Role of the governor in foundation trusts
These Essential Briefs have been researched and written especially for foundation trust governors. They provide governors with the essential information they need to fulfil their roles. To see the full range of titles in the series, visit www.ftga.org.uk
Setting the scene

Since the first edition of this Essential Brief, the Health and Social Care Act 2012 has come into force. This second edition is therefore an update of our previous guidance.

The Act 2012 represents the most extensive restructure of the NHS to date. This restructure impacts noticeably on all parts of NHS and governors are no different. Indeed, the Act 2012 is significant for governors because it reinforces the scope of their roles. From now on, they must do more to hold their boards of directors to account.

The Act 2012 describes the duties that the council of governors have to fulfil by law. You can view it online at http://www.legislation.gov.uk/ukpga/2012/7/contents.

The FTGA has been in close consultation with Monitor (the foundation trust regulator) since plans to update the Act were announced in 2010. This has enabled us to get a clear idea of the new roles and responsibilities incumbent upon governors. Accordingly, the purpose of this Essential Brief is to clarify the role of foundation trust governors in the light of the Act 2012. We shall explore both the existing and newer duties so that you can understand the increasing scope of your responsibilities, whatever your level of experience.

We will also invite you to consider how you will prepare yourself for your role, using a series of tips and questions to help you reflect on some practical measures you can take in order to be an effective governor.
The role of governor pre-2012

When it was originally created, the role of the foundation trust governor broadly encompassed two areas:

- Holding the board of directors to account for the performance of the trust, including their role in relation to audit, non-executive and chair appointments and any activities they might undertake to scrutinise how the trust performs.
- Representing the members’ interests and bringing these to bear on strategy decisions.

In order to fulfil these duties, governors were given the following responsibilities:

- To appoint and remove the chairman and non-executive directors (NEDs).
- To decide the remuneration, allowances and terms and conditions of office of the NEDs and chair.
- To approve the appointment of the chief executive.
- To appoint and remove the auditor.

In turn, boards were given clear directions in relation to governors:

- To present to the council of governors at a general meeting the annual accounts, any report of the auditor on them and the annual report.
- To have regard for the views of the council of governors in preparing its forward plan.
How has the Health and Social Care Act 2012 changed the role of governor?

The Act 2012 places great emphasis on local responsibility and accountability. Foundation trust governors have an integral role to play here and accordingly they have been given new powers:

- Making the final decision on any mergers, acquisitions, separations and dissolutions planned by the trust.
- Approving (or not) increases of more than five per cent a year to the trust’s private income.
- Holding the NEDs individually and collectively to account for the trust’s performance.

What else does the Act 2012 say?

The Act 2012 contains specific guidance regarding governors’ extra powers in addition to the above. Governors have more influence than ever before, especially in relation to financial matters:

- Significant transactions must be defined in the trust’s constitution and approved by more than half of the members of the council of governors voting.
- Governors must be satisfied that the earning of private patient income will not significantly interfere with their trust’s principal purpose of the performance of its functions (namely, NHS work) and must notify the board of their decision on this.
- Where an amendment is proposed to the constitution in relation to the powers or duties of the council, at least one governor must attend the next annual members’ meeting and present the proposal. The trust must also give its members the chance to vote on such amendments to the constitution.
Governors may require one or more of the directors to attend a meeting to obtain information about the trust’s performance of its functions or the directors’ performance of their duties.

These additions may seem daunting. However, the Act does place a number of requirements on boards of directors to empower governors. These are:

- Holding open board meetings.
- Before holding a board meeting, the board must send a copy of the agenda to the council of governors.
- As soon as practicable after holding a meeting, the board must send a copy of the minutes to the council of governors.
- The trust must ensure that governors are equipped with the skills and knowledge they require to undertake their role.

Without these stipulations in place, governors might find it difficult to perform their roles effectively. If your board is failing to fulfil one or more of these obligations, you can hold them to account immediately.

**The significance of open board meetings**

The FTGA successfully lobbied for open board meetings to be placed into the Act 2012. Boards are now required by law to hold open meetings.

Open board meetings help governors to perform their role because they enable them to see the directors at work and, in particular, to gauge the effectiveness of the NEDs. Trusts vary in their approach to open board meetings; some hold fully open meetings whilst some hold them in two parts – one open, one closed. Additionally, there are some trusts that do not plan to hold open board meetings before the April 2013 date on which this provision of the Act comes into force.
If your trust already holds open board meetings, attend as many of them as possible. They will give you access to vital information and attending them may also help you to build relationships with your directors and NEDs. If your trust is yet to instigate open board meetings, then hold them to account over it immediately.

**Accountability and representation: breaking down the governor’s role**

The Act 2012 describes the function of the council of governors thus:

*The general duties of the council of governors are –*

(a) to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and

(b) to represent the interests of the members of the corporation as a whole and the interests of the public.

These two functions carry with them some basic principles. They are outlined here and include questions to help you think about how your trust carries out these different duties. The range of different ways that governors carry out these functions is based on evidence from around the FTGA.

**Holding NEDs individually and collectively to account**

The chain of accountability within foundation trusts remains:
As you can see, the board of directors is held to account by the NEDs. They must scrutinise the board’s performance and decisions. Therefore, the role of the governor – holding the NEDs to account – must involve two main tasks:

1. Assessing how well (or not) the NEDs are scrutinising the board.

2. Scrutinising the performance of the board directly.

Clearly, you would not be able to judge how well the NEDs were holding the board to account unless you knew objectively how the board was performing. For example, if you knew that certain targets were not being met, and you could see that one or more NEDs were failing to challenge the board, you would understand that the NEDs were not fulfilling their duty. You could then fulfil yours by holding them to account over their lack of action.

You could hold the board to account by challenging them over their results in council meetings, in written communication or, if you had serious misgivings that the terms of authorisation were being breached or were likely to be breached, by contacting Monitor for help and intervention.

Certain documents and statistics will help you to scrutinise the board’s performance. Together, they will help to paint a full picture of your FT’s risks and results. The following lists will give you an idea of what to look at.

**Statistics in your FT**

Board assurance framework (BAF)
Annual governance statement
Risk registers (if your FT does not have a comprehensive approach to its BAF)
Serious incident reports
Mortality rates
Deaths in PICU (Paediatric ITU) and other PICU-specific performance aspects
Safety thermometer tool – pressure ulcers, catheter UTIs, falls and VTEs
PALs contacts
Patient Experience Database
Tier 1 Extreme Risks
Emergency transfers
Cancelled operations
Complaints, compliments and concerns

**Documents produced by your FT**
Performance requirements within contracts with commissioners
Quality accounts
Business plan
Strategy

**Documents produced by other organisations**
Monitor rating of your FT
Monitor compliance requirements
CQC registration requirements
Transformation (the Trust CRES saving reorganisation)

Once you have read these documents, you will find that asking simple questions is often the best way to understanding why your FT is getting these results. These questions might include:

Why is the trust doing it this way?
Is there a better way?
What are the risks?
Why are we doing it now?
In order to hold your NEDs to account, you also need a thorough understanding of their activities. A key phrase in the stipulation regarding NEDs is “individually and collectively”. The Act 2012 is clear that governors must examine the performance of individual NEDs, and not just the NEDs together as a group. In order to do this, it can be very helpful to build relationships with NEDs to understand exactly how they work and what they do. This relationship-building exercise is an ongoing one which is certainly not limited to sitting in board meetings together.

There are several ways in which you can build effective working relationships with your NEDs. Create opportunities for joint training and learning events: suggest topics that would be of use and interest. Investigate the work of the directors together; joint hospital visits are a great way to do this. You could also hold roundtables where governors and NEDs can share concerns and ideas. Your chair should be able to help you organise all of this.

Remember that good working relationships help to build transparency and trust – two key factors for success in the governors/NEDs/directors dynamic. If you need help building these relationships, ask your trust
chair for help. As chair of the governors, directors and trust overall, they are responsible for facilitating cohesion and understanding between the directors and those who hold them to account.

Representing the interests of the members of the corporation as a whole and the interests of the public

The second half of the governor’s role is a representative one. This representative capacity encompasses two strands:

- Representing the interests of NHS foundation trust members and the public.
- Relaying information about the trust, its vision and its performance to their members and the public.

In order to help you do this, there are some key activities that you could undertake.

Be aware of your trust’s central strategic principles and issues. Have you seen the trust’s strategy document? Is the strategy already formed? What could be done to make conversations with the board more productive?

Understand the local health economy. This could dictate the future viability of your foundation trust.

Understand the societal context in which your trust operates. This is something that the Health and Wellbeing Boards are strongly focusing on: they are keen to highlight the links between what a local population looks like and how this impacts on local health services. What demographic (age or wealth, for example) does your trust serve? What are the main issues that could arise as a result?

Contributing to the strategy committee, if there is one. Can you find ways to feed into the project and planning groups by conducting feasibility studies, focus groups or workshops with members?
Communicating with members via annual membership meetings and newsletters.

When to call for help

Despite implementing the above activities, your council may still be unsure as to whether your FT has failed or is failing to act in accordance with its constitution. In this instance, you can contact Monitor. They will put you in touch with a governor panel (expected to be in place by April 2013). This panel will operate independently of Monitor and will be able to answer questions on the matter. However, your council must first approve the referral (approval meaning that at least half of the governors voting agree with it). How this panel will be constituted is currently being worked out and the FTGA is involved in these discussions.

How should governors view their role regarding the FT’s members?

Governors are elected by members and as a result can feel that they are there to solve individual cases that are brought to their attention by staff, patients or members of the public. Indeed, they sometimes find it difficult to understand their relationship to members.

Whilst they have been voted in by members they do not have a democratically accountable relationship to them in the way that a local MP might. Governors are not responsible for making representations on behalf of individuals or groups of members and going back to them with a result in the same way that a local politician does.

Governors’ responsibilities are to ask if the systems are in place for particular issues to be taken forward through the proper routes, rather than attempting to solve the individual issues themselves. However, patients’ experiences can provide a useful pointer to issues that the trust needs to address.
Critical friendship with care and confidence

FT governors are known informally as ‘critical friends’. This phrase sums up their role – to give the trust their support, whilst keeping a watchful eye over its activities. The aim of being critical is to help the trust do the best it can for its members and the wider community. Whether you are a public, staff or patient governor, you are there to examine and question the work of your NEDs and directors and you should feel confident in doing so.

In addition, it is important to note that the statutory powers and responsibilities given to governors only provide a framework to help them serve the interests of their community and the wider public. Governors need to be proactive and engaged with their roles in order to bring these powers and responsibilities to life. Helpful activities here to consider include:

- Building strong relationships within your trust.
- Serving on committees.
- Putting regular and well-thought-out questions and recommendations to your board.
- Listening to service users and collecting the experiences of patients.

For more inspiration on how governors can make a difference to the lives of patients, please refer to the FTGA research paper Making a Difference (2010). This paper demonstrates what governors across the UK have learned during their tenure and illustrates how they are making a difference in their organisations. It also details best practice which governors can use in their own trusts.

To help build this confidence amongst you and your fellow governors, consider the following:

**Flexibility.** Considering how much the role has developed since its inception, it is entirely likely that even more changes will be made to
the role in the future. Adopting a flexible attitude will help you to take on new challenges to serve your trust to the best of your abilities.

**Team working.** A good council of governors recognises each governor’s individual skills and knowledge and makes the best of them in order to function effectively as a group. Knowing that your council works well together can instil a sense of confidence, especially if there are difficult conversations to be had with your board. Have you identified individual governor capabilities? What can you do to develop a greater sense of teamwork in the governing body? Do you ever meet just as a governing body?

**Training.** The Act 2012 stipulates that FTs should give governors the training and skills they need in order to perform their roles. If your trust is not providing this, they should be, so ask your trust chair for help.

The FTGA runs a full programme of development and networking events nationally and also provides support and information via our publications and website. Make sure that you register on our website (www.ftga.org.uk) to learn about all the different ways in which we can give you the information you need to perform your role.

In addition, the Department of Health has recently awarded the Foundation Trust Network (FTN) a contract to provide a national training programme for governors. The FTGA is currently reviewing this programme.