibility include:

- 4.1 Ensuring that the Council of Governors and Board of Directors receive accurate, timely and clear information that is appropriate for their respective duties.
- 4.2 Facilitating and supporting effective joint working between the Board of Directors and Council of Governors.
- 4.3 Ensuring effective communication by the Foundation Trust with patients, members, staff and other stakeholders.
- 4.4 Constructing the agendas for both the Board of Directors and Council of Governors (with the input of others as appropriate).
- 4.5 Handling high profile media coverage, particularly where this could be damaging to the reputation of the Trust.
- 4.6 Ensuring that the Trust has in place a clear schedule of matters reserved for the Board and, for the others, ensuring that a Scheme of Delegation is agreed and in place.

5 **ACTION REQUESTED OF THE TRUST BOARD**

The Trust Board is asked to consider the division of responsibilities between the Chairman and Chief Executive and, following amendment as required, to approve the revised statement.

**The electronic master copy of this document is held by Document Control,
Directorate of Performance Assurance, NL&G NHS Foundation Trust.**

APPENDIX A



NHS Foundation Trust Accounting Officer Memorandum

IRG 24/15
5 August 2015

NHS Foundation trust Accounting Officer Memorandum

Introduction

- 1 The National Health Service Act 2006 (the Act) designates the Chief Executive of an NHS Foundation Trust as the Accounting Officer.
- 2 The principal purpose of the NHS Foundation Trust is the provision of goods and services for the purposes of the health service in England. The NHS Foundation Trust has a general duty to exercise its functions effectively, efficiently and economically.
- 3 The Act specifies that the Accounting Officer has the duty to prepare the accounts in accordance with the Act. An Accounting Officer has the personal duty of signing the NHS Foundation Trust's accounts. By virtue of this duty, the Accounting Officer has the further duty of being a witness before the Committee of Public Accounts (PAC) to deal with questions arising from those accounts or, more commonly, from reports made to Parliament by the Comptroller and Auditor General (C&AG) under the National Audit Act 1983.
- 4 Associated with these duties are the further responsibilities that are the subject of this memorandum. It is incumbent on the Accounting Officer to combine these duties with their duties to the Board of Directors of the NHS Foundation Trust.
- 5 It is an important principle that, regardless of the source of the funding, Accounting Officers are responsible to Parliament for the resources under their control.

Responsibilities of Monitor

- 6 In relation to NHS Foundation Trusts, it is the responsibility of Monitor to be satisfied that the NHS Foundation Trust is compliant with **its NHS Provider Licence**.

The general responsibilities of an NHS Foundation Trust Accounting Officer

- 7 The Accounting Officer has responsibility for the overall organisation, management and staffing of the NHS Foundation Trust and for its procedures in financial and other matters. The Accounting Officer must ensure that:
 - there is a high standard of financial management in the NHS Foundation Trust as a whole;
 - **the NHS Foundation Trust delivers efficient and economical conduct of its business and safeguards financial propriety and regularity throughout the organisation;**
 - **financial considerations are fully taken into account in decisions by the NHS Foundation Trust.**

The specific responsibilities of an NHS Foundation Trust Accounting Officer

- 8 The essence of the Accounting Officer's role is a personal responsibility for:
 - the propriety and regularity of the public finances for which he or she is answerable;
 - the keeping of proper accounts;

- prudent and economical administration in line with the principles set out in *Managing Public Money* available via: www.gov.uk/government/publications/managing-public-money
- the avoidance of waste and extravagance; and
- the efficient and effective use of all the resources in their charge.

9 As Accounting Officer you must:

- personally sign the accounts and, in doing, so accept personal responsibility for ensuring their proper form and content as prescribed by Monitor in accordance with the Act;
- comply with the financial requirements of the **NHS Provider Licence**;
- ensure that proper financial procedures are followed and that accounting records are maintained in a form prescribed for published accounts (so that they disclose with reasonable accuracy, at any time, the financial position of the NHS Foundation Trust);
- ensure that the resources for which you are responsible as Accounting Officer are properly and well managed and safeguarded, with independent and effective checks of cash balances in the hands of any official;
- ensure that assets for which you are responsible such as land, buildings or other property, including stores and equipment, are controlled and safeguarded with similar care, and with checks as appropriate;
- ensure that any protected property (or interest in) is not disposed of without the consent of Monitor;
- ensure that conflicts of interest are avoided, whether in the proceedings of the Board of Directors, **Council** of Governors or in the actions or advice of the NHS Foundation Trust's staff, including yourself; and
- ensure that, in the consideration of policy proposals relating to the expenditure for which you are responsible as Accounting Officer, all relevant financial considerations, including any issues of propriety, regularity or value for money, are taken into account, and brought to the attention of the Board of Directors.

10 An Accounting Officer should ensure that effective management systems appropriate for the achievement of the NHS foundation trust's objectives, including financial monitoring and control systems, have been put in place. An Accounting Officer should also ensure that managers at all levels:

- have a clear view of their objectives, and the means to assess and, wherever possible, measure outputs or performance in relation to those objectives;
- are assigned well-defined responsibilities for making the best use of resources (both those consumed by their own commands and any made available to organisations or individuals outside the NHS foundation trust), including a critical scrutiny of output and value for money; and
- have the information (particularly about costs), training and access to the expert advice which they need to exercise their responsibilities effectively.

11 Accounting Officers must make sure that their arrangements for delegation promote good management and that they are supported by the necessary staff with an appropriate balance of skills. Arrangements for internal audit should accord with the objectives, standards and practices set out in the *Public Sector Internal Audit Standards*.

Advice to the Board

- 12 An Accounting Officer has particular responsibility to see that appropriate advice is tendered to the Board of Directors and the **Council** of Governors on all matters of financial propriety and regularity and, more broadly, as to all considerations of prudent and economical administration, efficiency and effectiveness. Accounting Officers will need to determine how and in what terms such advice should be tendered, and whether in a particular case to make specific reference to their own duty as Accounting Officer to justify, to the Public Accounts Committee, transactions for which they are accountable.
- 13 The Board of Directors and the **Council** of Governors of an NHS foundation trust should act in accordance with the requirements of propriety or regularity. If the Board of Directors, **Council** of Governors or the Chairman is contemplating a course of action involving a transaction which you as Accounting Officer consider would infringe these requirements, however, you should set out in writing your objection to the proposal and the reasons for this objection. If the Board of Directors, **Council** of Governors or Chairman decides to proceed, you should seek a written instruction to take the action in question. You should also inform Monitor of the position, if possible before the decision is taken or in any event before the decision is implemented, so that Monitor, if it considers it appropriate, can intervene in accordance with its responsibilities under the Act. If the outcome is that you are overruled, the instruction must be complied with, but your objection and the instruction itself should be communicated without undue delay to the NHS foundation trust's external auditors and to Monitor. Provided that this procedure has been followed, the PAC can be expected to recognise that the Accounting Officer bears no personal responsibility for the transaction.
- 14 If a course of action is contemplated which raises an issue not of formal propriety or regularity but relating to your wider responsibilities for economy, efficiency and effectiveness, it is your duty to draw the relevant factors to the attention of the Board of Directors and the **Council** of Governors and to advise them in whatever way you deem appropriate. If your advice is overruled, and the proposal is one which as Accounting Officer you would not feel able to defend to the PAC as representing value for money, you should seek a written instruction before proceeding. Monitor should be informed of such an instruction, if possible before the decision is implemented. It will then be for Monitor to consider the matter, and decide whether or not to intervene.
- 15 If, because of the extreme urgency of the situation, there is no time to submit advice in writing in either of the eventualities referred to in paragraphs 13 and 14 before the decision is taken, you must ensure that, if the advice is overruled, both the advice and the instructions are recorded in writing immediately afterwards.

Appearance before the Committee of Public Accounts (PAC)

- 16 The C&AG may, under the National Audit Act 1983, carry out examinations into the economy, efficiency and effectiveness with which the NHS foundation trust has used its resources in discharging its functions. An Accounting Officer may expect to be called upon to appear before the PAC from time to time to give evidence on the reports arising from these examinations or reports following the annual certification audit, and to answer the PAC's questions concerning expenditure and receipts for which he or she is Accounting Officer. An Accounting Officer may be supported by one or two other senior officials who may, if necessary, assist in giving evidence.

- 17 An Accounting Officer will be expected to furnish the PAC with explanations of any indications of weakness in the matters covered by paragraphs 8 - 15 above, to which their attention has been drawn by the C&AG or about which they may wish to question the Accounting Officer.
- 18 In practice, an Accounting Officer will normally have delegated authority to others, but cannot on that account disclaim responsibility or dilute his or her accountability. Nor, by convention, does the incumbent Accounting Officer decline to answer questions where the events took place before taking up appointment: the PAC may be expected not to press the incumbent's personal responsibility in such circumstances.
- 19 The PAC has emphasised the importance it attaches to accuracy of evidence, and the responsibility of witnesses to ensure this, in order to ensure that relevant lines of enquiry may be pursued at its hearings. The Accounting Officer should ensure that he or she is adequately and accurately briefed on matters which are likely to arise at the hearing. The Accounting Officer may, however, ask the PAC for leave to supply information not within his or her immediate knowledge by means of a later note. Should it be discovered subsequently that the evidence provided to the PAC has contained errors, these should be made known to the PAC at the earliest possible moment.
- 20 In general, the rules and conventions governing appearances of officials before parliamentary committees apply to the PAC, including the general convention that officials do not disclose the advice given to the board. Nevertheless, in a case where the procedure described in paragraph 13 was used concerning a matter of propriety or regularity, the Accounting Officer's advice, and it's overruling by the board, would be disclosed to the PAC. In a case covered by paragraph 14, where the advice of an Accounting Officer has been overruled in a matter not of propriety or regularity but of prudent and economical administration, efficiency or effectiveness, the C&AG will have made clear in the report to the PAC that the Accounting Officer was overruled. The Accounting Officer should seek to avoid disclosing the advice given to the board, though subject to their agreement the Accounting Officer should be ready to explain the reasons for their decision.

Absence of an Accounting Officer

- 21 An Accounting Officer should ensure that he or she is generally available for consultation, and that in any temporary period of unavailability due to illness or other cause, or during the normal period of annual leave, there will be a senior officer in the NHS foundation trust who can act on his or her behalf if required.
- 22 If it becomes clear to the Board of Directors that an Accounting Officer is so incapacitated that he or she will be unable to discharge these responsibilities over a period of four weeks or more, the Board of Directors should appoint an acting Accounting Officer, usually the Director of Finance, pending the Accounting Officer's return. The same applies if, exceptionally, the Accounting Officer plans an absence of more than four weeks during which he or she cannot be contacted.
- 23 The PAC may be expected to postpone a hearing if the relevant Accounting Officer is temporarily indisposed. Where the Accounting Officer is unable by reason of incapacity or absence to sign the accounts in time for submission, the NHS foundation trust may submit unsigned copies pending the Accounting Officer's return.

If the Accounting Officer is unable to sign the accounts in time for printing, the acting Accounting Officer should sign instead.

Sources

This document is based on the guidance outlined in *Managing Public Money*, published in July 2013, available via: www.gov.uk/government/publications/managing-public-money