Chapter 10: Governance – how NHS organisations are structured and run

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> ## ◎ Overview
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> This chapter's focus is governance, a subject that has received considerable attention over the years following spectacular failings across all sectors of the economy, including the 2008 banking crisis and the much-publicised failings at Mid Staffordshire NHS Foundation Trust. These (and more recent) crises have demonstrated just how important good governance is to the wellbeing of an organisation and the safety of patients. It is clear that it encompasses everything that an organisation does, not just its administrative and support functions, but includes how all elements of the organisation interlink. In the NHS this means that effective governance is as much of a concern to a nurse or consultant as it is to a director, accountant or manager.
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> It is now widely agreed that delivering high quality health and social care requires collaboration between organisations. As set out in the *NHS long-term plan*, delivering this way of working requires 'strong governance and accountability mechanisms in place for systems to ensure that the NHS as a whole can secure the best value from its combined resources'[163]. The critical governance issue for systems is how to make decisions that are in the best interests of the population that may however have a negative impact on individual organisations. (See chapter 4 for more on system working).
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> Governance is a huge subject in its own right; this chapter focuses on key aspects relating to NHS finance. If you want to find out more, the HFMA produces an NHS corporate governance map[164] with links to key tools and guidance.

10.1 What is governance?

The terms 'governance' and 'corporate governance' are now interchangeable, but it was the use of corporate governance as a phrase in the 1992 Cadbury Committee Report[165] that initiated widespread debate in this area. Corporate governance was defined in that report as 'the system by which companies are directed and controlled' and its focus was on how companies were run, structured, led and held to account. This report also identified the three fundamental principles of good governance as openness, integrity, and accountability.

10.2 Governance in the NHS

The NHS has been well aware of the importance of governance for many years, with a wide range of separate regulatory frameworks and ethical codes in operation for the different professions working in NHS organisations. The challenge has been to bring together the practices and information systems of these different disciplines in such a way that they form an integrated and effective organisation--wide governance structure.

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[163] NHS England and NHS Improvement, *The NHS Long-Term Plan,* January 2019
[164] HFMA, *NHS corporate governance map,* updated October 2023
[165] Institute of Chartered Accountants in England and Wales, *The financial aspects of corporate governance*, December 1992

The importance of having an integrated approach to governance (i.e., covering all aspects of governance including financial, clinical, and organisational) along with high standards and an open culture has been heightened by failures that have dented public confidence in the NHS and raised questions over how NHS organisations are run.

Examples of governance failures within the NHS

In 2013 the Francis report into Mid-Staffordshire NHS Foundation Trust[166] found the root cause of hundreds of deaths due to poor care and negligence to be the Trust's (and the Trust board's) focus on achieving NHS foundation trust status, which took its attention away from effective oversight.

In 2015 the Kirkup review of maternity services at Morecombe Bay NHS Foundation Trust[167] included concern that deliberate attempts had been made to cover failings, and that dysfunctional relationships within and between NHS organisations were at the heart of this.

In 2020 the public inquiry into mental health services in Tayside[168] noted that 'governance and leadership lie at the heart of the independent inquiry's final report because good governance and leadership are central to the effective delivery of mental health services in Tayside'.

In 2021 the Comptroller and Auditor General's (C&AG) report[169] on the Department of Health and Social Care's (DHSC) annual report and accounts 2020/21 referred to financial reporting and governance issues at University Hospitals of Leicester NHS Trust (UHL). The local auditor noted that adjustments appeared to have been made in the 2018/19 financial statements at the request of UHL's management to achieve a certain outcome rather than to represent accurately the economic reality of transactions into which UHL entered. The auditor's findings related to accounting judgements and manual intervention associated with the previous senior leadership regime at UHL and continued failures in the management and control of accounting records. The C&AG noted that the position at UHL was unprecedented - an NHS trust had failed to comply with the Secretary of State's direction to prepare true and fair accounts and to maintain appropriate accounting records. Moreover, the restatement of the 2018/19 financial statements reflected both financial control failures and a series of actions taken by UHL in the preparation of those accounts that did not reflect the actual substance of the financial transactions entered by the Trust.

In 2022 the independent review into maternity services at The Shrewsbury and Telford Hospital NHS Trust[170] noted that 'the Trust leadership team up to Board level to be in a constant state of churn and change. Therefore it failed to foster a positive environment to support and encourage service improvement at all levels. In addition the Trust Board did not have oversight, or a full understanding of issues and concerns within the maternity service, resulting in a lack of strategic direction and effective change, nor the development of accountable implementation plans.'

Clear linkages were drawn between the scandals and the governance failings that allowed them to continue uncorrected. Investigations into governance lapses have also underlined the need for an open and questioning culture and governance policies, procedures and structures that are comprehensive and work in practice, not just on paper.

These (and other) incidents have driven home to boards just how wide ranging their responsibilities are and emphasised how important it is to see governance arrangements relating to clinical and quality spheres as an integral part of an organisation's overall approach, rather than the preserve of

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166 UK Government, *Report of the Mid Staffordshire NHS Foundation Trust public inquiry*, February 2013
167 UK Government, *The report of the Morecambe Bay investigation*, March 2015
168 Independent Inquiry into Mental Health Services in Tayside, *Final report of the independent inquiry into mental health services in Tayside,* February 2020
169 National Audit Office, *The Department of Health and Social Care annual report and accounts 2019-2020,* January 2021
170 Department of Health and Social Care, *Final report of the Ockenden review,* March 2022

clinicians. The National Quality Board's report[171] made this clear when it stated that 'final and definitive responsibility for improvements, successful delivery, and equally failures, in the quality of care' lie with the provider organisation's board and leaders.

By now it should be clear why an effective and integrated approach to governance is so important and equally obvious that if an NHS organisation gets it wrong it can have a disastrous impact on patients and undermine public confidence in the service as a whole. But what does this mean NHS organisations need to do in practice?

Lessons from these governance lapses reinforce the importance of:

- an effective board that blends a strategic focus with a system of oversight and scrutiny, providing effective independent challenge of management

- the importance of an effective audit (and risk assurance) committee

- clarity of decision-making and accountability throughout the organisation

- competent and capable senior management

- a culture of openness, both in terms of communication from the top downwards of vision and values as well as communication upwards about areas of concern

- a focus on ensuring that business as usual is operating as it should, including core clinical services and corporate and administrative management

- values and ethics that are clearly articulated and demonstrated through leadership

- the widest possible involvement of stakeholders and understanding of their needs and interests.

NHS bodies must also recognise that governance is as much about behaviour, values and attitudes as about structures, systems, processes and controls. There is no point having a comprehensive governance framework if no-one is committed to it or understands why it exists and what it is designed to achieve.

Despite previous reports into failures the issue remains significant, and in 2023 an inquiry was announced into the circumstances around the crimes committed by Lucy Letby. The statutory inquiry will investigate the wider circumstances around what happened at the Countess of Chester Hospital NHS Foundation Trust and will include the handling of concerns and governance. It will look at what actions were taken by regulators and the wider NHS[172].

10.3 Elements of governance

Effective governance arrangements should underpin all that an organisation does, but it is helpful to break it down across three key elements – we will look at each in turn with a focus on financial aspects:

- culture and values (the people issues) - for example, an organisation's leadership style and tone, openness and adherence to relevant legislation and codes of practice

- structures and processes - for example, statutory and regulatory requirements, board and committee structures and internal policies and procedures

- control frameworks - for example, assurance, risk management, internal, external and clinical audit.

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[171] Department of Health and Social Care, *Quality governance in the NHS – a guide for provider boards*, March 2011
[172] Department of Health and Social Care, *Legal Powers given to Lucy Letby inquiry*, August 2023

10.4 Organisational culture and values

Every organisation develops its own unique culture and values but to be effective, it is essential that there is 'a system of shared values and beliefs about what is important, what behaviours are appropriate and about feelings and relationships internally and externally'[173]. If everyone within an organisation is to 'buy in' to these shared values they must be meaningful, make sense and be realistic. There is no point having a carefully crafted statement of values if it bears no relation to how things actually feel on the front line - for example, it would be a mistake for an organisation to claim that it has a 'no blame culture' if this is not borne out in practice.

Developments in partnership working, and the establishment of Integrated Care Boards (ICBs) means that governance frameworks must also work in a manner that supports effective collaboration. Different organisational cultures and values can add significantly to the complexity in this area. NHS England issued *Guidance on good governance and collaboration*[174] regarding collaborative working and effective governance.

Principles of public life

Everyone involved in the public sector brings their own personality, experience, and attitudes with them. However, the public provides the resources for which they are responsible and, as a result, certain ethical standards and values are expected of them – these standards are known as the *Seven principles of public life*[175] and were set out by the Nolan Committee in 1995.

The Nolan principles of public life

Selflessness – holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity – holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity – in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability – holders of public office are accountable for their decisions and actions to the public and must submit to whatever scrutiny is appropriate to their office.

Openness – holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

Honesty – holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership – holders of public office should promote and support these principles by leadership and example.

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[173] Purcell, J., Hutchinson, S., Swart, J., Kinnie, N. & Rayton, B., 2004, *Vision and Values: Organisational Culture and Values as a Source of Competitive Advantage.* Chartered Institute of Personnel and Development, London, UK

[174] NHS England, *Guidance on good governance and collaboration,* October 2022

[175] Committee on Standards in Public Life, *The seven principles of public life*, May 1995

The Treasury's guidance document, *Managing public money*[176] sets out the standards that it expects all public services to deliver, which overlap with the Nolan principles:

- honesty
- accountability
- integrity
- reliability.

- transparency
- impartiality
- accuracy

- fairness
- objectivity
- openness

The Treasury adds that organisations should carry these standards out 'in the spirit of, as well as to the letter of, the law in the public interest, to high ethical standards, achieving value for money.'

The introduction of a statutory duty of candour is a direct response to the recommendation made in the Francis inquiry report, that stressed its importance alongside openness and transparency.

Openness, transparency and candour

Openness – enabling concerns and complaints to be raised freely without fear and questions asked to be answered.

Transparency – allowing information about the truth about performance and outcomes to be shared with staff, patients, the public and regulators.

Candour – any patient harmed by the provision of a healthcare service is informed of the fact and an appropriate remedy agreed, regardless of whether a complaint has been made or a question asked about it.

Together, the Nolan principles, the Treasury standards and the recommendations set out in the Francis inquiry report provide a blueprint for the underlying culture and values of any public sector organisation.

Leadership

Effective leadership is also important. The *Good governance standard for public services*[177] recognises this when it states that 'good governance flows from a shared ethos or culture' and that it is 'the governing body that should take the lead in establishing and promoting values for the organisation and its staff.' In other words, the culture and values of an organisation are set from the top. In the context of the NHS this means that the behaviour, approach and leadership style of the board and senior management are critical in establishing an organisation's tone, 'feel' and direction.

NHS Constitution

The *NHS constitution*[178] further emphasises the importance of having clear (and consistently applied) principles underpinning all that the NHS does. All providers and commissioners of NHS care in England have a statutory duty to have regard to the *NHS constitution* in all their decisions and actions.

Of particular note in governance terms are the principles and values set out in the Constitution as these must underpin everything that an organisation does.

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[176] HM Treasury, *Managing Public Money*, May 2023
[177] Joseph Rowntree Foundation*, Good governance standard for public services,* 2005
[178] Department of Health and Social Care, *NHS constitution for England,* updated August 2023

Principles

- the NHS provides a comprehensive service, available to all

- access to NHS services is based on clinical need, not an individual's ability to pay

- the NHS aspires to the highest standards of excellence and professionalism

- the patient will be at the heart of everything the NHS does

- the NHS works across organisational boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population

- the NHS is committed to providing best value for taxpayers' money and the most effective, fair and sustainable use of finite resources

- the NHS is accountable to the public, communities and patients that it serves.

Values

- working together for patients

- respect and dignity

- commitment to quality of care

- compassion

- improving lives

- everyone counts.

The *Francis inquiry report* recognised the importance of the Constitution when it stated that:

- it 'should be the first reference point for all NHS patients and staff and should set out the system's common values, as well as the respective rights, legitimate expectations and obligations of patients.' (recommendation 3)

- its core values 'should be given priority of place and the overriding value should be that patients are put first and everything done by the NHS and everyone associated with it should be informed by this ethos'. (recommendation 4)

Legislation

There are two Acts of Parliament that are worthy of note here as they both have links to an organisation's culture:

- the *Freedom of Information Act 2000*[179] means that NHS bodies are required to answer questions from members of the public and make information available to them. In addition, the government has introduced requirements in relation to transparency which requires the publication of items of spend over £25,000[180].

- the *Bribery Act 2010*[181] applies to both organisations and individuals and means that NHS bodies must ensure that they have in place adequate procedures to prevent bribery taking place. If they fail to do this, organisations can be prosecuted for the failure to prevent a bribe being paid on the organisation's behalf - for example, when placing a contract for a major service or investment.

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[179] UK Parliament, *Freedom of Information Act 2000*
[180] HM Treasury, *Guidance for publishing spend over £25,000*, Updated November 2017
[181] UK Parliament, *Bribery Act 2010*

Codes of practice

Since the early 1990s, several codes of practice[182] have been issued to provide practical guidance on behavioural aspects of governance. For the most part, the content of these codes has been incorporated into legislation or tailored guidance but the key messages that were set out in the *Code of conduct: code of accountability in the NHS*[183] are worth repeating – namely that board members must adhere to three crucial public sector values that are at the heart of the NHS:

- accountability – everything done by those who work in the NHS must be able to stand the test of Parliamentary scrutiny, public judgements on propriety and professional codes of conduct

- probity – there should be an absolute standard of honesty in dealing with the assets of the NHS: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties

- openness – there should be sufficient transparency about NHS activities to promote confidence between the NHS organisation and its staff, patients, and the public.

Each ICB[184] has a constitution setting out the board membership and governance arrangements for the organisation. This requires that 'The ICB will, at all times, observe generally accepted principles of good governance. This includes the Seven Principles of Public Life (the Nolan Principles) and any governance guidance issued by NHS England.'

NHS trust and ICB board members are expected to follow the *Standards for Members of NHS Boards and Governing Bodies in England*[185] issued by the Professional Standards Authority. Although issued prior to the establishment of ICBs, the principles remain valid. The standards cover personal behaviour, technical competence, and business practices.

The Financial Reporting Council *Guidance on board effectiveness*[186] identifies the following signs of a possible culture problem:

- silo thinking

- dominant chief executive

- leadership arrogance

- pressure to meet the numbers/ overambitious targets

- lack of access to information

- low levels of meaningful engagement between leadership and employees

- lack of openness to challenge

- tolerance of regulatory or code of ethics breaches

- short-term focus

- misaligned incentives.

The Code of governance for NHS provider trusts[187] provides a framework for corporate governance within NHS provider trusts. He code identifies three key points:

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[182] Including, the *Code of conduct: code of accountability in the NHS* (1994) and the *Code of conduct for NHS managers* (2002)
[183] Department of Health, *Code of conduct: code of accountability in the NHS*, updated July 2004
[184] NHS England, Integrated care systems: guidance, June 2023
[185] Professional Standards Authority, *Standards for members of NHS boards and clinical commissioning group governing bodies in England*, November 2013
[186] Financial Reporting Council, *Guidance on board effectiveness*, July 2018
[187] NHSE, *Code of governance for provider trusts,* February 2023

- Corporate governance is the means by which boards lead and direct their organisations ensuring effective decision making so that decision-making and risk management is effective, and that the correct outcomes are delivered.

- For the NHS this will include: delivery of high quality services, a caring and compassionate environment and working in collaboration.

- The importance of identifying and implementing best practice.

10.5 Structures and processes

Organisational structures

The government (via the Secretary of State, the Department of Health and Social Care (DHSC) and its arm's length bodies (ALBs)) sets the structural arrangements that must be followed for the 'top' management and leadership structures of NHS organisations.

Although these structures vary according to the type of organisation, two basic principles apply to all – each must have its own governing body (the board) and a designated 'accountable' (or 'accounting') officer.

In addition, FTs have a council of governors to represent local interests and which 'binds a trust to its patients, service users, staff, and stakeholders'[188]. The council's key role is to 'hold the non-executive directors, individually and collectively, to account for the performance of the board of directors and to represent the interests of the FT's members and of the public'. Governors are also expected to act in the best interests of the FT and are responsible for sharing information about key decisions with their membership community.

The purpose of the board

The board is responsible for the strategies and actions of the organisation and is accountable to its members (in the case of FTs), the public and, ultimately, to Parliament. The board also monitors the achievement of the organisation's objectives (and looks for potential problems and risks that might prevent them from being achieved) and receives assurances that things are working as they should.

Given its status and role, there is a range of responsibilities and decisions that the board cannot delegate. These are referred to as being 'reserved to the board'.

Examples of activities reserved to the board

- financial stewardship responsibilities - for example, adopting the annual report and accounts that all NHS bodies are required to produce

- determining the organisation's strategy and policies and setting its strategic direction

- appointing senior executives

- overseeing the delivery of services

- standards of governance and behaviour.

In addition, an NHS organisation's board is free to agree other issues that only it will deal with and must also decide which responsibilities it will delegate by drawing up a scheme of delegation.

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[188] NHS England, *Addendum to your statutory duties - reference guide for NHS foundation trust governors,* October 2022

The composition of the board

The board brings together in a decision-making forum the executive directors and the non-executive directors (NEDs) of the organisation and is separate from the day-to-day management structure. Each board is led by an independent, non-executive chairperson.

NEDs play a particularly important role on the board as they provide independent, constructive challenge and a breadth of experience. By balancing the views of executive directors, they also ensure that power is not concentrated in a few hands so preventing any individual or small group from dominating the board's decision-making.

The exact structure of each board is different for each type of NHS body and is set out in legislation and associated regulations[189].

The boards of both non-foundation trusts and FTs comprise a chairperson, executive members (who are employees of the NHS organisation) and independent NEDs, who must be in the majority. The executive directors must include a medical director and nursing director as well as the chief executive and chief finance officer (CFO).

ICB boards must include at least two independent members, at least one registered nurse and a doctor. The ICB's chief executive and CFO must also be members of the board.

Appointments to the board

In FTs the council of governors appoints the NEDs in line with a code of governance; this recommends that there 'should be a formal, rigorous and transparent procedure for the appointment or election of new members to the boards of directors' and that appointments should be made 'on merit and based on objective criteria.' To ensure that this is the case in practice, the code recommends a nomination committee to ensure that independence is enshrined in the process and appointments are made on the basis of need (in terms of the board's needs) and competency (in relation to the individual's ability). The code also states that it is 'desirable' for there to be a majority of governor votes on nominations committees. Final decisions about the appointment of NEDs must be taken at a meeting of the council of governors.

In NHS trusts, NHS England is responsible for appointing, re-appointing (and where necessary terminating) chairs and NEDs. Appointees are chosen from lay people within the community that the organisation serves and are selected with a view to ensuring a balance of skills and experience - for example, there may be NEDs with professional qualifications in law or accountancy and others who have experience as a user of NHS services.

ICBs appoint their own independent members.

Board standards

To support provision of high standards by NHS boards, NHS England has published a suite of learning and development tools[190]. These tools complement the Fit and proper person test framework.

Key areas included within this suite include areas covering:

- New Standards for NHS board members
- NHS England Fit and Proper Person Test framework for board members

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[189] For non-foundation NHS trusts: regulations 2 and 4 of the 1990 Trust Membership and Procedure Regulations (SI 1990/2024). For FTs: schedule 7 to the NHS Act 2006.
[190] NHSE, *NHS leaders,* n.d.

- Guidance for chairs on implementation of the Fit and Proper Person Test for board members
- Fit and Proper Person Test for board members: guidance on electronic staff record
- Directory of board level learning and development opportunities
- NHS leadership competency framework for board members
- Framework for conducting annual appraisals of NHS chairs (CAF)

As has been described previously. guidance and overall requirements will develop over time, either through general reviews and revisions, and in response to issues.

NHS leadership, performance and patient safety191 is currently subject to review by the UK parliament's Health and social care committee. The committee will investigate the relationship between patient safety, performance/ efficiency and NHS leadership.

Board committees

To help a governing body discharge its duties effectively, several committees are normally established. Although it is up to each organisation to decide what committee structure best suits its needs, there are several mandatory committees, discussed in turn below. For ICBs, the constitution sets out how it will discharge its functions including what committees and sub-committees are in place. It is usual for a board to also have additional committees that are not mandated, such as finance and performance, or quality and governance.

Oversight is achieved by a combination of reports to the board and the more detailed scrutiny undertaken by board sub-committees. Boards should agree what information is reported to the board as a whole and what information is provided to the board's sub-committees.

Audit committee

Every NHS organisation must have an audit committee that reports to the board. This committee's distinctive characteristic is that it comprises only independent non-executive members – there is usually at least three, to allow for a quorum of two. In addition, the chairperson of the organisation should not be a member, although may attend by invitation. The fact that only non-executives can be members should allow the audit committee to operate independently of executive management and to be objective when considering the opinions from independent auditors, and scrutinising the arrangements put in place and operated by the organisation's executive.

The chief executive and all other executive directors attend whenever they are invited by the audit committee chair and, in particular, to provide assurances and explanations to the committee when it is discussing audit reports or other matters within their areas of responsibility.

Detailed guidance about the role of audit committees is set out in the HFMA's *Audit committee handbook*[192]. This makes clear that one of the audit committee's key duties is to 'review the establishment and maintenance of an effective system of integrated governance, risk management and internal control, across the whole of the organisation's activities (both clinical and non-clinical), that supports the achievement of the organisation's objectives'.

Auditor panels

Non-foundation NHS trusts and ICBs must also have an auditor panel to advise on the selection, appointment, and removal of external auditors and on maintaining an independent relationship with them. This applies to appointments that started on or after 1 April 2017. In most cases, existing audit committees (or members of those committees) are nominated to act as the auditor panel.

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[191] UK Parliament, NHS leadership, performance and patient safety, n.d.
[192] HFMA, *NHS Audit committee handbook,* March 2024

In FTs it is the responsibility of the council of governors to appoint, re-appoint and remove the external auditor and approve their remuneration and terms of engagement. Support and guidance will be provided by the audit committee.

Remuneration committee

The remuneration (and terms of service) committee is another committee that is mandatory for all NHS organisations and reports to the board. Its role is to advise the board about the pay, other benefits and terms of employment for the chief executive and other senior staff.

In FTs, the remuneration committee should be composed of NEDs including at least three who are independent.

In NHS trusts, the committee's membership comprises at least two NEDs and the trust's chairperson.

For ICBs, only members of the board can belong to the remuneration committee.

Accountable or accounting officers

Every NHS organisation has an 'accountable' (or 'accounting') officer. This is a formal role conferred upon the organisation's chief officer (usually the chief executive).

The role of the accountable officer is a key element in governance terms with a line of accountability for the proper stewardship of public money and assets and for the organisation's performance stretching up to Parliament. The accountable officer is also accountable to the organisation's board for meeting the objectives it sets, for day-to-day management and for ensuring that governance arrangements are effective.

For non-foundation NHS trusts, accountable officers are accountable to the NHS England's accountable officer who is in turn accountable to the DHSC's accounting officer (and on to the Secretary of State and Parliament). For FTs, accounting officers are accountable directly to Parliament (with NHS England providing regulatory oversight)[193]. For ICBs, the accountable officers are accountable to NHS England's accountable officer who is in turn accountable to the DHSC's accounting officer (and on to the Secretary of State and to Parliament).

Chief finance officers

CFOs (also called finance directors or directors of finance) of health organisations are automatically executive directors with a seat on the board. This is in line with the Treasury's guide *Managing public money* which states that the CFO should 'have board status equivalent to other board members' and that he or she should be 'a member of the senior leadership team'. Where a CFO fulfils the role for more than one organisation, he or she must be on the board of each organisation.

Executive management

Each NHS organisation must have an effective management structure designed to achieve its statutory duties and implement the strategic objectives and policies agreed by the board. This structure will vary between organisations but should ensure that all areas of responsibility are clearly accountable to a *manager* and ultimately to an executive director.

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[193] This is the reason for the two slightly different terms – an accounting officer - for example, in a foundation trust or the Department of Health and Social Care is directly accountable to Parliament (via the Public Accounts Committee) but an accountable officer - for example, in an ICB or NHS trust, is responsible to an accounting officer of a government department who is in turn accountable to Parliament.

Fit and proper persons

All NHS provider organisations have a duty[194] not to appoint a person to an executive level post (including associate directors) or to a non-executive position unless they are judged to be a 'fit and proper person'. In other words that they:

- are of good character
- have the necessary qualifications, skills and experience
- can perform the work that they are employed for
- can supply information as set out in the regulations as required by the Care Quality Commission (CQC).

The 2019 review[195] of the fit and proper persons test for senior managers, led by Tom Kark QC, said new competency standards should be created for directors on NHS boards and where training is needed it should be made available. This was accepted, together with a recommendation that the government should set up a national database of directors' qualifications, previous employment, and performance.

NHS England have developed a Fit and proper person test (FPPT) framework[196] following this review, and also incorporated requirements from the Care Quality Commission in this area.

Organisational processes

Effective internal procedures and controls are an essential part of an effective framework of governance. Collectively these are sometimes referred to as business rules. Key elements that NHS organisations need to think about in relation to finance are:

- standing orders
- procedures for dealing with any conflicts of interest
- standing financial instructions
- policies and procedures.

Standing orders (SOs)

All NHS organisations must have standing orders (SOs) that provide a comprehensive framework for carrying out activities and are therefore a critical element in the governance framework. Effectively, SOs are the link to an organisation's statutory powers and translate these powers into a series of practical rules designed to protect the interests of both the organisation and its staff. In FTs and ICBs, SOs form part of the constitution.

What standing orders contain

Most provisions within SOs relate to the business of running the board and structure of its committees - for example:

- the composition of the board and committees
- how meetings are run
- form, content, and frequency of reports
- what constitutes a quorum

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194 UK Parliament, *The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*
195 Department of Health and Social Care, *Kark review of the fit and proper persons test,* March 2019
196 NHS England, *Fit and proper person test framework for board members*, updated March 2024

- record of attendance
- voting procedures.

Other areas covered include:

- appointment of committees and sub–committees
- scheme of delegation – a detailed listing of what the board alone can decide on and who it empowers to take actions or make decisions on its behalf
- decisions reserved to the board – those decisions that the board cannot delegate
- standards of business conduct - for example, relating to how contracts should be awarded to prevent bias
- declarations of interest
- register of interests and hospitality
- duties and obligations of board members.

Conflicts of interest

One area covered by SOs that often receives particular attention relates to standards of business conduct and declarations of interest and registers of interests/ hospitality. In 2017, NHS England published *Conflicts of interest in the NHS - guidance for staff and organisations*[197]. It introduced common principles for managing conflicts of interest; provides advice about what to do in common situations; and supports good judgement about how interests should be approached and managed.

Board members must declare any personal or business interests or relationships that may influence (or be perceived to influence) their judgement or decisions. The fundamental principle is that no one should use their public position for private gain, either for their own benefit or for the benefit of those close to them - for example, if a board member or member of staff has any interest in a contract, that interest must be disclosed, and they must take no part in the evaluation process or decision.

It is important that both actual and potential conflicts of interest are declared and managed as any outside interest, hospitality or sponsorship represents a risk of a conflict arising. The procedures followed to manage conflicts of interest also help protect individuals from any subsequent allegations of bias.

In addition, the *Bribery Act 2010* makes it an offence to accept gifts or hospitality as an inducement or reward for doing something in your public role and staff are advised to refuse to accept such gifts or hospitality rather than declare them subsequently. There is usually some leeway for minor gifts - for example, pens or diaries, but the offer of higher value items should be questioned. The key point here is that board members and staff must be open about any gifts they have received or been offered. A simple concept is to think about how it would look on the front page of the local newspaper: if the action or gift could not be defended then it should not be carried out or accepted.

Standing financial instructions (SFIs)

SFIs cover financial aspects in more depth and set out detailed procedures and responsibilities. They are designed to ensure that NHS organisations account fully and openly for all that they do through setting the financial control environment and scheme of delegation. SFIs are detailed rules that must be complied with. Although FTs are not required to have SFIs many do, and others have written financial procedures that fulfil the same function.

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[197] NHS England, *Managing conflicts of interest in the NHS - guidance for staff and organisations,* February 2017

Other policies and procedures

For NHS bodies to run smoothly and effectively, many more policies and procedures (both financial and non-financial) are required, all of which contribute to the achievement of the organisation's overarching objectives. These policies and procedures cover a wide variety of areas and are usually pulled together in manuals and made available to all staff via the organisation's intranet. They should include a whistleblowing policy, to ensure that concerns raised by staff and other stakeholders about possible improprieties in financial, clinical or safety matters are taken seriously, without adverse consequences for the person raising that concern. Existence of any particular policy is not in itself sufficient; the policy must be up to date and applied effectively.

10.6 Control frameworks

Internal control

Internal control comprises the systems and processes that an organisation has in place to assist and ensure that things are running as they should, and that the organisation is achieving its objectives and meeting its legal and other obligations. It includes the governance framework, risk management, information and communications, monitoring processes, and assurance activities.

The board is responsible for ensuring that there is an effective system of internal control and that it:

- identifies and prioritises the risks to the achievement of the organisation's objectives
- evaluates the likelihood of those risks being realised and the consequent impact
- manages the risk efficiently, effectively and economically.

In practice, this means that at the core of an effective internal control system there needs to be a structured approach to identifying objectives, risks, and mitigations. In the NHS, this structure is reported through an assurance framework underpinned by a risk management system.

Assurance framework

The HFMA's *NHS audit committee handbook* describes the assurance framework as 'the key source of evidence that links the organisation's 'mission critical' strategic objectives to risks, controls and assurances, and is the main tool that the governing body uses in discharging its overall responsibility for internal control'.

Each organisation designs its own 'assurance framework' (sometimes referred to as a board assurance framework or BAF) based on a sound understanding of the strategic risks that could prevent the organisation achieving its agreed objectives and the potential effect each risk could have on those objectives.

However, there are several essential components identified in the Department of Health's 2003 publication *Building an assurance framework: a practical guide*[198] as set out below.

How to build an assurance framework

1. Establish strategic objectives

2. Identify the principal (or strategic) risks that may threaten the achievement of these objectives

3. Identify and evaluate the design of key controls intended to manage these principal risks

4. Identify the arrangements for obtaining assurance on the effectiveness of these key controls

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[198] Department of Health, *Building an assurance framework: a practical guide,* 2003

5. Evaluate the reliability of the assurances identified

6. Identify positive assurances and areas where there are gaps in controls and/ or assurances

7. Put in place plans to take corrective action where gaps in controls and/ or assurances have been identified in relation to principal (strategic) risks

8. Maintain dynamic risk management arrangements including, crucially, a well-founded risk register.

The management of risk

In an organisation the management of risk is a formal process to ensure that all the main risks are identified, their importance is assessed and appropriate ways of reducing them agreed and implemented. One of the biggest mistakes that people make is thinking that filling in the risk register is the same as managing the risks. It is not. Managing risk involves management action while a register is simply a recording device.

Risk is subjective and the extent that an organisation manages risk depends on what level of risk it can live with. This is known as risk appetite.

For an organisation's assurance framework to be effective it must be underpinned by a robust approach to risk management. This involves identifying and managing risks, particularly those that present the biggest challenge in management terms.

There are several ways – individually or in combination - in which managers can mitigate risk. These are often described as the 'five ts':

•   terminate the action and therefore avoid the risk completely

•   transfer the risk, or the management of the risk, to another person or organisation because they are better able to manage it

•   tolerate the risk, without any further action

•   take the risk because the potential gains are expected to outweigh the potential losses

•   treat the risk through a range of management or mitigation tools (usually seen as internal controls).

The basics of managing risk are straightforward – it is about being aware of potential problems, thinking through what effect they could have and planning ahead to prevent the worst-case scenario.

The three lines of defence model

The three lines model[199] , or three lines of defence model, helps senior managers and the board get information systematically on how objectives are being met and risks are being managed. The term 'defence' is often used in this context as the model shows how directors might protect themselves from any allegations of not having due processes.

The first line of defence is reporting by line management on the operation of the controls they are responsible for. The second line of defence is that of management oversight functions - for example, management of risk or compliance. The third line of defence is internal audit (and similar functions) that are inside the organisation but operate to professional standards to provide 'independent' assurance to the board. Additional (or fourth line) assurance comes from external sources - for example, external auditors, inspectors, and regulators.

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[199] The Institute of Internal Auditors, *The IIA's three lines model: an update of the three lines of defense,* 2020

Internal audit

All NHS bodies are required to have an internal audit function that plays a key role in assurance by providing an independent and objective opinion to the accountable/ accounting officer, board, and audit committee on the extent to which the management of risk, control and governance arrangements support the aims of the organisation. Each year the head of internal audit must produce an opinion that is used by the accountable or accounting officer to inform the governance statement. This statement forms part of each organisation's annual accounts and draws together 'position statements and evidence on governance, risk management and control, to provide a more coherent and consistent reporting mechanism'. See chapter 11 for more details about this statement and the annual accounts.

Clinical audit

Another important element of the management of risk and assurance framework is clinical audit – a process that is carried out by healthcare professionals themselves and involves:

* setting standards

* measuring current practice

* comparing results with standards

* changing the way things are done

* re-auditing to make sure practice has improved.

In its guide, *Best practice in clinical audit*[200], the National Institute for Health and Care Excellence (NICE) states that it sees clinical audit as being 'the component of clinical governance that offers the greatest potential to assess the quality of care routinely provided for NHS users' and that it (clinical audit) 'should therefore be at the very heart of clinical governance systems'.

For NHS boards, managing clinical risk is just as important (if not more so) as managing financial and business risk. Good clinical audit is, therefore, an enormous asset and source of assurance.

Counter fraud and corruption

The emphasis on dealing with fraud and corruption in the NHS has increased significantly over recent years. The NHS Counter Fraud Authority (NHSCFA)[201] is a special health authority tasked to lead the fight against fraud, bribery and corruption in the NHS.

In January 2021, the NHSCFA rolled out new counter fraud requirements, applicable to all NHS funded services, in relation to the *Government Functional Standard GovS 013: counter fraud*[202]. The standard sets expectations for the management of fraud, bribery, and corruption across government and wider public services. In 2023 the DHSC published its 3 year counter fraud strategy[203].

In February 2024 the NHSCFA launched Project Athena[204], a pilot project that looks at patterns of data to both prevent fraud and to enhance the effectiveness of responses.

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[200] National Institute for Health and Care Excellence, *Best practice in clinical audit,* 2002
[201] NHS Counter Fraud Authority, *About us, n.d.*
[202] UK Government, *Government Functional Standard GovS 013: Counter Fraud*, August 2021
[203] DHSC, *Counter-fraud strategy: 2023 to 2026,* June 2023
[204] NHS Counter Fraud Authority, *Project Athena – a new way of tackling fraud in the NHS, February 2024*

10.7 Current UK developments

In 2021 the government consulted on their proposals to strengthen the governance framework, and in 2022 the government published their consultation response, *Restoring trust in audit and corporate governance*[205]. This included a number of proposals across the following areas:

- Enhancing regulation

- Greater accountability of directors and auditors where there are significant failures

- Developments in reporting requirements.

Under these proposals, the Financial reporting council (FRC)[206] will transition to the Audit, reporting and governance authority (ARGA).

The FRC launched consulted on strengthening the UK corporate governance code[207]. The key areas include

- A revised framework for effective and prudent controls providing stronger reporting and evidence of effectiveness

- Enhancements to areas where requires are to comply, or to explain

- Revision to reflect developments and requirements regarding sustainability reporting and assurance

- Update to align with revised legal and regulatory requirements.

In January 2024 the updated code[208, 209] was published and will be applicable for financial years commencing on or after 1 January 2025.

Key learning points

- The three fundamental principles of governance are openness, integrity and accountability.

- An effective approach to governance should underpin everything that an organisation does.

- Clinical and financial scandals have shown clear links to governance failings – if an NHS organisation gets its approach to governance wrong it can have a catastrophic impact.

- There are three key elements to governance – culture and values; policies structures and processes; control frameworks.

- Good leadership and management are crucial to sound governance as is a shared ethos or culture and a 'tone' that is set from the top.

- Everyone who works in the public sector should adhere to the seven principles of public life.

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[205] Department for Business, Energy and Industrial Strategy, Restoring trust in audit and corporate governance, May 2022
[206] FRC, *Position paper, restoring trust in audit and corporate governance,* July 2022
[207] FRC, *Corporate governance code consultation,* May 2023
[208] FRC, *UK corporate governance code,* January 2024
[209] FRC, *Corporate governance code guidance,* updated March 2024

Key learning points

- The principles and values set out in the *NHS Constitution* should underpin all that an organisation does.
- Every NHS organisation must have a board, audit and remuneration committees, an accountable/ accounting officer and a chief finance officer.
- The board (that includes both executive and non-executive members) is responsible for the strategies and actions of the organisation and is ultimately accountable to the public and Parliament.
- One of the audit committee's key roles is to review the system of integrated governance, management of risk and internal control across the whole of the organisation's activities.
- The remuneration committee advises the board about pay, benefits and terms of employment of senior staff.
- The accountable/ accounting officer is accountable to the organisation and (ultimately) to Parliament.
- Standing orders provide a framework for carrying out activities and translate statutory powers and duties into practical rules that all must abide by.
- Organisations need an effective and comprehensive system of internal control that is designed to ensure that things are running as they should.
- All NHS organisations must have clear objectives and an understanding of the risks that could prevent their achievement, the possible impact and how they can be avoided.
- An assurance framework links key objectives and risks with the main sources of assurance used by the board to ensure effective internal control.
- Managing clinical risk is just as important (if not more so) as financial and business risk, clinical audit is therefore a key source of assurance in this area.

Additional HFMA resources

The HFMA maintains a directory of resources which provides links to other HFMA outputs such as briefings and webinars across a range of subjects, including a section dedicated to risk management and governance. It also highlights online learning courses that are available. The directory of resources can be found here.