Hospitals Under Pressure
Holding foundation trust boards of directors to account
These Essential Briefs have been planned and written for foundation trust governors. They are designed to provide you with the essentials in key relevant areas to support you in your role as a governor.
Introduction

The ethos behind the establishment of foundation trusts is to ‘allow local people to have a say in how their local hospital is run’. A critical ingredient in the local accountability of hospitals is the degree to which the elected governors are able to exert appropriate influence on the management of that hospital.

More precisely, Monitor (the NHS regulator of foundation trusts) expects governors to: hold the board of directors collectively to account for the performance of the foundation trust... ensuring the board of directors acts so that the foundation trust does not breach its terms of authorisation.

At the time of writing (January 2010), 14 foundation trusts (more than 10 per cent of all trusts) have a regulatory ‘red’ rating for governance (ie, the regulator has a concern that the foundation trust is significantly breaching its terms of authorisation). Put another way, either patients are not receiving treatment as fast as they might, or the quality of the care provided is not as high as it should be, or the regulator has a concern about the way in which the hospital is being run.

In all these circumstances governors have a legitimate strategic role in ensuring the hospital delivers the levels of performance (with regard to both access and quality of care) required by the community and that the hospital complies with its terms of authorisation.

This Essential Brief sets out the practical ways in which the governors of a foundation trust can collectively hold the board of directors to account. The first section deals with holding the chair of the board to account.
The Chair’s Appraisal

The tone, ethos and aspirations of any organisation are defined by those who lead it. The characters of and relationship between the chair and chief executive of any board are therefore of fundamental importance. Governors have absolute power over the performance assessment of the chair.

The annual performance review of the chair is therefore a critical first step in holding the board of directors to account. What should governors be looking for in the robust performance assessment of a chair?

First, governors should ensure that the members of the committee (eg, Nominations Committee) responsible for the annual review of the chair’s performance are independent and will not be influenced by existing relationships. Second, governors should set robust criteria against which they will assess their chair’s performance.

It would be all too easy for governors to set the criteria around a chair’s ability and skills in managing governor meetings, interaction with the governors, and outward-facing approach to the members of the hospital. These attributes are clearly relevant, but more important might be those skills associated with the direction of the board of directors (particularly with regard to strategic focus), credibility with regulators, and leadership of the hospital to achieve its strategic objectives. It is these skills that are paramount in delivering services to patients.

Governors must also decide who is going to support them in their annual assessment of the chair and the setting of the criteria. The senior independent director (SID)(see next section) should lead in the actual appraisal and convey the views of the executive and non-executive directors on the performance of the chair (ensuring a rigorous and documented process) Governors might also consider
what role the Lead Governor might take in conveying the views of the governors in the process.

It would also be reasonable for governors to be supported by the trust secretary and Human Resources Director, and perhaps also to consider retaining external assessors. Whatever combination of support the governors rely on they must take the lead in the process and ensure it is independent and robust. Ensuring the correct person is leading the board, by effective appraisal of the chair’s leadership, will contribute to the board of directors taking responsibility for ensuring the trust complies with its terms of authorisation and is accountable to the community.

**Senior Independent Director and the Non-Executive Directors (NEDs)**

The key function for an effective SID is to step in if the normal channels of communication between the chair and the governors (or directors) breaks down or if it would be inappropriate for the chair to be directly involved, for instance if there are concerns about his or her effectiveness or independence. The SID should have been appointed by the board of directors on the basis that he/she has the respect of the entire board, will demonstrate independence and will remain independent under significant pressure. In view of the importance of the role, governors should express any concerns they may have about the individual being considered for the appointment.

The SID must have regular contact with governors, and governors would be wise to establish how that relationship is developed.

The ability to appoint (and remove) the NEDs of the board is an important role for governors. Governors should take the lead in approving the form of appraisal that the chair will conduct with the NEDs and the process for agreeing the results of that process.
In order to effectively influence the board of directors governors’ working relationships with the NEDs are important. They should maintain an overview of the collective capability of this group, particularly of their ability to constructively challenge decision-making within the board and of their understanding of the underlying business of the hospital.

Governors should take an interest in any unexpected changes in the board, particularly in respect of the NEDs. When a NED resigns, governors should satisfy themselves that the resignation does not reflect any concerns about governance, if necessary arranging to meet formally with the resigning NED. Governors should also satisfy themselves about the reasons for the chairman of the audit committee and/or the SID stepping down from their positions.

In most cases NEDs rightly see their role in the context of board decision-making (particularly with the very limited commitment they have made – generally 2.5 days per month). If governors require NEDs to have a more substantive role with them, they should build this – along with the necessary time they think it requires – into their job description.

Governors may wish to press for more regular and more informal meetings with NEDs and the SID to ensure effective influence over the board. Quarterly, structured meetings are unlikely to allow time for issues and concerns to be explored.
Influencing Governor Meeting Agendas

Governors also need to ensure that the meetings cycle provides them with the opportunity to challenge performance of the hospital (this will require a discussion on historical performance and the board’s view of performance going forward) and whether the strategic objectives in the business plan will be met.

The area of performance creates potential for the role of the board of directors and governor to be confused; a careful judgement needs to be made as to the level of information governors seek.

The chair of any foundation trust board of directors is also chair of the governors, and the governors are required to hold the chair and the board of directors to account for performance. This creates a potential conflict of interest and, although all chairs try to balance this conflict, governors need to ensure they have the opportunity to air concerns in governors’ meetings.

The chair (and trust secretary) will usually manage the agendas of meetings. Unless the chair is very open and encouraging, governors can feel reluctant to put forward agenda items, particularly if they feel the item is unlikely to be well-received. Lead Governors may be able to play an important role here by working with the Chair and Trust Secretary to set Council of Governors’ meetings agendas.

Alternative routes for ensuring concerns are discussed at governors’ meetings might include channeling ideas through the chairs of working groups or through the Lead Governor if one has been appointed. One test of how effective the processes are is: what percentage of governor meeting agenda items, in a year, are driven by the governors?
**Compliance with Authorisation**

Governors need answers to the following questions: has the hospital breached its terms of authorisation over the past three months; and is it likely it will breach the terms over the next year?

If the foundation trust has breached its authorisation, or the directors believe it will do so in future, the governors should not delve into the detail of the data – that is the role of management and the board of directors – but they must make a judgment as to whether the leadership and composition of the board of directors are sufficient to bring the hospital back on track. To a large extent that decision will be based on how quickly any breach is likely to be resolved and on how well they believe the board of directors will manage future risk.

So what information do governors need to make their judgement? It could be a simple, one-page document looking something like this:

<table>
<thead>
<tr>
<th></th>
<th>Last Quarter</th>
<th>Next Quarter</th>
<th>One Year On</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Terms of Authorisation</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>Financial Risk Rating</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>4</td>
<td>2</td>
<td></td>
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<tr>
<td><strong>Governance</strong></td>
<td></td>
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<tr>
<td>1 Quarter Target Breach</td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td><strong>Mandatory Services</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>compliant – no concerns</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>not achieving in quarter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>significant breach</td>
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This example would tell governors that all has been well over the last quarter - that is, the foundation trust is complying with its authorisation, has a good financial position (highest Monitor rating of 5) and no governance concerns are outstanding (eg, national targets are all being achieved).

However, future performance and financial indicators are looking negative, with poor financial risk rating and continued breach of at least one national target. In fact, if the board of directors’ projections are correct, there is a serious probability that Monitor will intervene. Although simple, and high level, this kind of reporting allows governors to focus on the key issues.

It should be noted that, as well as complying with Monitor’s terms of authorisation, foundation trusts must also comply with the new regulatory structure being established by the Care Quality Commission. Although this is a ‘developing regime,’ when it is fully established governors will need a high-level overview on compliance.
Achieving Business Plan Objectives

Governors also need to check whether the objectives in the foundation trust’s strategic plan are being met. Governors will have been involved in discussions with the board of directors about the strategy of the hospital (or a sub-group of governors may have been involved in a strategy working group).

As with the hospital’s terms of authorisation report, a simple one-page table is sufficient (see below).

This kind of reporting will allow governors to challenge slippage on projects that may be of critical importance to the community but less of a priority for the board of directors. Postponing capital development projects or not extending services can be a relatively easy option for boards of directors seeking to mitigate financial risks.

Strategic Objective (s) from Business Plan

<table>
<thead>
<tr>
<th>Strategic Objective(s) from Business Plan</th>
<th>Progress to Date</th>
<th>Completion (On Time/Within Budget)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Renovation of Paediatric Department</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- [ ] development on target (time and budget)
- [ ] behind plan (time and/or budget)
- [ ] will not achieve (time and/or budget)

In assessing whether projects are on budget and/or on time, the governors will be relying on the judgement of the board of directors. If the board of directors’ judgement is regularly incorrect (or objectives are set but routinely not achieved) then the question of capacity and capability of the board (in particular the skills of the chair and non-executive directors) should be considered by the governors.
The Future

The independence, and long-term survival, of foundation trusts may depend on the degree to which local people can hold the boards to account for their performance in delivering health care to the community they serve. The time and emotional commitment required by governors to facilitate this can not be underestimated, nor can the resolve that will often be required to challenge the natural dominance of boards.

As the economic climate in the public sector continues to deteriorate in 2010/11 with tight financial settlements, higher demand for services and ever-increasing expectations of patients, the ultimate test of the effectiveness of the foundation trust governance structure (and the role of governors) may well be the number of times Monitor is forced to use its statutory powers of intervention – for example, by removing the chair of a trust.

With hindsight, 2009 may not have been a good year for the tenure of foundation trust chairs: the chair of Colchester University Hospital was formally removed and several other chairs have resigned.

We can never be sure about the facts of individual cases, but perhaps if the governors of those foundation trusts had been encouraged and supported differently, or more robustly, then the outcome might have been different.

It is hoped that this short briefing will help governors in the challenging role of holding boards of directors to account and perhaps reduce the number of formal interventions required by Monitor.