



MEETING TITLE Trust Board Meeting in Public		MEETING DATE 28/01/2014	
TITLE of PAPER	For Approval: Revised NHS Foundation Trust Code of Governance (Dec 2013)	PAPER REF	5.3
STRATEGIC OBJECTIVE	All		
PURPOSE OF THE PAPER	That the Trust Board is assured of YAS' compliance with the revised NHS Foundation Trust Code of Governance (December 20213), effective 1 January 2014.		
For Approval	<input checked="" type="checkbox"/>	For Assurance	<input type="checkbox"/>
For Decision	<input type="checkbox"/>	Discussion/Information	<input type="checkbox"/>
AUTHOR / LEAD	Anne Allen, Director of Corporate Affairs & Trust Secretary	ACCOUNTABLE DIRECTOR	Chief Executive
DEBATED AT:	Committee/Group: Foundation Trust Development Group	Date: 15 January 2014	
PREVIOUSLY AGREED AT:	Committee/Group: Not Applicable	Date:	
RECOMMENDATION	That Trust Board adopts the revised NHS FT Code of Governance (December 2013) with effect 1 January 2014.		
RISK ASSESSMENT		Yes	No
Corporate Risk Register and/or Board Assurance Framework amended <i>If 'Yes' – expand in Section 4. / attached paper</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Resource Implications (Financial, Workforce, other - specify) <i>If 'Yes' – expand in Section 2. / attached paper</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Legal implications/Regulatory requirements <i>If 'Yes' – expand in Section 2. / attached paper</i>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Quality and Diversity Implications <i>If 'Yes' – please attach to the back of this paper</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
ASSURANCE/COMPLIANCE			
Care Quality Commission Registration Outcome(s)	All		
NHSLA Risk Management Standards for Ambulance Trusts	1: Governance		

Revised NHS Foundation Trust Code of Governance (December 2013)

1. PURPOSE/AIM

- 1.1 That the Trust Board is assured of YAS' compliance with the revised NHS Foundation Trust Code of Governance (December 2013), effective 1 January 2014 .

2. BACKGROUND/CONTEXT

- 2.1 Monitor is the Regulator of NHS Foundation Trusts (FTs). One of Monitor's objectives is to make sure that public providers are well led. To this end, the *NHS Foundation Trust Code of Governance* [the Code] provides guidance to FTs to help them deliver effective corporate governance, contribute to better organisational performance and ultimately discharge their duties in the best interests of patients.
- 2.2 Yorkshire Ambulance Service, as an NHS Trust, operates, as far as practicable in the same way, and to the same standards of corporate governance as a FT and therefore, the Code is relevant to the YAS' context. Where, for example, an NHS Trust is unable to operate in the same way as an FT is inability to access commercial lending/finance.
- 2.3 Since the Code was last updated in 2010, in addition to setting out new duties for Monitor, the Health and Social Care Act, 2012 established a range of new duties for FT Governors and Boards of NHS FTs. As a result, new regulatory tools have been published – *the Provider Licence* and the *Risk Assessment Framework* – which have implications for how trusts establish and report on corporate governance arrangements. The UK Corporate Governance Code (formerly the Combined Code on Corporate Governance), on which the Code is based, has also been significantly updated a number of times since 2010.
- 2.4 As well as making changes to reflect the new regulatory and policy landscape, Monitor also wanted to make sure that the updated Code is a useful, practical tool for trusts to use. The draft went out widely to public consultation during November 2013 on a number of significant changes including a new introduction, a new structure, greater clarity regarding disclosure requirements and a section which explains how the Code fits alongside Monitor's other governance tools.

The Consultation document was circulated to YAS Board members; some feedback was received though none of significance for submission to Monitor.

- 2.5 **The final version of the Code was published on 19 December, the main changes to which include:**
- i. **You told us that reporting on all of the principles was too burdensome.** We are therefore now only asking for a report on how the principles are applied in cases of non-compliance. This reflects the reporting requirements of the UK Corporate Governance Code.
 - ii. **You told us that including all of the information in a separate disclosure created duplication and unnecessary effort.** As a result, where information is already included in the annual report, you need only clearly reference the location of that information in the disclosure rather than duplicating the content.
 - iii. **You told us that the combination of statutory, mandatory and comply or explain requirements was confusing.** We have therefore clearly identified statutory provisions separately throughout the Code.
- 2.6 The feedback exercise also raised a number of questions which Monitor has been unable or chosen not to address in the Code. These include:
- iv. **Questions about the format, scope and resources required for the tri-annual governance reviews.** Monitor will be consulting separately on guidance for these reviews in January 2014.
 - v. **Questions about the expectations on, and knowledge and capacity of, governors in undertaking their statutory duties.** We would strongly recommend referring to the detailed governance on these questions, which is available elsewhere. In particular [*Your statutory duties: A reference guide for NHS foundation trust governors*](#) and [*Director-governor interaction in NHS foundation trusts: A best practice guide for boards of directors*](#).
- 2.7 There are two other changes that Monitor has highlighted since the draft was published, and which are particularly relevant to YAS:
- 2.7.1 **We stated in our consultation a desire to maintain the current requirement for three independent members of the Audit Committee.** Feedback from the professional bodies that responded to the consultation (including the authors of the UK Corporate Governance Code on which the *NHS Foundation Trust Code of Governance* is based) suggested that this was not best practice.

We have therefore revised the Code to require all members of the Audit Committee to be independent. The option to ‘explain’ non-compliance is available for trusts that have valid reasons for failing to meet this standard.

YAS is already compliant: All members of YAS Audit Committee are independent, i.e. Membership comprises each of the Non-Executive Directors excluding the Chairman.

2.7.2 We stated in the draft Code that it would apply from 1 April 2014. Feedback from the sector highlighted that because the 2010 edition of the Code does not reflect the 2012 Act or other regulatory developments including the licence it would be more practical to report against the revised Code.

We have therefore revised the Code to apply from 1 January 2014. This means that trusts should report on the revised code for 2013/14. The option to ‘explain’ non-compliance is available in the case of provisions that are new and cannot be applied retrospectively.

3. PROPOSALS/NEXT STEPS

3.1 That the Trust continues to operate, as far as practicable in the same way, and to the same standards of corporate governance as a Foundation Trust adopting the revised NHS FT Code of Governance (December 2013) with effect from 1 January 2014.

4. RISK ASSESSMENT

4.1 There are regulatory and reputational risks to the Trust if the updated Code is not appropriately implemented.

5. RECOMMENDATIONS

That Trust Board adopts the revised NHS FT Code of Governance (December 2013) with effect from 1 January 2014.

6. APPENDICES/BACKGROUND INFORMATION

The revised NHS Foundation Trusts Code of Governance (December 2013)

<http://www.monitor-nhsft.gov.uk/node/5532>