

Role of the Governor and the Board

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1. Introduction

- 1.1 The Health Foundation is a company limited by guarantee (registered company number 1714937) with charitable status (registered charity 286967) (the “**Foundation**”, the “**charity**” or the “**company**”)
- 1.2 As a company it has a two-tier structure. The first tier is the board of directors, who are responsible for the administration and management of the company, which is accountable to the second tier, the members, with whom rest ultimate constitutional power, who may or may not be the same people as the board. The directors, who are also the charity law trustees, are referred to in the Foundation as the “**Governors**”.
- 1.3 As well as being the charity law trustees (and directors) the Governors of the Foundation are also the only members of the Foundation.
- 1.4 This document sets out the main responsibilities and other key considerations for the Governors in their roles as trustees and members of the Foundation.
- 1.5 The key sections of this document are as follows:

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2. Role and responsibilities of the Board of Governors

- 2.1 As a charitable company, the Board of Governors (the “**Board**”) are both trustees under charity law and directors under company law. The duties of charity trustees and company directors are broadly the same, with the duties of charity trustees slightly broader. For this reason, this document focuses on the duties of Governors as trustees.
- 2.2 Governors, in their role as trustees of the Foundation, have and must accept ultimate responsibility for directing the affairs and management of the Foundation, ensuring that it is well-run, efficient, operating in accordance with all relevant laws and regulations, financially

stable and sustainable and delivering the charitable outcomes for the benefit of the public for which it has been set up. They have a number of duties which they must exercise¹:

2.2.1 Ensuring the charitable objects of the Foundation² are carried out for the public benefit:

- (a) Acting in the way the Governors consider in good faith are most likely to achieve the purposes of the Foundation and having regard to the Charity Commission's public benefit guidance; and
- (b) Making sure the charity's assets and resources are used only for the purposes of the Foundation;

2.2.2 Ensuring that the charity complies with all legal and regulatory requirements:

- (a) Ensuring that the charity complies with its constitution, charity law and other law, the requirements of the Charity Commission and other relevant regulators; in particular, ensuring that the charity prepares reports on what it has achieved and annual returns and accounts as required by law;

2.2.3 Safeguarding the assets of the charity and managing the charity's resources responsibly:

- (a) Ensuring that the charity has satisfactory control systems and procedures to safeguard all monies, properties and other assets (including intellectual property and reputation) and to ensure that any investment, borrowing or fundraising is carried out to the maximum benefit of the charity, within the constraints of the law and ethical and other policies laid down by the Board;
- (b) Ensuring that the financial intelligence that it receives is of sufficient quality;
- (c) Ensuring that the major risks to which the charity is exposed are identified and reviewed regularly with systems in place to mitigate or minimise these risks;
- (d) Avoiding exposing the charity's funds, assets, beneficiaries or reputation to undue risk and not over-committing the charity;
- (e) Guarding against fraud and mismanagement by implementing and reviewing appropriate financial procedures; and

¹ For more detailed guidance on trustee duties, governors should read the Charity Commission's guidance "The Essential Trustee":
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866947/CC3_feb20.pdf

² These are "the advancement of health, including public health, well-being and the delivery of health and social care and any other objects and purposes which are exclusively charitable according to the laws of England and Wales, in particular (without limitation) by: promoting projects to improve health and research into health utilising and making available the useful results"

- (f) Ensuring that the charity is run in a way that ensures its financial stability and sustainability;

2.2.4 Acting with reasonable care and skill:

- (a) Making use of each Governor's skills and experience and obtaining appropriate professional advice when necessary, such as where there may be material risk to the charity, or where the trustees may be in breach of their duties;
- (b) Devoting sufficient time, thought and energy to the role of Governor such as by preparing for, attending and actively participating in meetings of the Governors;

2.2.5 Acting in the best interests of the charity including by:

- (a) Ensuring that the charity has a clear vision, mission and strategic direction, is focused on achieving these and is accountable by:
 - (i) Working within the Board, and with the Chief Executive and senior management team to ensure that the Foundation has a clear vision, mission and strategic plan that have been agreed by the Board and that there is a common understanding of these by Governors and staff, and periodically reviewing the long-term strategy and goals in line with the charitable objects of the Foundation;
 - (ii) Ensuring that major decisions (in line with the Foundation's policies specifying those matters that must come to the Board) are aligned to the overall strategy;
 - (iii) Holding the Chief Executive and senior management team to account for delivery of strategy and to challenge strategy development;
 - (iv) Ensuring that the progress of the Foundation in relation to its vision, mission, strategic objectives and priorities, business plans and annual targets is measured objectively; and
 - (v) Being able to demonstrate the Foundation is complying with the law, is well run and effective;
- (b) Ensuring that the Foundation's governance is of the highest possible standard by:
 - (i) Striving for best practice in good governance, for example through regular training, governance reviews and Governor appraisals;
 - (ii) Keeping appropriately confidential matters confidential and avoiding any personal conflicts of interest or misuse of charity funds or assets and declaring and managing any conflicts of interest which arise; and

- (iii) Ensuring that the Foundation has a governance structure that is appropriate to a charity of its size and complexity, stage of development, and its charitable objects, and that enables the Governors to fulfil their responsibilities and make informed and effective decisions³; and
 - (c) Promoting and implementing the Foundation's culture and values by:
 - (i) Leading in establishing, implementing and promoting values, standards and ways of working for the Foundation and its staff, both within the organisation and externally;
 - (ii) Acting with integrity and shaping a positive culture for the Board and the Foundation, reflecting its values in light with its charitable objects including acting (as a Board as a whole) in accordance to the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership⁴; and
 - (iii) Safeguarding the good name and values of the Foundation and being ambassadors for them, both internally and externally
 - (iv) Encouraging diversity in the recruitment of new governors and supporting inclusive and accessible participation in meetings.
- 2.3 As mentioned above, as a company limited by guarantee, the Foundation's Governors are also company law directors. As well as their duties under charity, covered above, under company law they owe certain duties to the charity in their role as directors which are set out in the Companies Act 2006 and which largely overlap those of trustees⁵. There are two additional duties to note:
- 2.3.1 a duty to ensure that the Foundation files certain documents (such as, members' resolutions and the company's annual report and accounts) and information with the Registrar of Companies within the relevant deadlines; and
 - 2.3.2 in a situation where the Foundation is insolvent or on the verge of insolvency, a duty to the Foundation to act in the best interests of the Foundation's *creditors* (rather than, for example, solely the beneficiaries).

³ See Charity Commission's guidance on decision making by trustees here - <https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making>

⁴ See the Nolan Principles in full: <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

⁵ See description of key directors' general duties under the Companies Act 2006: <https://www.legislation.gov.uk/ukpga/2006/46/part/10/chapter/2/crossheading/the-general-duties>

3. **Role and responsibilities of *individual* Governors as trustees**

3.1.1 In undertaking their role as Governors, each Governor's individual behaviour shall comply with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

3.1.2 As well as their responsibilities set out in section 2 above, the duties of each Governor shall also include:

- (a) Committing to and giving a minimum of nine full working days per annum for Foundation work (including preparation time for meetings of the Board, its committees and any other sub-groups that may be formed from time to time);
- (b) Chairing or participating as member of one or more Board committees and/or any sub-groups;
- (c) Volunteering for and willingly accepting opportunities to further their own understanding of the Foundation's work;
- (d) Acting as a positive ambassador for the work of the Foundation by agreement of the Chair and the Chief Executive;
- (e) Using his or her specific skills, knowledge, experience, and perspectives to help the Board reach sound decisions;
- (f) Staying informed and preparing well for meetings, and taking an active part in discussions;
- (g) Contributing actively to the Board's role in giving strategic direction to the charity, setting overall policy, defining goals, setting targets and evaluating performance against agreed objectives and targets;
- (h) Working for, and building upon, collegiate working relationships;
- (i) Demonstrating ongoing commitment to the charity and acting in its best interests;
- (j) Complying with the policies of the charity, including but not limited to the policy on conflicts of interest and this document; and
- (k) Seeking to resolve any concerns about the performance of the Board, its compliance with its governing documents and/or the welfare of the Foundation, by contacting the Chair or the Chief Executive in such circumstances. If these channels fail to resolve the matter, or the nature of the matter makes them inappropriate, then contacting the Vice-Chair.

4. Governors as members of the Foundation

- 4.1 As well as being the charity law trustees (and company law directors) of the Foundation, as the Foundation has a governance structure whereby the trustees and the members are the same – a “foundation model” – the Governors are furthermore also the company law members of the Foundation.
- 4.2 The members of a charitable company exercise the following key powers giving them ultimate control over it, including the following:
- 4.2.1 they have power to appoint and remove the trustees;
 - 4.2.2 they have power to change the Articles (with 75% consent, by way of ‘special’ resolution);
 - 4.2.3 they have power to change the name (unless the Articles provide for the trustees to do so), and
 - 4.2.4 they have power to wind up the charity.
- 4.3 Recent case law has confirmed that the members of a charitable company in arrangements like this will owe fiduciary duties to exercise their membership rights for the benefit of the charitable company and not for their own benefit. Thus, should the member(s) ever wish to remove a trustee, for example, the member(s) will need to be able to show that such removal is in the interests of the Foundation.
- 4.4 As such, in the event that the Governors wish to exercise any of their rights in their capacity as members of the Foundation - rather than trustees or directors - they will need to do so for the benefit of the Foundation. In practice this is likely to mean that their approach to decision-making (as members) will be the same as in their capacity as trustees and directors, taking into account and implementing the range of duties and responsibilities set out elsewhere in this document.

5. Matters reserved for the Board

In the furtherance of its role and responsibilities, the following matters of the Foundation shall only be undertaken with the Board’s prior consent:

- 5.1.1 Setting the long-term strategy and goals of the charity;
- 5.1.2 Agreeing business plans (including the accompanying budget) and all major new projects as required by the Foundation’s financial regulations;
- 5.1.3 Agreeing the formation, acquisition or disposal of any subsidiary or subsidiary undertaking or premises (freehold or leasehold) including entering into contracts for such purposes;
- 5.1.4 Any borrowings secured on the assets of the Foundation;

- 5.1.5 Setting the investment strategy and spending policy (but not matters delegated to the Investment committee);
- 5.1.6 Agreeing the annual report and financial statements and letter of representation, for the Foundation and, as appropriate, its subsidiaries;
- 5.1.7 Agreeing changes to bank mandates and significant changes to the financial regulations;
- 5.1.8 Agreeing expenditure in excess of the annual Foundation budget that the Board has already approved;
- 5.1.9 Instituting and conducting legal action or litigation;
- 5.1.10 Appointing and removing a Governor or the Chair of the Board, Vice-Chair of the Board, a senior independent director of the Board and/or the Chief Executive of the Foundation;
- 5.1.11 Agreeing the approach to improving Board performance, appraisal and development of governors, including the Chair;
- 5.1.12 Appointing and removing directors to the board of Medtrust Innovations Ltd. (NB: Whilst acknowledging that the Board of the Foundation is able to do this, Medtrust's articles of association provide for the board of Medtrust to do this with no need for approval by the Board of the charity);
- 5.1.13 Agreeing the committee structure, membership and terms of reference; agree any matters reserved for the decision of the Board by any such terms of reference;
- 5.1.14 Agreeing changes to this document, other than the up-dating in the light of other Board decisions;
- 5.1.15 Delegating powers to committees from time to time as provided for in the Articles and in accordance with their respective terms of reference; and
- 5.1.16 Apart from the matters set out or referred to in sections 5.1.1 to 5.1.16 above, the Board delegates full authority to the Chief Executive of the Foundation to do all things necessary and appropriate for the proper conduct of the Foundation's business and activities including the power to sub-delegate to other executives and staff of the Foundation. The Board reserves the right to amend or revoke at any time any of the authorities and powers delegated to the Chief Executive.