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# NHS foundation trust annual reporting manual 2022/23

March 2023

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# Introduction

## About this document

This document contains the requirements for NHS foundation trusts preparing their annual report, and also contains NHS England's accounts direction (annex 1 to chapter 1).

This document does not relate to NHS trusts, which should solely refer to the *Department of Health and Social Care Group Accounting Manual 2022/23 (DHSC GAM 2022/23)*.

## Requirements for foundation trust annual reports and accounts

In this document, the *NHS Foundation Trust Annual Reporting Manual 2022/23 (FT ARM 2022/23)*, we set out the requirements for foundation trusts' annual reports. It contains the formal accounts direction for foundation trusts and the requirements for the basic structure, but foundation trusts should also follow the *Department of Health and Social Care Group Accounting Manual 2022/23 (DHSC GAM 2022/23)* for detailed requirements for their accounts.

As explained in Chapter 1, an NHS foundation trust's annual report and accounts should be presented as one document.

## Summary of changes for 2022/23: annual reports

For ease of reference, the main changes in annual report requirements compared to the *NHS Foundation Trust Annual Reporting Manual 2021/22 (FT ARM 2021/22)* are set out below. Changes are also shown in ***bold italics*** in this document except where this would impair clarity in large sections and a drafting note is added.

|                                     | Area of change  | Reference in FT ARM |
|-------------------------------------|---|---------------------|
| <b>New and changed requirements</b> |   |                     |
| 1.                                  | <b>Performance report: joint forward plans and capital resource plans</b><br>The trust should disclose in the performance report how it has exercised its function with respect to joint forward plans and joint capital resource plans published by its system.<br>This disclosure is required by paragraph 26(1A) of schedule 7 to the National Health Service Act 2006, as inserted by section 11 of the Health and Care Act 2022. | Paragraph 2.9       |

|   | <b>Area of change</b>   | <b>Reference in FT ARM</b>              |
|---|---|---|
| 2.                                      | <p><b>Performance report: health inequalities</b></p> <p>Information should be provided about the trust’s activities to tackle health inequalities, including the extent to which the trust has exercised its functions consistent with NHS England’s statement under section 13SA(1) of the NHS Act 2006 (if issued) on how NHS bodies should exercise their powers to collect, analyse and publish information related to health inequalities.</p> <p>This disclosure is required by paragraph 26(1B) of schedule 7 to the National Health Service Act 2006, as inserted by section 11 of the Health and Care Act 2022.</p> <p>For 2022/23, the statement envisaged by section 13SA(1) has not yet been published (expected in Summer 2023) therefore for 2022/23, trusts should describe their own approach to tackling health inequalities, with reference to relevant guidance from NHS England.</p> | Paragraph 2.22                          |
| 3.                                      | <p><b>Fair Pay disclosures: prior year comparatives</b></p> <p>Prior year comparatives are now required for all ratios in this second year of the revised reporting arrangements.</p>   | Paragraph 2.94                          |
| <b>Minor changes and clarifications</b> |   |   |
| 4.                                      | <p><b>Staff survey example disclosure</b></p> <p>Following changes to the format of the staff survey in 2021/22, this means that two years of information in the new format will be disclosed and one year in the old format (or more at the trust’s discretion).</p>   | Paragraph 2.98 and Annex 2 to chapter 2 |
| 5.                                      | <p><b>NHS Oversight Framework disclosure</b></p> <p>The example disclosure for the NHS Oversight Framework has been significantly revised following publication of the NHS Oversight Framework for 2022/23.</p>   | Annex 3 to chapter 2                    |
| 6.                                      | <p><b>Remuneration report: part year pensions disclosures</b></p> <p>Guidance has been added regarding pension disclosures for senior managers in post for part of the year.</p>  | Paragraph 2.84                          |
| 7.                                      | <p><b>Fair Pay disclosures: ‘employees’</b></p> <p>A footnote has been added to make reference to HM Treasury guidance on the definition of ‘employees’ in applying the Fair Pay disclosure requirements.</p>   | Paragraph 2.88                          |

|    | <b>Area of change</b>   | <b>Reference in FT ARM</b> |
|----|---|----------------------------|
| 8. | <p><b>References to NHS England</b></p> <p>References to Monitor or NHS Improvement in the FT ARM have been updated to refer to NHS England. These changes are not shown in bold italics. They are shown in red for clarity in the model statement of accounting officer's responsibilities (annex 4 to chapter 2), the model annual governance statement (annex 5 to chapter 2) and the example certificate on the summarisation schedules (annex 2 to chapter 1) to help trusts update their disclosures. Documents issued by Monitor (or its operating name of NHS Improvement) are treated from 1 July 2022 as having been issued by NHS England.</p>   | Throughout                 |
| 9. | <p><b>ADDED 31 May 2023: Additional disclosure beneath pension entitlements table</b></p> <p>On 27 April 2023 HM Treasury published updated discount rates for determining the discount rate used in calculating cash equivalent transfer values (CETVs) payable on unfunded public sector pension schemes. In May 2023 HM Treasury clarified that this updated guidance should not be used in calculations for 2022/23 annual reports. This means that 'Greenbury' information provided by NHS BSA during January to April 2023 on the 'old' basis is correct.</p> <p>A new paragraph has been added to the FT ARM which requires NHS foundation trusts to disclose this basis of calculation.</p> | Paragraph 2.78             |

For changes in accounts requirements, please see the [DHSC GAM 2022/23](#) and accompanying [consultation](#) document.

### **Signature arrangements**

Where signed documents relating to the annual report and accounts are submitted to NHS England, electronic signatures in documents will be accepted.

### **Updated Code of Governance for NHS provider trusts**

The new [Code of Governance for NHS provider trusts](#) applies to both NHS trusts and NHS foundation trusts and comes into effect from 1 April 2023. Therefore the *FT ARM 2022/23* continues to make reference to the 2014 [NHS foundation trust Code of Governance](#) as applicable to the 2022/23 reporting year.

# 1. Annual report and accounts preparation and submission requirements

## **Statutory requirements for NHS foundation trusts' annual reports**

- 1.1. Schedule 7, paragraph 26 of the NHS Act 2006 (the 2006 Act) requires NHS foundation trusts to prepare an annual report. Paragraph 26(3) of Schedule 7 provides that it is for NHS England to decide the form of the reports, when the reports are to be submitted, and the periods to which the reports relate.
- 1.2. NHS England's decision as to the requirements for NHS foundation trusts' annual reports is set out in Annex 1 to this chapter.
- 1.3. The detailed requirements for foundation trusts' annual reports are set out in Chapter 2. We base these requirements on those contained in HM Treasury's Financial Reporting Manual (FRoM),<sup>1</sup> adapted as necessary for NHS foundation trusts.

## **Statutory requirements for NHS foundation trusts' annual accounts**

- 1.4. Schedule 7, paragraph 25(1) of the 2006 Act requires NHS foundation trusts to prepare annual accounts. Paragraph 25(2) of Schedule 7 provides that it is for NHS England to decide the form and content of the accounts.
- 1.5. NHS England's directions to NHS foundation trusts are set out in Annex 1 to this chapter.
- 1.6. The detailed requirements for foundation trusts' accounts are set out in the *DHSC GAM 2022/23*, as guided by our accounts direction. The annual accounts for NHS foundation trusts must include four primary statements (Statement of Comprehensive Income, Statement of Financial Position, Statement of Changes in Equity and a Statement of Cash Flows), which should follow the presentational form set out in the summarisation schedules for providers issued by NHS England, although lines that are nil in the

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<sup>1</sup> [www.gov.uk/government/collections/government-financial-reporting-manual-frem](http://www.gov.uk/government/collections/government-financial-reporting-manual-frem)

current and prior year can be omitted for clarity. Immaterial lines may be aggregated. Items must not be moved in or out of operating income or operating expenditure compared to the summarisation schedules.

The summarisation schedules for foundation trusts are termed Trust Accounts Consolidation (TAC) schedules and are included in NHS England's Provider Financial Return (PFR) forms. The accounts should also contain the notes to the accounts. Disclosures entitled 'note' (rather than 'table') in the TAC schedules should be included in the accounts, but entities have discretion over their precise format and these may be omitted if immaterial.

1.7. The *DHSC GAM* will be supported by the following materials to be issued by NHS England:

- the TAC schedules must be submitted to NHS England to support production of the provider consolidated accounts
- an accounts template, which is not mandatory for use
- template NHS provider accounting policies. Any deviation from the accounting policies in the *DHSC GAM* upon which these are based should be confirmed to NHS England via the confirmation question in the TAC schedules.

1.8. These materials will be issued as follows:

- in December 2022 and January 2023, for use in the month 9 exercise submitted in January 2023 and
- in March 2023 for use in the year end accounts.

1.9. The *DHSC GAM* sets out how these materials should be used.

### **Content of the annual report and accounts**

1.10. The annual report and accounts of an NHS foundation trust consist of:

- the performance report comprising:
  - overview of performance
  - performance analysis
- the accountability report, comprising:
  - directors' report
  - remuneration report
  - staff report
  - the disclosures set out in the *NHS Foundation Trust Code of Governance*

- **NHS Oversight Framework**
- statement of accounting officer's responsibilities
- annual governance statement
- the auditor's report including certificate
- the foreword to the accounts which should state that the accounts are prepared in accordance with paragraphs 24 and 25 of Schedule 7 to the NHS Act 2006 and are presented to Parliament pursuant to Schedule 7, paragraph 25 (4) (a) of the National Health Service Act 2006
- four primary financial statements (see paragraph 1.6) and
- the notes to the accounts.

1.11. NHS foundation trusts are able to present their annual report and accounts in any way they choose, providing they are compliant with this manual for the annual report and with IFRS and the additional requirements in the *DHSC GAM* for the annual accounts. The sections of the annual report and accounts must follow the overall format set out in paragraph 1.10.

### **Deadlines, approval and publication procedures**

1.12. The deadlines for the production of the NHS foundation trust annual reports and accounts for the year ended 31 March 2023 will be published separately in a letter and available [here](#).<sup>2</sup> **Please note it is the responsibility of the trust's Accounting Officer (not the auditor) to comply with these requirements. Our annual report and accounts timetable letter forms part of our direction to foundation trusts on the requirements for annual accounts.**

1.13. Auditors are required to read the information in the annual report and refer to this in their audit report. Therefore, the draft annual report must be submitted to the auditor to allow them sufficient time to do this prior to signing their opinion on the accounts.

1.14. The annual report and accounts submitted after audit (per timetable referred to in paragraph 1.12) must be formally approved by the NHS foundation trust board of directors (the board). After approval by the board, the chief executive, as the Accounting Officer, should sign and date the Statement of Financial Position and annual report (as guided in our direction) as evidence of this. As Accounting Officer, the chief executive should also sign the foreword to the accounts, the annual governance statement and the remuneration report. The annual report and accounts should disclose the

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<sup>2</sup> <https://www.england.nhs.uk/financial-accounting-and-reporting/financial-reporting/>



name of the person who signed them. Once the annual report and accounts have been approved the auditor will sign the opinion on the accounts.

- 1.15. Once the annual report and accounts have been approved, the chief executive (in capacity as Accounting Officer) and director of finance must sign a certificate which states that the consolidation schedules are consistent with the annual accounts. Annex 2 to this chapter includes the required wording for such a certificate.
- 1.16. NHS foundation trusts are required to lay their annual report and accounts, with any report of the auditor on them, before Parliament (paragraph 25(4)(a)), Schedule 7 of the 2006 Act) to enable parliamentary scrutiny.
- 1.17. The requirement to lay the annual report and accounts before Parliament means that they are classified as an Act Paper and become the property of Parliament. There are strict rules about the format of the publication and these must be followed in every case. Full details are contained in Annex 5 to Chapter 2 of the *DHSC GAM 2022/23* and in [separate guidance](#)<sup>3</sup> issued by the Department.
- 1.18. The annual report and accounts that are laid before Parliament **must include the full statutory accounts and not summarised information**. The annual report and accounts each NHS foundation trust submits to Parliament to be laid must be one document.
- 1.19. The annual report submitted at the end of the audit process (see timetable referred to in paragraph 1.12) must include all of the text which will be included in the final publication submitted to Parliament. This is because the auditors will need to see the form of the annual report prior to signing their opinions. The period before submission to Parliament is to allow NHS foundation trusts time to format the document to the standards required for publication.
- 1.20. Until the annual report and accounts have been laid before Parliament nothing can be published by the NHS foundation trust for the wider public.
- 1.21. Once laid before Parliament the annual report and accounts cannot be changed. However, NHS foundation trusts have the discretion to publish an additional summarised document locally; see paragraph 1.26 for more details.
- 1.22. Copies of the audited annual accounts, any report of the auditor and the latest annual report must be made available for inspection by members of the public free of charge at all reasonable times (paragraph 22(1), Schedule

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<sup>3</sup> [www.gov.uk/government/publications/department-of-health-guidance-on-laying-accounts-in-parliament](http://www.gov.uk/government/publications/department-of-health-guidance-on-laying-accounts-in-parliament)

7 of the 2006 Act). It is the foundation trust's own responsibility to ensure that once laid before Parliament, the annual report and accounts are made available to the public. Any person who requests a copy of or an extract from any of these documents must be provided with one, although a reasonable copying charge may be levied where the person requesting a copy or extract is not a member of the NHS foundation trust (paragraph 22(4), Schedule 7 of the 2006 Act).

- 1.23. The National Audit Office's guidance to auditors requires foundation trust auditors to issue an auditor's annual report. The auditor's annual report is intended to be a public document and foundation trusts must ensure that the document is made available to members of the public free of charge. The document should not be made publicly available until after the annual report and accounts have been laid before Parliament. We suggest that publication on the foundation trust's website is the easiest way to ensure the auditor's annual report is made available.

### **Annual general meeting of the council of governors**

- 1.24. The annual report and accounts and auditor's report on the accounts must be presented to the council of governors at a meeting of the council of governors (paragraph 28, Schedule 7 of the 2006 Act). This meeting of the council of governors should be convened within a reasonable timescale after the end of the financial year but must not be before the annual report and accounts have been laid before Parliament.

- 1.25. It is suggested that an advertisement be placed in the local media not less than 14 days prior to the date of the meeting, stating:

- the time, date and location of the meeting and
- that copies of the annual report and accounts (or annual report and summary financial statements) of the NHS foundation trust are available, on request, prior to the meeting and how copies can be obtained.

### **Performance report: overview with supplementary material**

- 1.26. Once the full annual report and accounts have been laid before Parliament, NHS foundation trusts have discretion as to whether they wish to publish the full document locally or a separate performance report: overview<sup>4</sup> together with supplementary material.

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<sup>4</sup> The Companies Act 2006 refers to publishing a strategic report with supplementary material. The FReM has replaced the strategic report in the public sector with the performance report. NHS England considers that the performance report: overview section (as defined in Chapter 2) is the equivalent to the strategic report for these purposes.

- 1.27. The performance report: overview and supplementary material must be made available to the public free of charge, although a reasonable copying charge may be levied for copies of the full audited accounts where the decision has been made to publish the performance report: overview and supplementary material. The supplementary material must, as a minimum in accordance with s426A of the Companies Act 2006:
- contain a statement that the performance report: overview with supplementary material is only part of the foundation trust's annual report and accounts
  - state how a person can obtain a copy of the foundation trust's full annual report and accounts
  - state whether the auditor's report on the full annual report and accounts was unmodified or modified and, if qualified, set out the auditor's report in full together with any further material needed to understand the modification
  - state whether, in that auditor's report, the auditor's statement as to whether the performance report and accountability report was consistent with the accounts was unqualified or qualified and, if it was qualified, set out the qualified statement in full together with any further material needed to understand the qualification and
  - contain a copy of that part of the directors' remuneration report which sets out the single total figure table in respect of the foundation trust's directors' remuneration (in accordance with the requirements of Chapter 2 of this manual).
- 1.28. The performance report: overview and supplementary material must also contain the Annual Governance Statement.
- 1.29. The performance report: overview and supplementary material must not be published before the full annual report and accounts have been laid before Parliament.

### **NHS foundation trusts in their first period of operation (authorisation of an existing NHS trust)**

- 1.30. When an NHS trust is authorised as an NHS foundation trust, an annual report and accounts must still be published for the final period of the NHS trust's existence. This may cover a full financial year where the change in status occurs on 1 April or a shorter period where the change in status occurs during the financial year. NHS foundation trusts will be required to prepare the final accounts and summarisation schedules for the predecessor NHS trust and meet the deadlines set by NHS England. NHS foundation

trusts should be aware that auditors may require the NHS trust accounts to be prepared in accordance with the NHS foundation trust deadline, where earlier, in order for the auditor to issue their report on the NHS foundation trust accounts.

- 1.31. A public meeting must be held by 30 September following the end of the financial year in which the NHS foundation trust was authorised at which the predecessor NHS trust's final annual report and accounts for the final period of NHS trust status must be presented.
- 1.32. The annual report, annual accounts and consolidation schedules for the final period of NHS trust status must be prepared in accordance with the *DHSC GAM* for the period in question as applicable to NHS trusts. Two separate annual reports and accounts should be produced (rather than combined into one) as the corporate governance regimes and reporting frameworks are different for each type of body.
- 1.33. Further details are set out in Annex 9 to Chapter 4 of the *DHSC GAM*.

#### **NHS foundation trusts in their final period of operation**

- 1.34. Where an NHS foundation trust ceases to exist during or at the end of a financial year, the annual report and accounts should be prepared for that period in accordance with this manual and the *DHSC GAM*. The annual report and accounts should be prepared for the period from 1 April up to the date that the NHS foundation trust ceased to exist. This date may be considered to be the day before the date cited in a transfer order and/or legislation which transfers assets and liabilities to other bodies and dissolves the trust at midnight on that date. For example, if the trust is dissolved on 1 October (at midnight), it is reasonable to prepare for the final period accounts as at 30 September, immediately prior to the outward transfers. References to 31 March elsewhere in this manual should be read as the date at the end of the reporting period. The final period annual report and accounts should be submitted in line with the standard timetable referred to in paragraph 1.12 above.
- 1.35. When an NHS foundation trust ceases to exist and its services, assets and liabilities are transferring to another NHS body/(ies) or the Secretary of State, one of the receiving bodies will assume responsibility for the preparation of the final period annual report and accounts. Where the transfer and closure occurs significantly earlier than 31 March, the receiving body may wish to prepare the final period accounts in advance of the deadlines referred to in paragraph 1.12. In any case, the annual report and accounts can only be finalised once the post-consultation *FT ARM* and *DHSC GAM* for that year have been issued. The receiving body will also be asked to provide a later Events after the Reporting Period confirmation

to NHS England for the purposes of the consolidated foundation trust accounts and the whole of government accounts.

- 1.36. The chief executive of the nominated receiving body referred to in paragraph 1.35 will be required to take on the role of accounting officer for this final period annual report and accounts. The chief executive should ensure they are able to obtain the necessary assurances to enable them to make the required declarations.
- 1.37. NHS foundation trusts are reminded to refer to the *DHSC GAM* which sets out how the going concern concept is adapted for the public sector. This definition will continue to apply to the final period annual report and accounts.
- 1.38. Where an NHS foundation trust in special administration has ceased to provide services and its provider licence has been revoked during the year but the entity continued to exist at the end of the financial year, it remains that foundation trust's responsibility to prepare an annual report and accounts for the year and have them audited. The annual report and accounts will be prepared for the full financial year and should be prepared in accordance with the requirements of this manual. It is likely that such a shell organisation will have arrangements in place with another entity (probably a receiving body for its former services) to prepare the annual report and accounts on its behalf, but it is the Accounting Officer of the now unlicensed foundation trust who will certify the annual report and accounts.
- 1.39. The requirement in paragraph 28, Schedule 7 of the 2006 Act that an NHS foundation trust's annual report and accounts must be presented to the council of governors does not apply to the final period annual report and accounts. This is because the council of governors for that NHS foundation trust will no longer exist when the final period annual report and accounts are prepared.
- 1.40. The requirement in paragraph 25(4a), Schedule 7 of the 2006 Act that an NHS foundation trust's annual accounts should be laid before Parliament will continue to apply. This responsibility will fall to the receiving body referred to in paragraphs 1.35 and 1.36. Where the foundation trust continues to exist but is unlicensed at the end of the financial year, that foundation trust is responsible for ensuring the annual report and accounts are laid before Parliament, although this may be performed with the support of another organisation as envisaged by paragraph 1.38.

- 1.41. Quality accounts are prepared for a 12 month period;<sup>5</sup> therefore an organisation that demises before 31 March is not required to prepare a quality account.
- 1.42. Further guidance is provided in Annex 9 to Chapter 4 of the *DHSC GAM*.

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<sup>5</sup> Specified in section 9(2) of the Health Act 2009

## Annex 1 to Chapter 1: Decisions and Directions

### NATIONAL HEALTH SERVICE ACT 2006

#### DECISION BY NHS ENGLAND IN RESPECT OF NHS FOUNDATION TRUSTS' ANNUAL REPORTS

NHS England, in exercise of powers conferred on it by paragraph 26 of Schedule 7 to the National Health Service Act 2006, hereby decides that:

1. The annual report of each NHS foundation trust shall be in the form and provide such information as laid down in the annual reporting guidance for NHS foundation trusts within the *NHS Foundation Trust Annual Reporting Manual (FT ARM)* that is in force for the relevant financial year.
2. The annual report of each NHS foundation trust shall be submitted in accordance with the requirements specified in the FT ARM and accompanying timetable letter as to when such reports must be sent to NHS England.
3. The following sections contained in each annual report shall be signed and dated by the chief executive of the NHS foundation trust to which it relates:
  - the performance report
  - the accountability report
  - the remuneration report
  - the annual governance statement.

#### Signed by authority of NHS England

**Signed:**

**Name:** Amanda Pritchard (Chief Executive)

**Dated:** March 2023

## **NATIONAL HEALTH SERVICE ACT 2006**

### **DIRECTIONS BY NHS ENGLAND IN RESPECT OF NHS FOUNDATION TRUSTS' ACCOUNTS**

NHS England, with the approval of the Secretary of State, in exercise of powers conferred on it by paragraphs 24(1A) and 25(1) of Schedule 7 to the National Health Service Act 2006 (the '2006 Act'), hereby gives the following Directions:

#### **1. Application and interpretation**

(1) These Directions apply to NHS foundation trusts in England.

(2) In these Directions:

(a) references to "the accounts" and to "the annual accounts" refer to:

for an NHS foundation trust in its first operating period since being authorised as an NHS foundation trust, the accounts of an NHS foundation trust for the period from point of licence until 31 March

for an NHS foundation trust in its second or subsequent operating period following initial authorisation, the accounts of an NHS foundation trust for the period from 1 April until 31 March

for an NHS foundation trust in its final period of operation and which ceased to exist as an entity during the year, the accounts of an NHS foundation trust for the period from 1 April until the end of the reporting period

(b) "the NHS foundation trust" means the NHS foundation trust in question.

#### **2. Form and content of accounts**

(1) The accounts of an NHS foundation trust kept pursuant to paragraph 24(1) of Schedule 7 to the 2006 Act must comply with the requirements of the Department of Health and Social Care Group Accounting Manual (DHSC GAM) in force for the relevant financial year.

#### **3. Annual accounts**

(1) The annual accounts submitted under paragraph 25 of Schedule 7 to the 2006 Act shall show, and give a true and fair view of, the NHS foundation trust's income and expenditure, cash flows and financial state at the end of the financial period.

(2) The annual accounts shall follow the requirements as to form and content set out in chapter 1 of the NHS Foundation Trust Annual Reporting Manual (FT ARM) in force for the relevant financial year.



(3) The annual accounts shall comply with the accounting requirements of the Department of Health and Social Care Group Accounting Manual (DHSC GAM) as in force for the relevant financial year.

(4) The Statement of Financial Position shall be signed and dated by the chief executive of the NHS foundation trust.

#### **4. Annual accounts: Statement of accounting officer's responsibilities**

(1) The statement of accounting officer's responsibilities in respect of the accounts shall be signed and dated by the chief executive of the NHS foundation trust.

#### **5. Annual accounts: Foreword to accounts**

(1) The foreword to the accounts shall be signed and dated by the chief executive of the NHS foundation trust.

### **Signed by the authority of NHS England**

**Signed:**

**Name:** Amanda Pritchard (Chief Executive)

**Dated:** March 2023

## Annex 2 to Chapter 1: Example Certificate on Summarisation Schedules

Drafting note: updates are shown in red text

### Trust Accounts Consolidation (TAC) Summarisation Schedules for [...] NHS Foundation Trust

Summarisation schedules numbers TAC01 to TAC34 and accompanying WGA sheets for 2022/23 have been completed and this certificate accompanies them.

#### Finance Director Certificate

1. I certify that the TAC schedules have been compiled and are in accordance with:
  - the financial records maintained by the NHS foundation trust
  - accounting standards and policies which comply with the Department of Health and Social Care's Group Accounting Manual and
  - the template **NHS provider accounting policies issued by NHS England**, or any deviation from these policies has been fully explained in the Confirmation questions in the TAC schedules.
2. I certify that the TAC schedules are internally consistent and that there are no validation errors\*.
3. I certify that the information in the TAC schedules is consistent with the financial statements of the NHS Foundation Trust [**\*\*except for [insert text on where the schedules differ from the accounts and explain the differences]\*\***].

[Signature]

[Name], Director of Finance

[Date]

#### Chief Executive Certificate

1. I acknowledge the accompanying TAC schedules, which have been prepared and certified by the Finance Director, as the TAC schedules which the Foundation Trust is required to submit to **NHS England**.
2. I have reviewed the schedules and agree the statements made by the Director of Finance above.

[Signature]

[Name], Chief Executive

[Date]

*\* If you are unable to eliminate validation errors after discussions with your auditors and contacting NHS England then amend this accordingly.*

*\*\* Please insert the 'except for' clause only if applicable.*

## 2. Annual reporting guidance for NHS foundation trusts

2.1 This chapter sets out the requirements for the content and format of the annual report element of the annual report and accounts of NHS foundation trusts.

### Content of the annual report

2.2 The annual report of NHS foundation trusts must, as a minimum, include:

- the performance report, comprising:
  - overview of performance
  - performance analysis
- the accountability report, comprising:
  - directors' report
  - remuneration report
  - staff report
  - the disclosures set out in the *NHS Foundation Trust Code of Governance*
  - **NHS Oversight Framework**
  - statement of accounting officer's responsibilities
  - annual governance statement.

2.3 The annual report may, at the NHS foundation trust's discretion, include additional reporting covering equality, the Modern Slavery Act 2015 and the NHS Constitution.

### Principles to follow when preparing the annual report

2.4 The annual report should be prepared on the same 'group' basis as the accounts, including narrative. If the foundation trust has judged that it controls one or more entities under accounting standards for the purposes of its accounts, those entities should be included in the annual report disclosures where relevant. For example, when determining 'senior

managers' for the remuneration report as required by paragraph 2.51, if a controlled entity is material then consideration should be given to whether any senior managers of that entity meet the definition of a senior manager for the foundation trust group as a whole.

2.5 Chapters 2 and 3 of HM Treasury's [Financial Reporting Manual](#) (FReM) offer guidance on best practice in financial and narrative reporting. While primarily written for central government, the principles apply equally to NHS foundation trusts. In particular preparers should be mindful of its guidance on:

- whether information should be published, and questions to ask in determining this
- the importance of linking different parts of the annual report and accounts and achieving a balanced narrative overall
- the value of presenting trend data where available and guidance on the use of graphics and charts.

## Performance report

2.6 The purpose of the performance section of the annual report is to provide information on the entity, its main objectives and strategies and the principal risks that it faces. The requirements of the performance report are based on the requirements of a Strategic Report as set out in with sections 414A, 414C and 414D<sup>6</sup> of the Companies Act 2006, except for sections 414A(5) and (6) and 414D(2) which are not relevant. These requirements have been adapted for the public sector and NHS foundation trusts. The minimum requirements are contained in the subsequent paragraphs of this manual and foundation trusts do not need to refer to the regulations in order to meet the minimum requirements.

2.7 The performance report must provide a fair, balanced and understandable analysis of the entity's performance, in line with the overarching requirement for the annual report and accounts as a whole to be fair, balanced and understandable.

2.8 Performance of the organisation in both the overview and performance analysis should cover all aspects of performance and not only financial. This should include delivery against quality improvement priorities and performance against the most pertinent indicators for the NHS foundation trust in the NHS System Oversight Framework. Linkage should be made to disclosures on quality governance and data quality included in the

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<sup>6</sup> As inserted/amended by the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (SI 2013/1970).

accountability report.

- 2.9 ***As part of the performance report (the overview and performance analysis as appropriate) the NHS foundation trust should review the extent to which the trust has exercised its functions in accordance with the relevant plans of the integrated care board(s) (ICB(s)) for which it is a partner trust; namely (a) the relevant forward plans of the CCGs for that ICB; (b) any joint capital resource plan agreed between the ICB, the trust and the other partner trusts of the ICB..<sup>7</sup>***
- 2.10 If in the opinion of the directors, the disclosure of impending developments or matters in the course of negotiation would be seriously prejudicial to the interests of the foundation trust, these do not need to be disclosed.
- 2.11 The performance report shall be signed and dated by the chief executive in their capacity as Accounting Officer. The auditor will review the performance report for consistency with the financial statements.
- 2.12 The performance report is required to have two sections: an 'overview' and a 'performance analysis'.

## Overview

- 2.13 The purpose of the overview is to give the user a short summary that provides them with sufficient information to understand the organisation, its purpose, the key risks to the achievement of its objectives and how it has performed during the year. ***In referring to the NHS foundation trust, this should make reference to the objectives of the local health system of which it is a part (see paragraph 2.9).*** The performance report overview should be a short summary which draws together information from across the annual report and accounts to provide a holistic view of the organisation and its performance during the year. The performance overview should be enough for the lay user to have no need to look further into the rest of the annual report and accounts, unless they were interested in further detail or had specific needs.
- 2.14 The overview must include:
- a statement from the chief executive providing their perspective on the performance of the foundation trust over the period
  - a statement of the purpose and activities of the foundation trust including a brief description of the business model and environment, organisational

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<sup>7</sup> In performing this review the NHS foundation trust may wish to refer to NHS England's guidance on good governance and collaboration: <https://www.england.nhs.uk/long-read/guidance-on-good-governance-and-collaboration/> and

structure, objectives and strategies

- a brief history of the foundation trust and its statutory background
- a summary of the principal risks faced and how these have affected the delivery of objectives, how they have changed, how they have been mitigated and any emerging risks that may affect future performance. This should only serve as a summary of the further detail on risks provided in the performance analysis section, and cross-referenced to the annual governance statement where relevant<sup>8</sup>. This should also include the key issues and opportunities arising that could affect the foundation trust in delivering its objectives and/or its future success and sustainability
- a going concern disclosure (as set out below) and
- a summary of performance (to the extent not already covered above)

### Overview: going concern

2.15 There is no presumption of going concern status for NHS foundation trusts. Directors must decide each year whether or not it is appropriate for the NHS foundation trust to prepare its accounts on the going concern basis.

2.16 The *FReM* explains:

*“The anticipated continuation of the provision of a service in the future, as evidenced by inclusion of financial provision for that service in published documents, is normally sufficient evidence of going concern.”*

*“Where an entity ceases to exist, it should consider whether or not its services will continue to be provided (using the same assets, by another public sector entity) in determining whether to use the concept of going concern for the final set of financial statements.”*

2.17 An NHS foundation trust’s assessment of whether the going concern basis is appropriate for its accounts should therefore only be based on whether it is anticipated that the services it provides will continue to be provided with the same assets in the public sector. This is expected to be the case for NHS foundation trusts unless exceptional circumstances indicate otherwise; these should be discussed with NHS England. Where the continued provision of services in the public sector is anticipated to apply, there will not be any

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<sup>8</sup> The description of risk in the overview should serve as a summary of this detail provided in the analysis section. The performance analysis focuses on risks faced and the link to the performance of the organisation. The accountability report (annual governance statement) focuses on the arrangements for risk management, associated internal control, and the effectiveness of those controls. The performance report overview should give a summary. Clear and effective cross-referencing between the three sections is encouraged where relevant and appropriate.

material uncertainties over going concern requiring disclosure.

2.18 Where an NHS foundation trust has or is expected to demise in its current organisational form but its services (and accompanying assets) are transferring to another NHS body, this would not prevent the going concern basis for accounts being adopted, and would also not be a material uncertainty on going concern. Clearly the changes to organisational form are important to the user of the annual report and accounts; in this scenario the going concern disclosure should cross-reference to the relevant disclosures elsewhere in the annual report and accounts.

2.19 A typical disclosure would read:

*“After making enquiries, the directors have a reasonable expectation that the services provided by the NHS foundation trust will continue to be provided by the public sector for the foreseeable future. For this reason, the directors have adopted the going concern basis in preparing the accounts, following the definition of going concern in the public sector adopted by HM Treasury’s Financial Reporting Manual.”*

2.20 Consideration of risks to the financial sustainability of the organisation is a separate matter to the application of the going concern concept. Determining the financial sustainability of the organisation requires an assessment of its anticipated resources in the medium term. Any identified significant risk to financial sustainability is likely to form part of the risks disclosures included in the wider performance report, but is a separate matter from the going concern assessment.

## **Performance analysis**

2.21 The purpose of the performance analysis is for entities to provide a detailed performance summary of how their entity measures its performance, more detailed integrated performance analysis and long-term trend analysis where appropriate.

2.22 As a minimum, the performance analysis must include:

- information on how the foundation trust measures performance, ie what the foundation trust sees as its key performance measures, how it checks performance against those measures and narrative to explain the link between key performance indicators (KPIs), risk and uncertainty
- a more detailed analysis and explanation of the financial and operational performance of the foundation trust during the year and an explanation of the links between different pieces of information, and trend analysis of performance if not included elsewhere. This analysis is required to utilise a wide range of data including key financial information from the financial

statements section of the accounts

- further detail on the risk profile of the foundation trust: ie the risks it faces, how risks have affected the organisation in achieving its objectives, how they have been mitigated and how this may affect future plans and performance. This should also cover how risks have changed over time and through the period – including significant changes in risks, such as a change in the likelihood or possible impact, and new and emerging risks. How existing and new risks could affect the entity in delivering its plans and performance in future years should also be discussed. See also footnote 8 above
- information about environmental matters, including the impact of the foundation trust’s business on the environment. A recommended format for this disclosure is to follow the foundation trust’s report on progress against the plan required by Service Condition 18 of the NHS Standard Contract, with reference to the ‘*Delivering a Net Zero Health Service*’ plan under the *Greener NHS* programme.
- ***information on the trust’s work to tackle health inequalities, including the extent to which the trust has exercised its functions consistent with NHS England’s statement under section 13SA(1) of the NHS Act 2006 (if issued) on how NHS bodies should exercise their powers to collect, analyse and publish information related to health inequalities. NOTE for 2022/23: the statement envisaged by section 13SA(1) has not yet been published (expected in Summer 2023) therefore for 2022/23, trusts should describe their own approach to tackling health inequalities, with reference to relevant guidance from NHS England<sup>9</sup>.***
- information about social, community, anti-bribery and human rights issues including information about any trust policies and the effectiveness of those policies
- any important events since the end of the financial year affecting the foundation trust and
- details of any overseas operations.

2.23 The performance analysis should provide a summary of how equality of service delivery to different groups has been promoted through the organisation. The disclosure may include information regarding the following, or cross-referenced to other publications containing such

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<sup>9</sup> <https://www.england.nhs.uk/about/equality/equality-hub/national-healthcare-inequalities-improvement-programme/>



information:

- how the entity has had due regard to the aims of the public sector equality duty where applicable.
- customer satisfaction scores broken down by protected characteristics where collected.
- performance against equality of service delivery KPIs and metrics if applicable.
- explanations of activities the entity is undertaking to promote equality of service delivery

## Accountability report

2.24 The accountability report of the annual report comprises:

- directors' report
- remuneration report
- staff report
- the disclosures set out in the *NHS Foundation Trust Code of Governance*
- ***NHS Oversight Framework***
- statement of accounting officer's responsibilities and
- annual governance statement.

2.25 The accountability report shall be signed and dated by the chief executive in their capacity as Accounting Officer.

2.26 The auditor will review the accountability report for consistency with the financial statements. The following parts of the accountability report will also be subject to audit:

- the elements of the remuneration report designated as subject to audit (see paragraphs 2.48 to 2.87) which comprise:
  - a) single total figure table of remuneration for each senior manager
  - b) pension entitlement table and other pension disclosures for each senior manager
  - c) fair pay disclosures
  - d) payments to past senior managers, if relevant
  - e) payments for loss of office, if relevant
- staff report: exit packages, if relevant
- staff report: analysis of staff numbers
- staff report: analysis of staff costs.

## Directors' report

2.27 The Directors' report should include the items listed below, unless disclosed elsewhere in the annual report and accounts in which case a cross-reference may be provided. These requirements are based on the requirements of the FReM, together with some additional requirements adopted by NHS England from the regulations.<sup>10</sup>

- the names of the chairperson, the deputy chairperson (where there is one) and the chief executive
- the names of individuals who at any time during the financial year were directors of the NHS foundation trust
- details of company directorships and other significant interests held by directors or governors which may conflict with their management responsibilities. Where the NHS foundation trust maintains a Register of Interests that is open to the public, the disclosure may be limited to a comment on how access to the information in that Register may be obtained
- (for public sector information holders only) - a statement that the NHS foundation trust has complied with the cost allocation and charging guidance issued by HM Treasury<sup>11</sup>
- details of any political donations
- a statement describing the better payment practice code, or any other policy adopted on payment of suppliers, and performance achieved. The disclosure of performance should include the number and value of (i) invoices paid within 30 days (ii) invoices that were or should have been paid within that 30-day period, and (iii) the proportion of (i) compared to (ii). To retain consistency with the disclosure made by NHS trusts, this should be split between NHS and non-NHS payables.
- the total amount of any liability to pay interest which accrued by virtue of failing to pay invoices within the 30 day period where obligated to do so, and the total amount of interest actually paid in discharge of any

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<sup>10</sup> The requirements are based on sections 415, 416 and 418 of the Companies Act 2006 (section 415(4) and (5) and section 418(5) and (6) would not apply to NHS foundation trusts) as inserted by SI 2013(1970) and Regulation 10 and Schedule 7 of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 ('the Regulations').

<sup>11</sup> This guidance relates to Chapter 6 of MPM ([here](#)), the Guide to the Establishment and Operation of Trading Funds ([here](#)), the Reuse of Public Sector Information Regulations – EU Directive ([here](#)), and the Information Fair Trading Scheme ([here](#)).

such liability

- disclosures relating to NHS England's well-led framework (see below)
- information on fees and charges (income generation) if not included in the accounts (see below) and
- income disclosures as required by section 43(2A) of the NHS Act 2006.

### **NHS England's well-led framework**

2.28 NHS foundation trusts are required to include in the directors' report a section which gives a brief overview of the arrangements in place to ensure that services are well-led.<sup>12</sup> This should provide information or signpost the reader to where the trust's approach to ensuring services are well led is discussed in more detail in the annual report (eg in the annual governance statement or performance report). The section should summarise briefly:

- how the foundation trust has had regard to the well-led framework in arriving at its overall evaluation of the organisation's performance, internal control and board assurance framework, and a summary of action plans to improve the governance of quality
- material inconsistencies (if any) between:
  - the annual governance statement
  - the corporate governance statement<sup>13</sup>, and annual report and
  - reports arising from Care Quality Commission planned and responsive reviews of the NHS foundation trust and any consequent action plans developed by the NHS foundation trust.

2.29 In addition to the recommended disclosures in respect of the strategies, performance, resources and financial position of the business in the performance report and directors' report, NHS foundation trusts may wish to consider highlighting information about patient care activities and stakeholder relations, for example:

#### *Patient care:*

- descriptions of how the NHS foundation trust is using its foundation

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<sup>12</sup> NHS England's well-led framework is published at <https://www.england.nhs.uk/well-led-framework/>

<sup>13</sup> The corporate governance statement is no longer submitted to NHS England but its preparation remains a condition of the FT licence. NHS England is currently evaluating responses to a consultation on changing the licence, but preparation of the corporate governance statement was part of the licence applicable for 2022/23.

trust status to develop its services and improve patient care

- performance against key healthcare targets
- arrangements for monitoring improvements in the quality of healthcare and progress towards meeting any national and local targets, incorporating Care Quality Commission assessments and reviews and the NHS foundation trust's response to any recommendations made
- progress towards targets as agreed with local commissioners, together with details of other key quality improvements
- any new or significantly revised services
- service improvements following staff or patient surveys/ comments and Care Quality Commission reports
- improvements in patient/carer information
- information on complaints handling.

#### *Stakeholder relations:*

- descriptions of significant partnerships and alliances entered into by the NHS foundation trust to facilitate the delivery of improved healthcare. These should be described together with the benefits to patients and the methods used to fund these activities
- development of services involving other local services/agencies and involvement in local initiatives
- consultation with local groups and organisations, including the overview and scrutiny committees of local authorities covering the membership areas
- any other public and patient involvement activities.

### **Fees and charges (income generation)**

2.30 Foundation trusts should disclose the income and full cost associated with fees and charges levied by the trust where the full cost exceeds £1 million or the service is otherwise material to the accounts. If this disclosure is included in the accounts (per *DHSC GAM* chapter 5) it need not be repeated in the annual report<sup>14</sup>.

### **Income disclosures required by Section 43(2A) of the NHS Act 2006**

2.31 Section 43(2A) of the NHS Act 2006 (as amended by the Health and Social

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<sup>14</sup> Further information can be found in chapter 6 of Managing Public Money (MPM). MPM does not define "full cost" for the purpose of this disclosure: it is reasonable to infer this would include a sensible apportionment of overheads associated with delivery of the activity.

Care Act 2012) requires that the income from the provision of goods and services for the purposes of the health service in England must be greater than its income from the provision of goods and services for any other purposes. NHS foundation trusts should include a statement in their annual report that they have met this requirement, or where they have not met the requirement this fact should be disclosed, together with the principal reasons and the actions that the NHS foundation trust is taking to ensure that they meet the requirement in future financial years.

2.32 As required by section 43(3A) of the NHS Act 2006, an NHS foundation trust must provide information on the impact that other income it has received has had on its provision of goods and services for the purposes of the health service in England.

## Remuneration report

2.33 The *FReM* requires NHS foundation trusts to prepare a remuneration report in their annual report and accounts. The *FReM* and NHS England requires that this remuneration report complies with:

- Sections 420 to 422 of the Companies Act 2006 (section 420(2) and (3), section 421(3) and (4) and section 422(2) and (3) do not apply to NHS foundation trusts)
- Regulation 11 and Parts 3 and 5 of Schedule 8<sup>15</sup> of the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) (“the Regulations”)
- Parts 2 and 4 of Schedule 8 of the Regulations as adopted by this Manual and
- elements of the *NHS Foundation Trust Code of Governance*.

2.34 The remuneration report must be signed by the chief executive.

2.35 The remuneration report must disclose information on those persons in senior positions having authority or responsibility for directing or controlling the major activities of the NHS foundation trust. This means those who influence the decisions of the NHS foundation trust as a whole rather than the decisions of individual directorates or sections within the NHS foundation trust. Such persons will include advisory and non-executive board members. In the following paragraphs, such persons are described as “senior managers”. As guided by paragraph 44(1) of part 7 of schedule 8 to the Regulations, figures included in this table should include the aggregate

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<sup>15</sup> Schedule 8 as substituted by The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981).

amount paid to a senior manager in respect of their services as a senior manager of the foundation trust and amounts received in respect of their services as a senior manager of a subsidiary or other undertaking of the foundation trust. Preparers should refer to [the Regulations](#)<sup>16</sup> for more guidance if required.

2.36 The remuneration report comprises the following three sections:

- annual statement on remuneration
- senior managers' remuneration policy and
- annual report on remuneration (of which some elements are subject to audit).

Each of these three sections is described below.

### **Annual statement on remuneration**

2.37 The remuneration report should contain an annual statement from the chair of the remuneration committee summarising for the financial year:

- the major decisions on senior managers' remuneration
- any substantial changes relating to senior managers' remuneration made during the year and
- the context in which those changes occurred and decisions have been taken.

### **Senior managers' remuneration policy**

2.38 The information required below must be set out in a separate section of the remuneration report and constitutes the senior managers' remuneration policy of the foundation trust.

2.39 Future policy table:

- In table form, a description of each of the components of the remuneration package for senior managers which comprise the senior managers' remuneration policy (including, but not limited to the items which are relevant for the purposes of the single total figure table). Where the explanation describes components that apply generally to all senior managers, the table must also include any particular arrangements which are specific to any individual senior manager.

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<sup>16</sup> [www.legislation.gov.uk/uksi/2013/1981/schedule/made](http://www.legislation.gov.uk/uksi/2013/1981/schedule/made)

- For each component described in the table, set out:
  - how that component supports the short- and long-term strategic objectives of the foundation trust
  - an explanation of how that component operates
  - the maximum that could be paid in respect of that component (which may be the monetary amount or a description)
  - where applicable, a description of the framework used to assess performance, including:
    - a description of any performance measures that apply, and where more than one performance measure an indication of the weightings used
    - details of the performance period and
    - the amount (expressed in monetary terms or otherwise) that may be paid in respect of
      - the minimum level of performance that results in any payment under the policy and
      - any further levels of performance set in accordance with the policy

and in a note accompanying the table, an explanation of why any performance measures were chosen and how any performance targets are set
  - an explanation of whether there are any provisions for the recovery of sums paid to directors or for withholding the payments of sums to senior managers
- Accompanying notes setting out, where applicable:
  - for any new components of the remuneration package, why they have been introduced
  - any changes made to existing components of the remuneration package
  - an explanation of the differences between the foundation trust's policy on senior managers' remuneration and its general policy on employees' remuneration.

- Where one or more senior managers are paid more than £150,000,<sup>17</sup> the remuneration report should explain (not necessarily on an individual basis) the steps the foundation trust has taken to satisfy itself that this remuneration is reasonable. Pay for a part time senior manager should be compared against a pro rata of £150,000. For this disclosure, 'pay' should be considered to be columns (a), (b), (c) and (d) of the 'single total figure table' in paragraph 2.49.
- For non-executive directors, the policy for the components of their remuneration may be set out in a separate table, which must include:
  - the fee payable to such directors
  - any additional fees payable for any other duties to the foundation trust
  - such other items that are considered to be remuneration in nature

#### 2.40 Service contracts obligations

- A description of any obligation on the foundation trust which:
  - is contained in all senior managers' service contracts
  - is contained in the service contracts of any one or more existing senior managers (not including any obligations in the preceding disclosure) and/or
  - the foundation trust proposes would be contained in senior managers' service contracts to be entered into

and which could give rise to, or impact on, remuneration payments or payments for loss of office but which is not disclosed elsewhere in the remuneration report.

#### 2.41 Policy on payment for loss of office

- The policy on the setting of notice periods under senior managers' service contracts.
- The principles on which the determination of payments for loss of office will be approached, including:
  - an indication of how each component will be calculated and

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<sup>17</sup> £150,000 is the threshold used in the Civil Service for approval by the Chief Secretary to the Treasury, as set out in guidance issued by the Cabinet Office. The Cabinet Office approvals process does not apply to NHS foundation trusts but this is considered a suitable benchmark above which NHS foundation trusts should make this disclosure.



- whether, and if so how, the circumstances of the loss of office and the senior manager's performance are relevant to any exercise of discretion.

2.42 Statement of consideration of employment conditions elsewhere in the foundation trust

- a statement of how the pay and conditions of employees (including any other group entities) were taken into account when setting the remuneration policy for senior managers
- whether, and if so how, the foundation trust consulted with employees when preparing the senior managers' remuneration policy and
- whether any remuneration comparisons were used and if so, what they were and how the information was taken into account.

2.43 The policy on diversity and inclusion used by the remuneration committee, the policy objectives and link to the trust's strategy, how it has been implemented and progress on achieving the objectives. This can cross-reference to disclosure provided in the staff report (as required by paragraph 2.97) as appropriate.

### Annual report on remuneration

2.44 **This section of the remuneration report includes some elements that are subject to audit.**

#### **Information not subject to audit**

2.45 **Service contracts**

For each senior manager who has served during the year, disclose the date of their service contract, the unexpired term, and details of the notice period.

2.46 **Remuneration committee**

The report must contain the following details in respect of the remuneration committee:

- Details of the membership of the remuneration committee. This means the names of the chair and members of the remuneration committee should be disclosed (Code of Governance A.1.2).
- The number of meetings and individuals' attendance at each should also be disclosed (Code of Governance A.1.2).
- The name of any person (and in particular any director of the trust who was not a member of the committee) who provided advice or services to the committee that materially assisted the committee in their

consideration of any matter.

Where such a person was neither a director or employee of the trust, nor someone providing legal advice on compliance with any relevant legislation:

- a description of the nature of any other services that person has provided to the trust during the financial year
- by whom the advisor was appointed, whether or not by the committee and how they were selected
- whether and how the committee satisfied itself that the advice received was objective and independent and
- the fee or other charge paid by the foundation trust to the advisor for the remuneration advice or services received and the basis on which it was charged.

#### 2.47 **Disclosures required by Health and Social Care Act**

The following information is required by section 156 (1) of the Health and Social Care Act 2012, which amended paragraph 26 of Schedule 7 to the NHS Act 2006, and is not subject to audit:

- information on the corporation's policy on pay and on the work of the committee established under paragraph 18(2) of Schedule 7 to the NHS Act 2006, and such other procedures as the corporation has on pay and
- information on the remuneration of the directors and on the expenses of the governors and the directors.

The NHS foundation trust should assess whether it considers the requirements of the first bullet point above to be already met by the disclosures in the remuneration report and staff report.

NHS England considers that information relating to the expenses of the governors and the directors should (separately for governors and for directors) include:

- the total number of [governors/directors] in office
- the number of [governors/directors] receiving expenses in the reporting period and
- the aggregate sum of expenses paid to [governors/directors] in the reporting period.

Disclosures should be made in £00 rather than £000 and be on an accruals

basis. Comparative period information should be provided.

**Information subject to audit**

2.48 The following information is required by paragraphs 4 to 16 inclusive of Part 3 of Schedule 8 to the Regulations, or where stated by the *NHS Foundation Trust Code of Governance*, and is subject to audit. The disclosures subject to audit are detailed below in paragraphs 2.49 to 2.87, including the supporting definitions.

2.49 The report should contain a single total figure for remuneration for each senior manager (see definition below) who served during the year shown in tabular form ('the single total figure table'). The format of this table is as follows:

| Single total figure table |                    |                         |                    |                    |                      |                    |
|---------------------------|--------------------|-------------------------|--------------------|--------------------|----------------------|--------------------|
|                           | a                  | b                       | c                  | d                  | e                    | Total              |
| Units                     | £000, bands of £5k | £s, to the nearest £100 | £000, bands of £5k | £000, bands of £5k | £000, bands of £2.5k | £000, bands of £5k |
| Director 1                | xxx                | xxx                     | xxx                | xxx                | xxx                  | xxx                |
| Director 2                | xxx                | xxx                     | xxx                | xxx                | xxx                  | xxx                |

2.50 In the table above:

- “a” is salary and fees (in bands of £5,000)
- “b” is all taxable benefits (total to the nearest £100)
- “c” is annual performance-related bonuses (in bands of £5,000)
- “d” is long-term performance-related bonuses (in bands of £5,000)
- “e” is all pension-related benefits (in bands of £2,500)
- Additional columns must also be included for any other items in the nature of remuneration – but excluding payments to former senior managers (see below).
- The final column is total of the above items (in bands of £5,000).
- Each of the above requirements is described in further detail below.
- Prior year comparatives are required for each of the amounts.
- As set out in paragraph 8(3) of the Regulations, where the calculations of any of these columns in accordance with the detail below result in a negative value (other than in respect of a recovery or withholding), the result should be expressed as zero in the relevant column in the table.

## Definition of 'senior managers'

- 2.51 The definition of 'senior managers' is "those persons in senior positions having authority or responsibility for directing or controlling the major activities of the NHS foundation trust". The chief executive should confirm whether this covers more than the chair, the executive and non-executive directors of the NHS foundation trust (who should be treated as senior managers as a matter of course).
- 2.52 This note covers all those individuals who hold or have held office as chair, non-executive director, executive director or senior manager (as identified by the chief executive) of the NHS foundation trust during the reporting year. It is irrelevant that:
- an individual was not substantively appointed (holding office is sufficient, irrespective of defects in appointment)
  - an individual's title as director included a prefix such as 'temporary' or 'alternate' or
  - an individual was engaged via a corporate body, such as an agency, and payments were made to that corporate body rather than to the individual directly.
- 2.53 There is a presumption that information about named individuals will be given in all circumstances and all disclosures in the remuneration report will be consistent with identifiable information of those individuals in the financial statements. However, entities must inform individuals in advance of the intention to disclose information about them, invite them to see what is intended to be published, and notify them they can object under Article 21 of the General Data Protection Regulation (GDPR).
- 2.54 If a named individual does not agree to disclosure, the trust must consider its approach to the disclosure. Under such circumstances the GDPR requires entities to demonstrate compelling legitimate grounds for the disclosure which override the interests, rights and freedoms of the named individual or for the establishment, exercise or defence of legal claims. NHS foundation trusts are strongly advised to take legal advice in such cases, because a decision not to publish the information may be challenged under the Freedom of Information Act. Where non-disclosure is agreed, the fact that certain disclosures have been omitted should be disclosed.
- 2.55 Alongside these steps for the remuneration report, NHS foundation trusts should also consider whether any other personal information contained within the annual report and accounts should also be subject to GDPR considerations as set out here.

## Senior managers with additional duties (eg medical directors)

- 2.56 Remuneration reports are required to disclose a single total figure of remuneration for each person occupying a director post. This should include all remuneration paid by the entity to the individual in respect of their service for the entity, including remuneration for duties that are not part of their management role.
- 2.57 The disclosure in single total figure table for medical directors and similar staff should therefore represent their total remuneration package from the entity. For transparency, entities should add a footnote underneath the table specifying the element of the individual's remuneration from the entity that relates to their clinical role. This footnote need not include details of the individual components (columns) of the single total figure table if the split between elements is not available in this detail.
- 2.58 Where the individual receives part of their remuneration from another body the entity should make disclosures only in respect of its share of the individual's remuneration.

## Column A: salary and fees

- 2.59 Salary is the gross salary paid/payable to the individual; this should be shown in £5,000 ranges. Where an individual held a contract of employment for the entire financial year but was only a senior manager for six months, it is the remuneration for six months which should be shown. Where there has been overlap in a post, for example where there have been two finance directors for a month, both must be shown.
- 2.60 Salary includes:
- all amounts paid or payable by the NHS foundation trust to the individual, including recharges from any other health body
  - overtime
  - the gross cost of any arrangement whereby a senior manager receives a net amount and an NHS foundation trust pays income tax on their behalf
  - any financial loss allowances paid in place of remuneration
  - any severance payment, including compensation for loss of office or early retirement (see also paragraph 2.86 for additional separate disclosure requirement)
  - recruitment and retention allowances
  - geographical allowances such as London weighting and

- any ex-gratia payments.

2.61 Salaries should exclude:

- taxable benefits
- performance pay and bonuses
- employers' National Insurance and superannuation contributions
- recharges to any other health body
- reimbursement of out-of-pocket expenses directly incurred in the performance of an individual's duties
- reimbursement of "travelling and other allowances" (paid under determination order) including home to work travel costs and
- any amount paid which the senior manager must subsequently repay. However, these amounts must be disclosed in the next report, and distinguished from other remuneration, where a senior manager is subsequently released from the liability or a loan to a senior manager remains unpaid for two years after the due date.

2.62 NHS foundation trusts should consider adding additional information to explain the circumstances of an individual senior manager in footnotes to the table if this will help the reader understand the disclosure.

**Column B: taxable benefits**

2.63 This is the gross value of such benefits before tax. It includes:

- expenses allowances that are subject to UK income tax and paid or payable to the person in respect of qualifying services and
- benefits received by the person (other than salary) that are emoluments of the person and are received by them in respect of qualifying services.

2.64 A narrative disclosure detailing the types of benefits and, where significant, the amount should be given after the table. Please note that this column should be disclosed in £s, to the nearest £100.

**Column C: Annual performance-related bonuses**

2.65 These comprise money or other assets received or receivable for the financial year as a result of achieving performance measures and targets relating to a period ending in the relevant financial year other than:

- those which result from awards made in a previous financial year and the final vesting is determined as a result of achieving performance measures or targets relating to a period ending in the relevant financial year and

- those which are receivable subject to the achievement of performance measures or targets in a future financial year.

2.66 The amounts should be reported in bands of £5,000.

2.67 Where an amount included in column C is for deferred bonus, the amount and percentage of such deferral should be disclosed in a note accompanying the table.

#### **Column D: Long-term performance-related bonuses**

2.68 These comprise money or other assets received or receivable for periods of more than one year where final vesting:

- is determined as a result of achieving performance measures or targets relating to a period ending in the relevant financial year and
- is not subject to the achievement of performance measures or targets in a future financial year.

2.69 The amounts should be reported in bands of £5,000.

#### **Performance bonuses – additional matters**

2.70 In respect of columns C and D, where the performance measures or targets are substantially (but not fully) completed by the end of the financial year, the amount shown in the table may include sums which relate to the following financial year but this must be explained in the report. In the following year's report, the amount must not be included as remuneration for that year.

2.71 For every component of remuneration included in columns C or D, a note accompanying the table must disclose:

- details of any performance measures and the relative weighting of each
- for each performance measure:
  - the performance targets set at the beginning of the performance period and the corresponding value of bonus achievable and
  - details of actual performance against the targets set and measured over the performance period and the resulting bonus awarded
- Where discretion has been exercised in the award, details of how the discretion was exercised and how the resulting bonus was determined.

#### **Column E: Pension-related benefits**

2.72 This will apply to executives only as non-executive directors do not receive any pensionable remuneration. The amount included here comprises all pension related benefits, including:

- the cash value of payments (whether in cash or otherwise) in lieu of retirement benefits and
- all benefits in year from participating in pension schemes.

2.73 For defined benefit schemes,<sup>18</sup> the amount included here is the annual increase (expressed in £2,500 bands) in pension entitlement determined in accordance with the 'HMRC' method,<sup>19</sup> less any amounts paid by employees. In summary, this is as follows:

Column E = Increase in entitlement – employee contributions

$$\text{Increase} = ((20 \times \text{PE}) + \text{LSE}) - ((20 \times \text{PB}) + \text{LSB})$$

Where:

PE is the annual rate of pension that would be payable to the director if they became entitled to it at the end of the financial year

PB is the annual rate of pension, adjusted for inflation, that would be payable to the director if they became entitled to it at the beginning of the financial year;

LSE is the amount of lump sum that would be payable to the director if they became entitled to it at the end of the financial year; and

LSB is the amount of lump sum, adjusted for inflation, that would be payable to the director if they became entitled to it at the beginning of the financial year.

The '*Disclosure of Senior Managers' Remuneration (Greenbury)*' document published by the NHS Business Services Authority includes an example of this calculation.

2.74 To help explain these figures to readers of the remuneration report, the foundation trust may wish to include narrative like the following:

*'The value of pension benefits accrued during the year is calculated as the real increase in pension multiplied by 20, less the contributions made by the individual. The real increase excludes increases due to inflation or any increase or decrease due to a transfer of pension rights.'*

*This value derived does not represent an amount that will be received by the individual. It is a calculation that is intended to provide an estimation*

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<sup>18</sup> This includes the NHS Pension Scheme which is a defined benefit scheme, though accounted for locally as a defined contribution scheme.

<sup>19</sup> The HMRC method derives from s229 of the Finance Act 2004, but is modified for the purpose of this calculation by paragraph 10(1)(e) of schedule 8 of SI 2008/410 (as replaced by SI 2013/1981).



*of the benefit being a member of the pension scheme could provide.*

*The pension benefit table provides further information on the pension benefits accruing to the individual.'*

2.75 Refer to paragraph 2.84 for guidance on senior managers in post for part of the reporting year.

### **Total pension entitlement**

2.76 Under the Companies Act Regulations, disclosure is required for each senior manager of:

- their pension entitlement: this requirement will be covered by inclusion of the pension entitlements table detailed in paragraph 2.77 below
- a description of any additional benefit that will become receivable by a director in the event that that senior manager retires early and
- where a senior manager has rights under more than one type of pension, separate details relating to each.

2.77 The FReM requires the following to be disclosed:

- the real increase during the reporting year in the pension and (if applicable) related lump sum at pension age in bands of £2,500
- the value at the end of the reporting year of the accrued pension and (if applicable) related lump sum at pension age in bands of £5,000
- the value of the cash equivalent transfer value at the beginning of the reporting year to the nearest £1,000
- the real increase in the cash equivalent transfer value during the reporting year, to the nearest £1,000
- the value of the cash equivalent transfer value at the end of the reporting year to the nearest £1,000 and
- in the case of a stakeholder pension account, the employer's contribution (in these circumstances the first four bullet points in this paragraph will not apply).

The following tabular format is recommended:

| Name and title | (a)<br>Real increase in pension at pension age (bands of £2,500)<br><br>£000 | (b)<br>Real increase in pension lump sum at pension age (bands of £2,500)<br><br>£000 | (c)<br>Total accrued pension at pension age at 31 March 20xx (bands of £5,000)<br><br>£000 | (d)<br>Lump sum at pension age related to accrued pension at 31 March 20xx (bands of £5,000)<br><br>£000 | (e)<br>Cash Equivalent Transfer Value at 1 April 20xx<br><br>£000 | (f)<br>Real increase in Cash Equivalent Transfer Value<br><br>£000 | (g)<br>Cash Equivalent Transfer Value at 31 March 20xx<br><br>£000 | (h)<br>Employer's contribution to stakeholder pension<br><br>£000 |
|----------------|--|---|--|--|---|--|--|---|
|                |  |   |  |  |   |  |  |   |

**2.78 For 2022/23, these figures should be based on the discount rate guidance that was extant on 31 March 2023. This is the approach that NHS BSA have used. NHS foundation trusts should disclose the following text beneath the table: “Cash equivalent transfer value (CETV) figures are calculated using the guidance on discount rates for calculating unfunded public service contribution rates that was extant on 31 March 2023. HM Treasury published updated guidance on 27 April 2023; this guidance will be used in the calculation of 2023/24 CETV figures.”**

2.79 The CETV is the actuarially assessed capitalised value of the pension scheme benefits accumulated by a member at a particular point in time. The benefits valued are the member’s accumulated benefits and any contingent spouse’s pension payable from the scheme. CETVs are calculated within the guidelines and framework prescribed by the Institute and Faculty of Actuaries.

2.80 The accrued benefits derived from the member’s purchase of added years of service and any “transferred-in” service must be included in these FReM pension disclosures.

2.81 The information required for the senior managers’ pension entitlements will be provided by NHS Pensions. The request for information from NHS Pensions must be made by the NHS foundation trust by the deadline set by NHS Pensions providing complete information at that time.

2.82 Detailed guidance regarding the end of year procedures for requesting information from NHS Pensions can be found on its [website](#).

2.83 Where a senior manager has opted out of the pension arrangements for the whole of the year, no pension figures should be reported and a footnote should be included stating “xxxxx chose not to be covered by the pension arrangements during the reporting year”. If a member opts out or opts in

during the year, they should be treated in the same way as a leaver or joiner.

2.84 ***Where individuals subject to remuneration disclosures have not been a senior manager of the NHS foundation trust for the whole financial year (for example due to joining, leaving, or promotion in the year or due to organisational changes in year), the real increase should be apportioned to reflect the period that the senior manager has been in post at the reporting body, as detailed in guidance from the NHTA BSA and the reporting body should make pension disclosures on that basis. The same guidance on apportionment applies to column e in the single total figure table.***

2.85 Where the NHS foundation trust has senior managers who are members of a different pension scheme the disclosure information should be requested in good time from the scheme.

### **Payments for loss of office**

2.86 For each individual who was a senior manager in the current or in a previous financial year that has received a payment for loss of office during the financial year, the following must be disclosed:

- the total amount payable to the individual, broken down into each component
- an explanation of how each component was calculated
- any other payments to the individual in connection with the termination of services as a senior manager, including outstanding long term bonuses that vest on or following termination and
- where any discretion was exercised in respect of the payment, an explanation of how it was exercised.

The requirements of Annex 1 to Chapter 2 which define what should be included in the disclosure of a non-compulsory departure payment also apply to the remuneration report.

### **Payments to past senior managers**

2.87 The report must contain details of any payments of money or other assets to any individual who was not a senior manager during the financial year but has previously been a senior manager at any time. The following payments do not need to be reported in this disclosure:

- payments for loss of office (which are separately reported above)
- payments that are otherwise shown in the single total figure table
- payments that have already been disclosed by the foundation trust in

- a previous remuneration report
- payments for regular pension benefits that commenced in a previous year and
- payments for employment or services provided by the individual other than as a senior manager of the foundation trust.

## Fair pay disclosures

### Percentage change in remuneration

2.88 For the single total figure table components of (i) salary and allowances, and (ii) performance pay and bonuses, NHS foundation trusts are required to disclose separately:

- a) the percentage change from the previous financial year in respect of the highest paid director, and
- b) the average percentage change from the previous financial year in respect of employees<sup>20</sup> of the entity, taken as a whole.

2.89 Four percentages will therefore be disclosed for each financial year under this requirement (or two if there are no performance pay and bonuses). Information is derived as follows:

- The calculation in (a) in paragraph 2.88 for salaries and allowances shall be based on the mid-point of the band for each of salary and performance pay and bonuses payable.
- The calculation in (b) in paragraph 2.88 for salary and allowances shall be the total for all employees on an annualised basis, excluding the highest paid director, divided by the FTE number of employees (also excluding the highest paid director).
- The calculation for (b) in paragraph 2.88 for performance pay and bonuses payable shall be the total for all employees, excluding the highest paid director, divided by the FTE number of employees (also excluding the highest paid director).

2.90 Prior year comparatives for each percentage change are required.

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<sup>20</sup> **HM Treasury's implementation guidance for the Fair Pay disclosures** ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1040530/Hutton\\_Review\\_of\\_Fair\\_Pay\\_-\\_Implementation\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040530/Hutton_Review_of_Fair_Pay_-_Implementation_guidance.pdf)) includes in paragraph 3.19 that "The calculation should include agency and other temporary employees covering staff vacancies, but exclude consultancy services. Only the remuneration paid to the employee should be included, not agency fees. An estimate may be appropriate to ascertain a reasonable split where this information is not available on entity payroll systems." **HM Treasury has advised that this definition should be applied to the term 'employees' in this Fair Pay section (paragraphs 2.88 to 2.96).**

- 2.91 NHS foundation trusts should disclose the range of staff remuneration together with prior year comparatives. This should include directors (including the highest paid director) and exclude pension benefits of all employees. NHS foundation trusts should also disclose the number of employees that received remuneration in excess of the highest-paid director.
- 2.92 NHS foundation trusts should provide context regarding the percentage figures disclosed, to help users of the accounts understand percentages disclosed.

### Pay ratio information

- 2.93 NHS foundation trusts must disclose pay ratio information set out in the following table. The structure of the table itself is illustrative. The disclosure is of information relating to the pay and benefits, and salary, of the employee whose pay and benefits are on the 25<sup>th</sup> percentile, median and 75<sup>th</sup> of the pay and benefits of all employees at the reporting date, together with a ratio comparing the total pay and benefits figure to the remuneration of the highest paid director.

| <u>20XX/20YY</u>  | <b>25<sup>th</sup> percentile</b>     | <b>Median</b>                         | <b>75<sup>th</sup> percentile</b>     | <u>[Guidance to preparers]</u>   |
|---|---------------------------------------|---------------------------------------|---------------------------------------|--|
| Salary component of pay   | £                                     | £                                     | £                                     | [This is the salary component of the total pay and benefits figure below – same guidance applies]  |
| Total pay and benefits excluding pension benefits                       | £<br>[ = 'Y25' for calculation below] | £<br>[ = 'Y50' for calculation below] | £<br>[ = 'Y75' for calculation below] | [These figures are based on annualised, full-time equivalent pay and benefits (per para 2.49 excluding pension benefits) of all staff (including temporary and agency staff) as at the reporting date] |
| Pay and benefits excluding pension: pay ratio for highest paid director | [X1 / Y25]:1                          | [X1 / Y50]:1                          | [X1 / Y75]:1                          | [X1 = mid-point of banded remuneration (excluding pension benefits) of the highest paid director, using the banding total for the highest paid director in the single total figure table]              |

- 2.94 ***Prior year comparatives should be provided for all figures in the table above.***
- 2.95 NHS foundation trusts must also provide an explanation of any significant changes in the ratios between the current and prior financial years, including whether the movement is attributable to a change in the remuneration of the highest paid director, or the pay and benefits of the trust's employees taken as a whole and if the latter why this has occurred.

## Format for disclosure

- 2.96 Based on requirements from HM Treasury, NHS foundation trusts should use the following introductory text and format for the disclosure:

*NHS foundation trusts are required to disclose the relationship between the remuneration of the highest-paid director in their organisation and the lower quartile, median and upper quartile remuneration of the organisation's workforce.*

*The banded remuneration of the highest-paid director in the organisation in the financial year 202X-2Y was £xx (202W-2X, £xx). This is a change between years of X%.*

*Total remuneration includes salary, non-consolidated performance-related pay, benefits-in-kind, but not severance payments. It does not include employer pension contributions and the cash equivalent transfer value of pensions.*

*For employees of the Trust as a whole, the range of remuneration in 202X-2Y was from £xx to £xx (202W-2X £xx to £xx). The percentage change in average employee remuneration (based on total for all employees on an annualised basis divided by full time equivalent number of employees) between years is X%. XX employees received remuneration in excess of the highest-paid director in 202X-2Y. (202W-2X: YY employees.)*

[Note requirement in paragraph 2.88 to set the above out separately for (i) salary and allowances, and (ii) performance pay and bonuses.]

[Add additional explanation if required to explain figures]

*The remuneration of the employee at the 25<sup>th</sup> percentile, median and 75<sup>th</sup> percentile is set out below. The pay ratio shows the relationship between the total pay and benefits of the highest paid director (excluding pension benefits) and each point in the remuneration range for the organisation's workforce.*

[Disclose pay ratio information required by paragraph 2.93]

[Add explanation required by paragraph 2.95]

## Staff report

- 2.97 The staff report must include the following information (these requirements are based on the HM Treasury FReM):

- An analysis of staff costs.<sup>21</sup> This should follow the format in the TAC schedules. This expands the disclosure in the example accounts to analyse between ‘permanently employed’ and ‘other staff’:
  - a) ‘Permanently employed’ – staff with a permanent (UK) employment contract directly with the entity (this will include executive directors but exclude non-executive directors)
  - b) ‘Other’ – staff engaged on the objectives of the entity that do not have a permanent (UK) employment contract with the entity. This includes employees on short-term contracts of employment, agency/temporary staff, locally engaged staff overseas, and inward secondments from other entities
- An analysis of average staff numbers. These should be disclosed in the categories listed in the TAC schedules. In allocating employees to categories, the employee definitions should be those in the [Occupational Code Manual](#)

This analysis should distinguish between ‘permanently employed’ and ‘other’ staff, following the definitions above.

The average number of employees is calculated as the whole time equivalent number of employees under contract of service in each week in the financial year, divided by the number of weeks in the financial year. The “contracted hours” method of calculating whole time equivalent number should be used, that is, dividing the contracted hours of each employee by the standard working hours. Staff on outward secondment should not be included in the average number of employees.

- A breakdown at the year end of the number of each gender who were:
  - a) directors
  - b) other senior managers and
  - c) employees.
- Sickness absence data
- Staff policies and actions applied during the financial year:
  - a) policies applied during the financial year for giving full and fair consideration to applications for employment made by disabled

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<sup>21</sup> In line with the *FReM*, the detailed staff costs note is included in the staff report in the annual report, rather than the accounts. A more summarised note is retained in the accounts, as required by the *DHSC GAM* and shown in the template accounts issued by NHS England.

- persons, having regard to their particular aptitudes and abilities
- b) policies applied during the financial year for continuing the employment of, and for arranging appropriate training for, employees who have become disabled persons during the period
  - c) policies applied during the financial year for the training, career development and promotion of disabled employees
  - d) actions taken in the financial year to provide employees systematically with information on matters of concern to them as employees
  - e) actions taken in the financial year to consult employees or their representatives on a regular basis so that the views of employees can be taken into account in making decisions which are likely to affect their interests
  - f) actions taken in the financial year to encourage the involvement of employees in the NHS foundation trust's performance
  - g) information on health and safety performance and occupational health
  - h) information on policies and procedures with respect to countering fraud and corruption
  - i) information on diversity and inclusion policies, initiatives and longer term ambitions. The disclosure may include information regarding the following, or cross-referenced to other publications containing such information:
    - how policies and activities undertaken in the year have or will improve the diversity and inclusiveness of the workforce
    - whether the entity has identified any barriers to improving the diversity of its workforce and if so, what actions the organisation has or will put in place
    - changes in staff composition impacting on the diversity and inclusiveness of the workforce, including appropriate trend data, if not provided elsewhere
    - performance against internal targets set in relation to diversity and inclusiveness of the workforce if applicable.
- Information on staff turnover: foundation trusts can meet this requirement by providing a link to [NHS workforce statistics](#)
  - Staff survey results (see below)
  - Trade Union Facility Time disclosures (see below)
  - Expenditure on consultancy



- Off-payroll engagements (see below)
- Exit packages (see Annex 1 to Chapter 2). This element is subject to audit, per paragraph 5.3.4 of the FReM.
- Information on where the entity's information on the gender pay gap can be found: this should include reference to the Cabinet Office website (<https://gender-pay-gap.service.gov.uk/>) and may also include a link to the relevant part of the NHS foundation trust's own website if it provides additional information.

## Staff survey

2.98 The foundation trust should include information on its staff survey results covering:

### a) Commentary

- Statement of approach to staff engagement – each NHS foundation trust will be required to include a statement of its approach to staff engagement and what mechanisms are in place to monitor and learn from staff feedback.

### b) Summary of performance – results from the NHS staff survey

- NHS foundation trusts will be required to provide a summary of the key findings from the most recent NHS staff survey including the response rate. The minimum information to include is set out below. If included as a table, separate tables are likely to be needed for years before 2021 given the change in reporting format in 2021/22.

Disclosures should include:

- indicator score for the trust for each of the nine indicators (seven 'Promise' elements, two themes) in the NHS staff survey report for the current and prior year and for the ten indicators for at least the year before
- the score for the benchmarking group for each of the nine indicators (seven 'Promise' elements, two themes) in the NHS staff survey report for the current year and prior year and for the ten indicators for at least the year before.

The trust may optionally also disclose information for up to five years, and/or information on the best and worst scores for each indicator if it wishes.

- Action plans to address areas of concerns

- The commentary on the key findings from the survey and each NHS foundation trust will include a summary of its plans to address specific areas of concern emerging from their listening channels, including the NHS staff survey, and workforce metrics, and any plans to improve these in the short, medium, and long term.

c) Future priorities and targets

- The commentary should include a statement on the key priorities to improve staff feedback it has (or plans to) put in place and what mechanisms are in place to monitor performance.

2.99 A sample template commentary and summary performance analysis is provided in Annex 2.

### Trade Union Facility Time

2.100 The required disclosures are set out in Schedule 2 to [The Trade Union \(Facility Time Publication Requirements\) Regulations 2017](#)<sup>22</sup> with further guidance provided by the Cabinet Office [here](#).<sup>23</sup> All NHS foundation trusts are within scope of the requirements, where the foundation trust has at least one trade union representative and at least 49 full-time equivalent employees during any seven of the twelve-month period of the annual report. The disclosure is not required if the period of the annual report for a demising trust is less than seven months.

2.101 Schedule 2 of the Regulations and annex A of the Cabinet Office guidance provide the format of the required disclosures. No disclosures are required for the prior year. If required to make the disclosures, NHS foundation trusts must include them within the staff report, rather than elsewhere in the annual report and accounts as permitted by the Cabinet Office guidance.

### Reporting high paid off-payroll arrangements

2.102 As part of the staff report NHS foundation trusts should present three tables relating to off-payroll arrangements, with some supporting disclosures. The details of these requirements are set out in Annex 6 to this chapter. Further information and definitions can be found in guidance previously issued by HM Treasury, available [here](#) and [here](#). Further guidance is available at <https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation> and from the Tax Centre of Excellence: <https://gff.civilservice.gov.uk/communities/centres-of-excellence/tax-centre-of-excellence/tax-guidance-and-information/off-payroll-working-ir35/guidance-on-off-payroll-working-rules-ir35-for-the-public-sector/>.

<sup>22</sup> [www.legislation.gov.uk/ukxi/2017/328/made](http://www.legislation.gov.uk/ukxi/2017/328/made)

<sup>23</sup> [www.gov.uk/government/publications/trade-union-facility-time-publication-requirements](http://www.gov.uk/government/publications/trade-union-facility-time-publication-requirements)

The staff report should also contain a statement on the NHS foundation trust's policy on the use of off-payroll arrangements, which as a minimum should cover arrangements for highly paid staff and controls it has in place over the use of such arrangements. 'Highly paid' is defined as the threshold used by HM Treasury in the reporting tables as reproduced in Annex 6 to this chapter (to be published separately).

## NHS Foundation Trust Code of Governance

2.103 *The NHS Foundation Trust Code of Governance (the Code of Governance)* was first published in 2006 and was most recently updated in July 2014. ***The new Code of Governance for NHS provider trusts is applicable from 1 April 2023.***

2.104 The purpose of the *Code of Governance* is to assist NHS foundation trust boards in improving their governance practices by bringing together the best practice of public and private sector corporate governance. The code is issued as best practice advice, but imposes some disclosure requirements.

2.105 The annual report should contain the following sentence:

"[name] NHS Foundation Trust has applied the principles of the NHS Foundation Trust Code of Governance on a comply or explain basis. The NHS Foundation Trust Code of Governance, most recently revised in July 2014, is based on the principles of the UK Corporate Governance Code issued in 2012."

2.106 NHS foundation trusts are required to provide a specific set of disclosures in their annual report to meet the requirements of the Code of Governance. Schedule A to the *Code of Governance* specifies everything that is required within these disclosures. Schedule A is divided into six categories:

- statutory requirements of the *Code of Governance* but do not require disclosures
- provisions which require a supporting explanation, even where the NHS foundation trust is compliant with the provision\*
- provisions which require supporting information to be made publicly available, even where the NHS foundation trust is compliant with the provision
- provisions which require supporting information to be made to governors, even where the NHS foundation trust is compliant with the provision
- provisions which require supporting information to be made to

members, even where the NHS foundation trust is compliant with the provision and

- other provisions where there are no special requirements as per 1-5 above and there is a “comply or explain” requirement. The disclosure should therefore contain an explanation in each case where the trust has departed from the *Code of Governance*, explaining the reasons for the departure and how the alternative arrangements continue to reflect the main principles of the Code of Governance (see pages 13-16 of that document).

\* Where the information is already contained within the annual report, a reference to its location is sufficient to avoid unnecessary duplication.

The information in the paragraph and table below only covers items falling into category 2 and category 6 above.

2.107 The requirements of parts 2 and 6 of schedule A to the *Code of Governance* are listed below. This table also includes requirements that are not part of the *Code of Governance* but are required by the *FT ARM*.

| Part of schedule A (see above) | Relating to   | Code of Governance reference | Summary of requirement   |
|--------------------------------|---|------------------------------|--|
| 2: Disclose                    | Board and Council of Governors  | A.1.1                        | The schedule of matters reserved for the board of directors should include a clear statement detailing the roles and responsibilities of the council of governors. This statement should also describe how any disagreements between the council of governors and the board of directors will be resolved. The annual report should include this schedule of matters or a summary statement of how the board of directors and the council of governors operate, including a summary of the types of decisions to be taken by each of the boards and which are delegated to the executive management of the board of directors. |
| 2: Disclose                    | Board, Nomination Committee(s), Audit Committee, Remuneration Committee | A.1.2                        | The annual report should identify the chairperson, the deputy chairperson (where there is one), the chief executive, the senior independent director (see A.4.1) and the chairperson and members of the nominations, audit and remuneration <sup>24</sup> committees. It should also set out the number of meetings of the board and those committees and individual attendance by directors.<br>Part of this requirement is also contained within paragraph 2.27 as part of the directors' report.  |

<sup>24</sup> This requirement is also contained in paragraph 2.46 as part of the remuneration report requirements. The disclosure relating to the remuneration committee should only be made once.

| <b>Part of schedule A (see above)</b> | <b>Relating to</b>         | <b>Code of Governance reference</b> | <b>Summary of requirement</b>  |
|---------------------------------------|----------------------------|-------------------------------------|--|
| 2: Disclose                           | Council of Governors       | A.5.3                               | The annual report should identify the members of the council of governors, including a description of the constituency or organisation that they represent, whether they were elected or appointed, and the duration of their appointments. The annual report should also identify the nominated lead governor.  |
| Additional requirement of FT ARM      | Council of Governors       | n/a                                 | The annual report should include a statement about the number of meetings of the council of governors and individual attendance by governors and directors.  |
| 2: Disclose                           | Board                      | B.1.1                               | The board of directors should identify in the annual report each non-executive director it considers to be independent, with reasons where necessary.  |
| 2: Disclose                           | Board                      | B.1.4                               | The board of directors should include in its annual report a description of each director's skills, expertise and experience. Alongside this, in the annual report, the board should make a clear statement about its own balance, completeness and appropriateness to the requirements of the NHS foundation trust.   |
| Additional requirement of FT ARM      | Board                      | n/a                                 | The annual report should include a brief description of the length of appointments of the non-executive directors, and how they may be terminated  |
| 2: Disclose                           | Nominations Committee(s)   | B.2.10                              | A separate section of the annual report should describe the work of the nominations committee(s), including the process it has used in relation to board appointments.   |
| Additional requirement of FT ARM      | Nominations Committee(s)   | n/a                                 | The disclosure in the annual report on the work of the nominations committee should include an explanation if neither an external search consultancy nor open advertising has been used in the appointment of a chair or non-executive director.   |
| 2: Disclose                           | Chair/Council of Governors | B.3.1                               | A chairperson's other significant commitments should be disclosed to the council of governors before appointment and included in the annual report. Changes to such commitments should be reported to the council of governors as they arise, and included in the next annual report.  |
| 2: Disclose                           | Council of Governors       | B.5.6                               | Governors should canvass the opinion of the trust's members and the public, and for appointed governors the body they represent, on the NHS foundation trust's forward plan, including its objectives, priorities and strategy, and their views should be communicated to the board of directors. The annual report should contain a statement as to how this requirement has been undertaken and satisfied. |

| <b>Part of schedule A (see above)</b> | <b>Relating to</b>                  | <b>Code of Governance reference</b> | <b>Summary of requirement</b>  |
|---------------------------------------|-------------------------------------|-------------------------------------|--|
| Additional requirement of FT ARM      | Council of Governors                | n/a                                 | <p>If, during the financial year, the Governors have exercised their power* under paragraph 10C** of schedule 7 of the NHS Act 2006, then information on this must be included in the annual report.</p> <p>This is required by paragraph 26(2)(aa) of schedule 7 to the NHS Act 2006, as amended by section 151 (8) of the Health and Social Care Act 2012.</p> <p>* Power to require one or more of the directors to attend a governors' meeting for the purpose of obtaining information about the foundation trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the foundation trust's or directors' performance).</p> <p>** As inserted by section 151 (6) of the Health and Social Care Act 2012)</p> |
| 2: Disclose                           | Board                               | B.6.1                               | The board of directors should state in the annual report how performance evaluation of the board, its committees, and its directors, including the chairperson, has been conducted.  |
| 2: Disclose                           | Board                               | B.6.2                               | Where there has been external evaluation of the board and/or governance of the trust, the external facilitator should be identified in the annual report and a statement made as to whether they have any other connection to the trust.   |
| 2: Disclose                           | Board                               | C.1.1                               | The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, are fair, balanced and understandable and provide the information necessary for patients, regulators and other stakeholders to assess the NHS foundation trust's performance, business model and strategy. Directors should also explain their approach to quality governance in the Annual Governance Statement (within the annual report).<br>See also ARM paragraph 2.112.  |
| 2: Disclose                           | Board                               | C.2.1                               | The annual report should contain a statement that the board has conducted a review of the effectiveness of its system of internal controls.  |
| 2: Disclose                           | Audit Committee/control environment | C.2.2                               | A trust should disclose in the annual report:<br>(a) if it has an internal audit function, how the function is structured and what role it performs; or<br>(b) if it does not have an internal audit function, that fact and the processes it employs for evaluating and continually improving the effectiveness of its risk management and internal control processes.  |

| <b>Part of schedule A (see above)</b> | <b>Relating to</b>                       | <b>Code of Governance reference</b> | <b>Summary of requirement</b>   |
|---------------------------------------|--|-------------------------------------|---|
| 2: Disclose                           | Audit Committee/<br>Council of Governors | C.3.5                               | If the council of governors does not accept the audit committee's recommendation on the appointment, reappointment or removal of an external auditor, the board of directors should include in the annual report a statement from the audit committee explaining the recommendation and should set out reasons why the council of governors has taken a different position.   |
| 2: Disclose                           | Audit Committee                          | C.3.9                               | A separate section of the annual report should describe the work of the audit committee in discharging its responsibilities. The report should include: <ul style="list-style-type: none"> <li>the significant issues that the committee considered in relation to financial statements, operations and compliance, and how these issues were addressed;</li> <li>an explanation of how it has assessed the effectiveness of the external audit process and the approach taken to the appointment or re-appointment of the external auditor, the value of external audit services and information on the length of tenure of the current audit firm and when a tender was last conducted; and</li> <li>if the external auditor provides non-audit services, the value of the non-audit services provided and an explanation of how auditor objectivity and independence are safeguarded.</li> </ul> |
| 2: Disclose                           | Board/Remuneration Committee             | D.1.3                               | Where an NHS foundation trust releases an executive director, for example to serve as a non-executive director elsewhere, the remuneration disclosures of the annual report should include a statement of whether or not the director will retain such earnings.  |
| 2: Disclose                           | Board                                    | E.1.5                               | The board of directors should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of governors and members about the NHS foundation trust, for example through attendance at meetings of the council of governors, direct face-to-face contact, surveys of members' opinions and consultations.  |
| 2: Disclose                           | Board/Membership                         | E.1.6                               | The board of directors should monitor how representative the NHS foundation trust's membership is and the level and effectiveness of member engagement and report on this in the annual report.   |
| 2: Disclose                           | Membership                               | E.1.4                               | Contact procedures for members who wish to communicate with governors and/or directors should be made clearly available to members on the NHS foundation trust's website and in the annual report.  |

| <b>Part of schedule A (see above)</b>                        | <b>Relating to</b>         | <b>Code of Governance reference</b> | <b>Summary of requirement</b>   |
|--|----------------------------|-------------------------------------|---|
| Additional requirement of FT ARM                             | Membership                 | n/a                                 | The annual report should include: <ul style="list-style-type: none"> <li>• a brief description of the eligibility requirements for joining different membership constituencies, including the boundaries for public membership;</li> <li>• information on the number of members and the number of members in each constituency; and</li> <li>• a summary of the membership strategy, an assessment of the membership and a description of any steps taken during the year to ensure a representative membership [see also E.1.6 above], including progress towards any recruitment targets for members.</li> </ul>  |
| Additional requirement of FT ARM (based on FReM requirement) | Board/Council of Governors | n/a                                 | The annual report should disclose details of company directorships or other material interests in companies held by governors and/or directors where those companies or related parties are likely to do business, or are possibly seeking to do business, with the NHS foundation trust. As each NHS foundation trust must have registers of governors' and directors' interests which are available to the public, an alternative disclosure is for the annual report to simply state how members of the public can gain access to the registers instead of listing all the interests in the annual report. See also ARM paragraph 2.27 as directors' report requirement. |
| 6: Comply or explain   | Board                      | A.1.4                               | The board should ensure that adequate systems and processes are maintained to measure and monitor the NHS foundation trust's effectiveness, efficiency and economy as well as the quality of its healthcare delivery  |
| 6: Comply or explain   | Board                      | A.1.5                               | The board should ensure that relevant metrics, measures, milestones and accountabilities are developed and agreed so as to understand and assess progress and delivery of performance   |
| 6: Comply or explain   | Board                      | A.1.6                               | The board should report on its approach to clinical governance.   |
| 6: Comply or explain   | Board                      | A.1.7                               | The chief executive as the accounting officer should follow the procedure set out by NHS England for advising the board and the council and for recording and submitting objections to decisions.   |
| 6: Comply or explain   | Board                      | A.1.8                               | The board should establish the constitution and standards of conduct for the NHS foundation trust and its staff in accordance with NHS values and accepted standards of behaviour in public life  |
| 6: Comply or explain   | Board                      | A.1.9                               | The board should operate a code of conduct that builds on the values of the NHS foundation trust and reflect high standards of probity and responsibility.  |
| 6: Comply or explain   | Board                      | A.1.10                              | The NHS foundation trust should arrange appropriate insurance to cover the risk of legal action against its directors.  |



| <b>Part of schedule A (see above)</b> | <b>Relating to</b>         | <b>Code of Governance reference</b> | <b>Summary of requirement</b>   |
|---------------------------------------|----------------------------|-------------------------------------|---|
| 6: Comply or explain                  | Chair                      | A.3.1                               | The chairperson should, on appointment by the council, meet the independence criteria set out in B.1.1. A chief executive should not go on to be the chairperson of the same NHS foundation trust.  |
| 6: Comply or explain                  | Board                      | A.4.1                               | In consultation with the council, the board should appoint one of the independent non-executive directors to be the senior independent director.  |
| 6: Comply or explain                  | Board                      | A.4.2                               | The chairperson should hold meetings with the non-executive directors without the executives present.   |
| 6: Comply or explain                  | Board                      | A.4.3                               | Where directors have concerns that cannot be resolved about the running of the NHS foundation trust or a proposed action, they should ensure that their concerns are recorded in the board minutes.   |
| 6: Comply or explain                  | Council of Governors       | A.5.1                               | The council of governors should meet sufficiently regularly to discharge its duties.  |
| 6: Comply or explain                  | Council of Governors       | A.5.2                               | The council of governors should not be so large as to be unwieldy.  |
| 6: Comply or explain                  | Council of Governors       | A.5.4                               | The roles and responsibilities of the council of governors should be set out in a written document.   |
| 6: Comply or explain                  | Council of Governors       | A.5.5                               | The chairperson is responsible for leadership of both the board and the council but the governors also have a responsibility to make the arrangements work and should take the lead in inviting the chief executive to their meetings and inviting attendance by other executives and non-executives, as appropriate. |
| 6: Comply or explain                  | Council of Governors       | A.5.6                               | The council should establish a policy for engagement with the board of directors for those circumstances when they have concerns.   |
| 6: Comply or explain                  | Council of Governors       | A.5.7                               | The council should ensure its interaction and relationship with the board of directors is appropriate and effective.  |
| 6: Comply or explain                  | Council of Governors       | A.5.8                               | The council should only exercise its power to remove the chairperson or any non-executive directors after exhausting all means of engagement with the board.  |
| 6: Comply or explain                  | Council of Governors       | A.5.9                               | The council should receive and consider other appropriate information required to enable it to discharge its duties.  |
| 6: Comply or explain                  | Board                      | B.1.2                               | At least half the board, excluding the chairperson, should comprise non-executive directors determined by the board to be independent.  |
| 6: Comply or explain                  | Board/Council of Governors | B.1.3                               | No individual should hold, at the same time, positions of director and governor of any NHS foundation trust.  |
| 6: Comply or explain                  | Nomination Committee(s)    | B.2.1                               | The nominations committee or committees, with external advice as appropriate, are responsible for the identification and nomination of executive and non-executive directors.   |

| <b>Part of schedule A (see above)</b> | <b>Relating to</b>                            | <b>Code of Governance reference</b> | <b>Summary of requirement</b>   |
|---------------------------------------|---|-------------------------------------|---|
| 6: Comply or explain                  | Board/Council of Governors                    | B.2.2                               | Directors on the board of directors and governors on the council should meet the “fit and proper” persons test described in the provider licence.   |
| 6: Comply or explain                  | Nomination Committee(s)                       | B.2.3                               | The nominations committee(s) should regularly review the structure, size and composition of the board and make recommendations for changes where appropriate.   |
| 6: Comply or explain                  | Nomination Committee(s)                       | B.2.4                               | The chairperson or an independent non-executive director should chair the nominations committee(s).   |
| 6: Comply or explain                  | Nomination Committee(s)/ Council of Governors | B.2.5                               | The governors should agree with the nominations committee a clear process for the nomination of a new chairperson and non-executive directors.  |
| 6: Comply or explain                  | Nomination Committee(s)                       | B.2.6                               | Where an NHS foundation trust has two nominations committees, the nominations committee responsible for the appointment of non-executive directors should consist of a majority of governors.   |
| 6: Comply or explain                  | Council of Governors                          | B.2.7                               | When considering the appointment of non-executive directors, the council should take into account the views of the board and the nominations committee on the qualifications, skills and experience required for each position.   |
| 6: Comply or explain                  | Council of Governors                          | B.2.8                               | The annual report should describe the process followed by the council in relation to appointments of the chairperson and non-executive directors.   |
| 6: Comply or explain                  | Nomination Committee(s)                       | B.2.9                               | An independent external adviser should not be a member of or have a vote on the nominations committee(s).   |
| 6: Comply or explain                  | Board   | B.3.3                               | The board should not agree to a full-time executive director taking on more than one non-executive directorship of an NHS foundation trust or another organisation of comparable size and complexity.   |
| 6: Comply or explain                  | Board/Council of Governors                    | B.5.1                               | The board and the council governors should be provided with high-quality information appropriate to their respective functions and relevant to the decisions they have to make.   |
| 6: Comply or explain                  | Board   | B.5.2                               | The board, and in particular non-executive directors, may reasonably wish to challenge assurances received from the executive management. They need not seek to appoint a relevant adviser for each and every subject area that comes before the board, although they should, wherever possible, ensure that they have sufficient information and understanding to enable challenge and to take decisions on an informed basis. |
| 6: Comply or explain                  | Board   | B.5.3                               | The board should ensure that directors, especially non-executive directors, have access to the independent professional advice, at the NHS foundation trust's expense, where they judge it necessary to discharge their responsibilities as directors.  |

| <b>Part of schedule A (see above)</b> | <b>Relating to</b>           | <b>Code of Governance reference</b> | <b>Summary of requirement</b>   |
|---------------------------------------|------------------------------|-------------------------------------|---|
| 6: Comply or explain                  | Board/Committees             | B.5.4                               | Committees should be provided with sufficient resources to undertake their duties.  |
| 6: Comply or explain                  | Chair                        | B.6.3                               | The senior independent director should lead the performance evaluation of the chairperson.  |
| 6: Comply or explain                  | Chair                        | B.6.4                               | The chairperson, with assistance of the board secretary, if applicable, should use the performance evaluations as the basis for determining individual and collective professional development programmes for non-executive directors relevant to their duties as board members.  |
| 6: Comply or explain                  | Chair/Council of Governors   | B.6.5                               | Led by the chairperson, the council should periodically assess their collective performance and they should regularly communicate to members and the public details on how they have discharged their responsibilities.   |
| 6: Comply or explain                  | Council of Governors         | B.6.6                               | There should be a clear policy and a fair process, agreed and adopted by the council, for the removal from the council of any governor who consistently and unjustifiably fails to attend the meetings of the council or has an actual or potential conflict of interest which prevents the proper exercise of their duties.  |
| 6: Comply or explain                  | Board/Remuneration Committee | B.8.1                               | The remuneration committee should not agree to an executive member of the board leaving the employment of an NHS foundation trust, except in accordance with the terms of their contract of employment, including but not limited to service of their full notice period and/or material reductions in their time commitment to the role, without the board first having completed and approved a full risk assessment. |
| 6: Comply or explain                  | Board                        | C.1.2                               | The directors should report that the NHS foundation trust is a going concern with supporting assumptions or qualifications as necessary.<br>See also ARM paragraph 2.15.  |
| 6: Comply or explain                  | Board                        | C.1.3                               | At least annually and in a timely manner, the board should set out clearly its financial, quality and operating objectives for the NHS foundation trust and disclose sufficient information, both quantitative and qualitative, of the NHS foundation trust's business and operation, including clinical outcome data, to allow members and governors to evaluate its performance.                                      |

| <b>Part of schedule A (see above)</b> | <b>Relating to</b>                   | <b>Code of Governance reference</b> | <b>Summary of requirement</b>  |
|---------------------------------------|--------------------------------------|-------------------------------------|--|
| 6: Comply or explain                  | Board                                | C.1.4                               | <p>a) The board of directors must notify NHS England and the council of governors without delay and should consider whether it is in the public's interest to bring to the public attention, any major new developments in the NHS foundation trust's sphere of activity which are not public knowledge, which it is able to disclose and which may lead by virtue of their effect on its assets and liabilities, or financial position or on the general course of its business, to a substantial change to the financial wellbeing, healthcare delivery performance or reputation and standing of the NHS foundation trust.</p> <p>b) The board of directors must notify NHS England and the council of governors without delay and should consider whether it is in the public interest to bring to public attention all relevant information which is not public knowledge concerning a material change in:</p> <ul style="list-style-type: none"> <li>• the NHS foundation trust's financial condition;</li> <li>• the performance of its business; and/or</li> <li>• the NHS foundation trust's expectations as to its performance which, if made public, would be likely to lead to a substantial change to the financial wellbeing, healthcare delivery performance or reputation and standing of the NHS foundation trust.</li> </ul> |
| 6: Comply or explain                  | Board/Audit Committee                | C.3.1                               | The board should establish an audit committee composed of at least three members who are all independent non-executive directors.  |
| 6: Comply or explain                  | Council of Governors/Audit Committee | C.3.3                               | The council should take the lead in agreeing with the audit committee the criteria for appointing, re-appointing and removing external auditors.   |
| 6: Comply or explain                  | Council of Governors/Audit Committee | C.3.6                               | The NHS foundation trust should appoint an external auditor for a period of time which allows the auditor to develop a strong understanding of the finances, operations and forward plans of the NHS foundation trust.   |
| 6: Comply or explain                  | Council of Governors                 | C.3.7                               | When the council ends an external auditor's appointment in disputed circumstances, the chairperson should write to NHS England informing it of the reasons behind the decision.  |
| 6: Comply or explain                  | Audit Committee                      | C.3.8                               | The audit committee should review arrangements that allow staff of the NHS foundation trust and other individuals where relevant, to raise, in confidence, concerns about possible improprieties in matters of financial reporting and control, clinical quality, patient safety or other matters.   |
| 6: Comply or explain                  | Remuneration Committee               | D.1.1                               | Any performance-related elements of the remuneration of executive directors should be designed to align their interests with those of patients, service users and taxpayers and to give these directors keen incentives to perform at the highest levels.  |

| Part of schedule A (see above) | Relating to                                  | Code of Governance reference | Summary of requirement  |
|--------------------------------|--|------------------------------|---|
| 6: Comply or explain           | Remuneration Committee                       | D.1.2                        | Levels of remuneration for the chairperson and other non-executive directors should reflect the time commitment and responsibilities of their roles.  |
| 6: Comply or explain           | Remuneration Committee                       | D.1.4                        | The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointments would give rise to in the event of early termination.                            |
| 6: Comply or explain           | Remuneration Committee                       | D.2.2                        | The remuneration committee should have delegated responsibility for setting remuneration for all executive directors, including pension rights and any compensation payments.   |
| 6: Comply or explain           | Council of Governors/ Remuneration Committee | D.2.3                        | The council should consult external professional advisers to market-test the remuneration levels of the chairperson and other non-executives at least once every three years and when they intend to make a material change to the remuneration of a non-executive. |
| 6: Comply or explain           | Board  | E.1.2                        | The board should clarify in writing how the public interests of patients and the local community will be represented, including its approach for addressing the overlap and interface between governors and any local consultative forums.                          |
| 6: Comply or explain           | Board  | E.1.3                        | The chairperson should ensure that the views of governors and members are communicated to the board as a whole.   |
| 6: Comply or explain           | Board  | E.2.1                        | The board should be clear as to the specific third party bodies in relation to which the NHS foundation trust has a duty to co-operate.   |
| 6: Comply or explain           | Board  | E.2.2                        | The board should ensure that effective mechanisms are in place to co-operate with relevant third party bodies and that collaborative and productive relationships are maintained with relevant stakeholders at appropriate levels of seniority in each.             |

## NHS Oversight Framework

2.108 NHS foundation trusts must include a section in the accountability report which describes the application of NHS England's NHS **Oversight Framework** to the trust. An example commentary and disclosure is provided in Annex 3. Any rating relating to finance and use and resources should be disclosed on the same basis as in the foundation trust's monitoring templates issued by NHS England: on a group basis but excluding the impact of consolidated charitable funds.

2.109 Where NHS England has notified the foundation trust that it has been found to have been in breach or suspected breach of its licence, this should be disclosed together with the action taken or proposed actions to remedy this.

## Statement of accounting officer's responsibilities

- 2.110 The NHS foundation trust's chief executive should explain their responsibility for preparing the financial statements. This should be positioned after the annual report and before the annual governance statement. A model statement of accounting officer's responsibilities is provided in Annex 4 to this chapter.
- 2.111 Paragraph 25 of Schedule 7 to the 2006 Act states that the NHS foundation trust is to prepare annual accounts, and that such functions of the trust are to be delegated to the Accounting Officer. The [NHS Foundation Trust Accounting Officer Memorandum](#) further states that it is the chief executive's personal responsibility to prepare the financial statements.
- 2.112 In addition, the [NHS Foundation Trust Code of Governance](#) (C.1.1) requires directors to include in the annual report an explanation of their responsibility for preparing the annual report and accounts. This includes the directors ensuring the annual report and accounts, taken as a whole, is fair, balanced and understandable and provides the information necessary for patients, regulators and stakeholders to assess the NHS foundation trust's performance, business model and strategy (*Code of Governance* C.1.1). The model statement of accounting officer's responsibilities in Annex 4 includes a statement from the accounting officer that this has been achieved.
- 2.113 The Accounting Officer is required to confirm that, as far as they are aware, there is no relevant audit information of which the entity's auditors are unaware, and the Accounting Officer has taken all the steps that they ought to have taken to make himself or herself aware of any relevant audit information and to establish that the entity's auditors are aware of that information. [Section 418](#) of the Companies Act gives more guidance on what this confirmation means.

## Annual governance statement

- 2.114 All entities covered by the requirements of this manual shall prepare an annual governance statement. A model annual governance statement is reproduced in Annex 5 to this document, but should be adapted and expanded to reflect the particular circumstance of the NHS foundation trust. NHS England does not prescribe for foundation trusts which issues should be considered to be significant control issues. Foundation trusts should ensure that a consistent definition of what constitutes significance is applied from year to year. Annex 5 provides examples of factors to consider in determining whether an issue is significant.
- 2.115 The annual governance statement includes reference to services being well-led. Trusts should refer to NHS England's well-led framework published at <https://www.england.nhs.uk/well-led-framework/> .

- 2.116 The annual governance statement should include disclosure of any serious incidents relating to information governance including data loss or confidentiality breach. As a minimum this should include details of any incidents notified to the ICO/DHSC in the Data Security Incident Reporting Tool. For these cases the foundation trust should detail any action taken by the ICO. If disclosure would be prejudicial to any ongoing investigations or disciplinary or regulatory proceedings, details may be omitted.
- 2.117 The annual report should also include a statement report that the board has conducted a review of the effectiveness of the trust's system on internal controls. (*Code of Governance C.2.1*).

### **Voluntary disclosures**

- 2.118 NHS foundation trusts are encouraged to include a section on equality reporting in the annual report. Inclusion is left to NHS foundation trusts' discretion. If included, we recommend treating this as a sub-section of the Accountability Report.

### **Equality reporting**

- 2.119 Requirements for the equality report, which may be included in the annual report and accounts at NHS foundation trusts' discretion, will be found at [www.gov.uk/equality-act-2010-guidance](http://www.gov.uk/equality-act-2010-guidance). If an equality report is included in the annual report, NHS foundation trusts are required to follow these requirements. If this is followed, the trust should also consider the related requirements in paragraph 2.23 and paragraph 2.97 and is encouraged to link these together.

### **Modern Slavery Act 2015**

- 2.120 The Modern Slavery Act 2015 established a duty for commercial organisations to prepare an annual slavery and human trafficking statement. This is a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business.
- 2.121 An entity is a 'commercial organisation' for the purposes of the Act if it supplies goods and services and has an annual turnover in excess of £36 million (set out in The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015). Additionally, it must be a body corporate or partnership which carries on a business, or part of a business, in any part of the United Kingdom.
- 2.122 The Act does not specify what constitutes a business, and the potential therefore exists for NHS bodies, particularly NHS providers, that earn income from providing services to be considered to be within the scope of the Act's reporting requirements.

- 2.123 Home Office guidance indicates that pursuit of primarily charitable or educational aims or purely public functions does not necessarily exempt an organisation if it engages in commercial activities. However, discussions between the Department of Health and Social Care and Home Office have established that NHS bodies are not considered to be carrying on a business where they are engaged in publicly funded activities and that it was not intended that such activities should be within the scope of the Act. Income earned by NHS providers from government sources, including clinical commissioning groups and local authorities, is considered to be publicly funded for this purpose.
- 2.124 Where NHS bodies engage in profit-making activities, these may still be sufficient to trigger the reporting requirements. This is likely to be the case where income is earned from non-government sources, such as private patients, and where this income exceeds £36 million in total. It is ultimately for individual NHS bodies to consider whether they have activities that require them to be treated as a commercial organisation for the purpose of the Act, and to produce the required statement accordingly.
- 2.125 Where a slavery and human trafficking statement is required, the Act specifies that entities must publish this on their website if they have one. NHS England does not require NHS foundation trusts to include the slavery and human trafficking statement in their annual report (where the Act requires one be produced) but foundation trusts may include it in the annual report if they wish.



## Annex 1 to Chapter 2: Exit packages

### Staff exit packages

NHS foundation trusts are required to disclose summary information of their use of exit packages agreed in the year, as required by the *FReM*

A narrative description should be provided, together with summary information in accordance with the table below (comparative information should be included either in brackets, additional columns, or a separate table).

| Exit package cost band                | Number of compulsory redundancies | Number of other departures agreed | Total number of exit packages by cost band |
|---------------------------------------|-----------------------------------|-----------------------------------|--|
| <£10,000                              |                                   |                                   |  |
| £10,000 – £25,000                     |                                   |                                   |  |
| £25,001 – £50,000                     |                                   |                                   |  |
| £50,001 – £100,000                    |                                   |                                   |  |
| £100,000 – £150,000                   |                                   |                                   |  |
| £150,001 – £200,000                   |                                   |                                   |  |
| etc.                                  |                                   |                                   |  |
| Total number of exit packages by type |                                   |                                   |  |
| Total resource cost                   |                                   |                                   |  |

The exit packages within the scope of this disclosure include, but are not limited to, those made under nationally-agreed arrangements or local arrangements for which Treasury approval was required.

This note should disclose all exit packages, including those paid to senior managers as defined in Chapter 2 of the FT ARM. Amounts paid to senior managers will require further disclosure in the directors' remuneration report.

The cost of ill-health retirements falls on the relevant pension scheme, not the foundation trust, and should not be included in this disclosure.

### Exit packages: non-compulsory departure payments

This note discloses the number of non-compulsory departures which attracted an exit package in the year, and the values of the associated payment(s) by individual type. The note is prepared on the same basis as the exit packages note, ie showing the exit packages agreed in the year, irrespective of the actual date of accrual or payment.

The total value in this note should agree with the total resource cost for other departures in the exit packages note. However, there are likely to be differences in the component numbers as the exit packages note relates to the number of individuals receiving an exit package, while this note gives the number for each component. As a single exit package is likely to be made up of several components, each of which will be counted separately, the total number is likely to be higher than the number of individuals. The first four lines should only be used for amounts due under contractual entitlements. Any non-contractual element of a payment (such as a non-contractual payment in lieu of notice) should be included in the 'non-contractual payment requiring HM Treasury (HMT) approval' line.

Payments are disclosed in the following categories. Comparative information should be included either in brackets, additional columns, or a separate table and restated if last year they were not disclosed as clarified here.

|   | <b>Agreements<br/>Number</b>                              | <b>Total Value of<br/>Agreements<br/>£000</b>             |
|---|---|---|
| Voluntary redundancies including early retirement contractual costs   |   |   |
| Mutually agreed resignations (MARS) contractual costs   |   |   |
| Early retirements in the efficiency of the service contractual costs  |   |   |
| Contractual payments in lieu of notice  |   |   |
| Exit payments following Employment Tribunals or court orders  |   |   |
| Non-contractual payments requiring HMT approval *   |   |   |
| <b>Total</b>  |   |   |
| Of which:<br>non-contractual payments requiring HMT approval made to individuals where the payment value was more than 12 months of their annual salary | [this will be a subset of the non-contractual line above] | [this will be a subset of the non-contractual line above] |

As a single exit packages can be made up of several components, each of which will be counted separately in this note, the total number above will not necessarily match the total numbers in note X [exit packages] which will be the number of individuals.

\*Includes any non-contractual severance payment made following judicial mediation, and X [list amounts] relating to non-contractual payments in lieu of notice.

The Remuneration Report provides details of exit payments payable to individuals named in that Report.

The foundation trust should also disclose the maximum (highest), minimum (lowest) and median values of special severance payments, ie amounts included in the 'non-contractual payments' line of the table above.

Early retirement costs include any top-up to compensation provided by the employer to buy out the actuarial reduction on an individual's pension. Exit

payments made following an Employment Tribunal or court order are also included. Any such payments are considered contractual as the orders have to be paid by the party against whom the order is made, although may relate to compensation for loss of office.

Non-contractual payments are those made outside of contractual or legal obligation, including those from judicial mediation. Pre-authorisation from HM Treasury (or the parent body for cases below de minimis limits) must be sought for such payments before they are agreed with the employee. Failure to obtain HM Treasury authorisation before making such a payment may constitute irregular expenditure. The amount of any non-contractual payments in lieu of notice must be listed in the footnote. A further line discloses the number and value of non-contractual payments made to individuals where the payment was more than 12 months' annual salary. The reference salary for this disclosure is the annualised salary at the date of termination of employment, and excludes bonus payments and employer's pension contributions.

## Annex 2 to Chapter 2: Staff survey report – template disclosure for NHS staff survey

### Staff experience and engagement

[Statement of approach to staff engagement and feedback arrangements in place and key priorities and targets.]

### NHS staff survey

The NHS staff survey is conducted annually. From 2021/22 the survey questions align to the seven elements of the NHS ‘People Promise’, and retains the two previous themes of engagement and morale. These replaced the ten indicator themes used in previous years. All indicators are based on a score out of 10 for specific questions with the indicator score being the average of those.

The response rate to the 2021/22 survey among trust staff was [x] % (2020/21: [x] %).

#### 2022/23 and 2021/22

Scores for each indicator together with that of the survey benchmarking group ([specify the benchmarking group]) are presented below.

| Indicators<br>(‘People Promise’ elements and themes) | 2022/23     |                          | 2021/22     |                          |
|--|-------------|--------------------------|-------------|--------------------------|
|  | Trust score | Benchmarking group score | Trust score | Benchmarking group score |
| People Promise:                                      |             |                          |             |                          |
| We are compassionate and inclusive                   |             |                          |             |                          |
| We are recognised and rewarded                       |             |                          |             |                          |
| We each have a voice that counts                     |             |                          |             |                          |
| We are safe and healthy                              |             |                          |             |                          |
| We are always learning                               |             |                          |             |                          |
| We work flexibly                                     |             |                          |             |                          |
| We are a team  |             |                          |             |                          |
| Staff engagement                                     |             |                          |             |                          |
| Morale   |             |                          |             |                          |

#### 2020/21

Scores for each indicator together with that of the survey benchmarking group

(*specify the benchmarking group*) are presented below.

|  | 2020/21     |                          |
|--|-------------|--------------------------|
|  | Trust score | Benchmarking group score |
| Equality, diversity and inclusion          |             |                          |
| Health and wellbeing                       |             |                          |
| Immediate managers                         |             |                          |
| Morale                                     |             |                          |
| Quality of appraisals                      |             |                          |
| Quality of care                            |             |                          |
| Safe environment – bullying and harassment |             |                          |
| Safe environment – violence                |             |                          |
| Safety culture                             |             |                          |
| Staff engagement                           |             |                          |

[Optional: *NHS foundation trusts may wish to include additional information from their results, including their strongest and lowest scores against their benchmark group, or results showing greatest improvement or decline over time.*]

[*Add commentary – this may include commenting on:*

- *Response rate compared to prior year*
- *Areas of improvement / deterioration from prior year*
- *Comparisons to benchmarking group*
- *Key areas for improvement*
- *Summary details of any local surveys and results (if applicable)*

### **Future priorities and targets**

*Include:*

- *Statement of key priority areas*
- *Performance against priority areas (against targets set)*
- *Monitoring arrangements and*
- *Future priorities and how they will be measured.*

## Annex 3 to Chapter 2: NHS Oversight Framework – example disclosure

**NHS Oversight Framework** [*Drafting note: this section has been comprehensively revised for 2022/23 but is not all shown in bold italics for clarity*]

NHS England's NHS Oversight Framework provides the framework for overseeing systems including providers and identifying potential support needs. NHS organisations are allocated to one of four 'segments'.

A segmentation decision indicates the scale and general nature of support needs, from no specific support needs (segment 1) to a requirement for mandated intensive support (segment 4). A segment does not determine specific support requirements. By default, all NHS organisations are allocated to segment 2 unless the criteria for moving into another segment are met. These criteria have two components:

- a) objective and measurable eligibility criteria based on performance against the six oversight themes using the relevant oversight metrics (the themes are: quality of care, access and outcomes; people; preventing ill-health and reducing inequalities; leadership and capability; finance and use of resources; local strategic priorities)
- b) additional considerations focused on the assessment of system leadership and behaviours, and improvement capability and capacity.

An NHS foundation trust will be in segment 3 or 4 only where it has been found to be in breach or suspected breach of its licence conditions.

### *Segmentation*

*[The foundation trust should disclose the segment in which NHS England has placed it, using the most up-to-date information available at the time of preparing the annual report. This should include details of any enforcement action taken by NHS England (or that previously taken by NHS Improvement / Monitor which is still in force) together with any actions being taken or proposed action by the trust. This can cross-refer to another part of the annual report (such as the annual governance statement) if appropriate.]*

This segmentation information is the trust's position as at [date]. Current segmentation information for NHS trusts and foundation trusts is published on the NHS England website: <https://www.england.nhs.uk/publication/nhs-system-oversight-framework-segmentation/>.

## Annex 4 to Chapter 2: Model statement of accounting officer's responsibilities

Drafting note: changes from the prior year are shown in red text to help NHS foundation trusts update their statements.

### Statement of the chief executive's responsibilities as the accounting officer of [name of provider] NHS Foundation Trust

The NHS Act 2006 states that the chief executive is the accounting officer of the NHS foundation trust. The relevant responsibilities of the accounting officer, including their responsibility for the propriety and regularity of public finances for which they are answerable, and for the keeping of proper accounts, are set out in the *NHS Foundation Trust Accounting Officer Memorandum* issued by NHS England.

NHS England has given Accounts Directions which require [name] NHS foundation trust to prepare for each financial year a statement of accounts in the form and on the basis required by those Directions. The accounts are prepared on an accruals basis and must give a true and fair view of the state of affairs of [name] NHS foundation trust and of its income and expenditure, other items of comprehensive income and cash flows for the financial year.

In preparing the accounts and overseeing the use of public funds, the Accounting Officer is required to comply with the requirements of the Department of Health and Social Care Group Accounting Manual and in particular to:

- observe the Accounts Direction issued by NHS England, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis
- make judgements and estimates on a reasonable basis
- state whether applicable accounting standards as set out in the *NHS Foundation Trust Annual Reporting Manual* (and the *Department of Health and Social Care Group Accounting Manual*) have been followed, and disclose and explain any material departures in the financial statements
- ensure that the use of public funds complies with the relevant legislation, delegated authorities and guidance
- confirm that the annual report and accounts, taken as a whole, is fair, balanced and understandable and provides the information necessary for patients, regulators and stakeholders to assess the NHS foundation trust's performance, business model and strategy and
- prepare the financial statements on a going concern basis and disclose any material uncertainties over going concern.

The accounting officer is responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the NHS foundation trust and to enable them to ensure that the accounts comply with requirements outlined in the above mentioned Act. The Accounting Officer is also responsible for safeguarding the assets of the NHS foundation trust and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

As far as I am aware, there is no relevant audit information of which the foundation trust's auditors are unaware, and I have taken all the steps that I ought to have taken to make myself aware of any relevant audit information and to establish that the entity's auditors are aware of that information.

To the best of my knowledge and belief, I have properly discharged the responsibilities set out in the *NHS Foundation Trust Accounting Officer Memorandum*.

Signed.....

Chief Executive

Date: xx xx 20xx



## Annex 5 to Chapter 2: Model annual governance statement

[The wording which is not in square brackets in this pro forma AGS should be replicated in every AGS and the words in square brackets should be amended and expanded as appropriate to the body in question.]

Drafting note: changes from the prior year are **shown in red text** to help NHS foundation trusts update their statements.

### Scope of responsibility

As Accounting Officer, I have responsibility for maintaining a sound system of internal control that supports the achievement of the NHS foundation trust's policies, aims and objectives, whilst safeguarding the public funds and departmental assets for which I am personally responsible, in accordance with the responsibilities assigned to me. I am also responsible for ensuring that the NHS foundation trust is administered prudently and economically and that resources are applied efficiently and effectively. I also acknowledge my responsibilities as set out in the *NHS Foundation Trust Accounting Officer Memorandum*.

### The purpose of the system of internal control

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of the policies, aims and objectives of [insert name of provider] NHS Foundation Trust, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically. The system of internal control has been in place in [insert name of provider] NHS Foundation Trust for the year ended 31 March 20xx and up to the date of approval of the annual report and accounts.

### Capacity to handle risk

[Describe the key ways in which:

- leadership is given to the risk management process; and
- staff are trained or equipped to manage risk in a way appropriate to their authority and duties. Include comment on guidance provided to them and ways in which you seek to learn from good practice.]

### The risk and control framework

[Describe the key elements of the risk management strategy, including the way in which risk (or change in risk) is identified, evaluated, and controlled. Include mention of how risk appetites are determined. Explicitly describe the key elements of the quality governance arrangements, including how the quality of

performance information is assessed and how assurance is obtained routinely on compliance with CQC registration requirements. Explicitly include how risks to data security are being managed and controlled as part of this process. Include a brief description of the organisation's major risks, including significant clinical risks, separately identifying in-year and future risks, how they are/will be managed and mitigated and how outcomes are/will be assessed. Work performed to assess whether services are well-led under **NHS England's** well-led framework will assist with this assessment and the trust should refer to well-led reviews as appropriate.]

[Include a description of the principal risks to compliance with the NHS foundation trust licence condition 4 (FT governance) and actions identified to mitigate these risks, particularly in relation to:

- the effectiveness of governance structures
- the responsibilities of directors and subcommittees
- reporting lines and accountabilities between the board, its subcommittees and the executive team
- the submission of timely and accurate information to assess risks to compliance with the trust's licence and
- the degree and rigour of oversight the board has over the trust's performance.]

[Describe the key ways that the trust is able to assure itself of the validity of its Corporate Governance Statement<sup>25</sup>, required under NHS foundation trust condition 4(8)(b)]

[Describe key ways in which risk management is embedded in the activity of the organisation. For example, set out the ways in which equality impact assessments are integrated into core trust business or how incident reporting is openly encouraged and handled across the trust.]

[Describe the key elements of the way in which public stakeholders are involved in managing risks which impact on them.]

[Describe the key ways in which the trust ensures that short, medium and long-term workforce strategies and staffing systems are in place which assure the Board that staffing processes are safe, sustainable and effective. Describe how your Trust complies with the *Developing Workforce Safeguards*<sup>26</sup>

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<sup>25</sup> Refer to footnote 13 on page 27 for further information

<sup>26</sup> [https://www.england.nhs.uk/nursingmidwifery/safer-staffing-nursing-and-midwifery/#developing\\_workforce\\_safeguards](https://www.england.nhs.uk/nursingmidwifery/safer-staffing-nursing-and-midwifery/#developing_workforce_safeguards)

recommendations.]

The foundation trust is fully/is not fully compliant with the registration requirements of the Care Quality Commission.

The foundation trust has published on its website an up-to-date register of interests, including gifts and hospitality, for decision-making staff (as defined by the trust with reference to the guidance) within the past twelve months as required by the *Managing Conflicts of Interest in the NHS*<sup>27</sup> guidance.

As an employer with staff entitled to membership of the NHS Pension Scheme, control measures are in place to ensure all employer obligations contained within the Scheme regulations are complied with. This includes ensuring that deductions from salary, employer's contributions and payments into the Scheme are in accordance with the Scheme rules, and that member Pension Scheme records are accurately updated in accordance with the timescales detailed in the Regulations.

Control measures are in place to ensure that all the organisation's obligations under equality, diversity and human rights legislation are complied with.

The foundation trust has undertaken risk assessments and *has plans in place which take account of the 'Delivering a Net Zero Health Service' report under the Greener NHS programme*. The trust ensures that its obligations under the Climate Change Act and the Adaptation Reporting requirements are complied with.

### **Review of economy, efficiency and effectiveness of the use of resources**

[Describe the key process that has been applied to ensure that resources are used economically, efficiently and effectively, including some comment on the role of the board, internal audit and any other review or assurance mechanisms.]

### **Information governance**

[Describe any serious incidents relating to information governance including data loss or confidentiality breach. As a minimum this should include details of any incidents notified to the ICO/DHSC in the Data Security Incident Reporting Tool. For these cases the foundation trust should detail any action taken by the ICO.]

### **Data quality and governance**

[Brief description of steps which have been put in place to assure the board that there are appropriate controls in place to ensure the accuracy of data

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<sup>27</sup> [www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/](http://www.england.nhs.uk/publication/managing-conflicts-of-interest-in-the-nhs-guidance-for-staff-and-organisations/)

In particular this should explain how the foundation trust assures the quality and accuracy of elective waiting time data, and the risks to the quality and accuracy of this data]

### **Review of effectiveness**

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control. My review of the effectiveness of the system of internal control is informed by the work of the internal auditors, clinical audit and the executive managers and clinical leads within the NHS foundation trust who have responsibility for the development and maintenance of the internal control framework. I have drawn on performance information available to me. My review is also informed by comments made by the external auditors in their management letter and other reports. I have been advised on the implications of the result of my review of the effectiveness of the system of internal control by the board, the audit committee [and risk/clinical governance/quality committee, if appropriate] and a plan to address weaknesses and ensure continuous improvement of the system is in place.

[Describe the process that has been applied in maintaining and reviewing the effectiveness of the system of internal control, including some comment on the role and conclusions of:

- the board
- the audit committee
- if relevant, the risk/ clinical governance/ quality committee/risk managers/risk improvement manager
- clinical audit
- internal audit and
- other explicit review/assurance mechanisms.

Include an outline of the actions taken, or proposed to deal with any significant internal control issues and gaps in control, if applicable.]

### **Conclusion**

[state either that no significant internal control issues have been identified or make specific reference to those significant internal control issues which have been identified in the body of the AGS above]

Signed.....

Chief Executive

Date: xx xx 20xx

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## Drafting guidance

PLEASE NOTE the requirement above: The Conclusion section must clearly state either that no **significant internal control issues** have been identified, or specifically list the **significant internal control issues** that have been identified in the body of the AGS.

### Determining significant internal control issues

Applying the requirements of paragraph 2.114 above, the following list gives examples of factors to consider when determining whether an internal control issue is significant. This list is not intended to be exhaustive.

- Might the issue prejudice achievement of priorities?
- Could the issue undermine the integrity or reputation of the NHS?
- What view does the Audit Committee take on this point?
- What advice has the internal or external audit given?
- Could delivery of the standards expected of the accounting officer be at risk?
- Has the issue made it harder to resist fraud or other misuse of resources?
- Did the issue divert resources from another significant aspect of the business?
- Could the issue have a material impact on the accounts?
- Might national or data security or integrity be put at risk?

## Annex 6 to Chapter 2: Off-payroll arrangements disclosure requirements

As part of the remuneration report, NHS foundation trusts should present the following data on their highly paid and/or senior off-payroll engagements.

### Guidance

The reported data should include (where paid £245 or more per day per day):

- i. Those appointments to which the off-payroll legislation applies whereby the Trust is required to undertake IR35 assessments under Chapter 10 of the 2003 Income Tax (Earnings and Pensions) Act. They are defined as: “A worker (or contractor), not employed by the client Trust, the supplier or any other organisation within the supply chain, that instead provides their services through their own limited company or another type of intermediary to the client. An intermediary will usually be the worker’s own personal service company but could also be a partnership or an individual.”
- ii. Those appointments that are not on the Trust’s payroll and where the off-payroll legislation does not apply. For example, the legislation does not apply to sole traders or workers that are employed by and on the payroll of an umbrella company, agency or other organisation in the supply chain.

Off-payroll appointments should be included regardless of the commercial route through which they are engaged. This includes all other commercial routes aside from the following reported data:

- i. Workers that are controlled and directed by external suppliers in the course of providing the Trust with a contracted-out service
- ii. Workers who are seconded to the Trust and on the payroll of the supplying organisation and
- iii. Consultants that are providing consultancy services to the Trust that do not go beyond provision of advice.

The principal guidance for off-payroll rules (IR35) in the public sector is available at [Public sector off-payroll working for clients - GOV.UK](#). Further guidance on the distinction between procurement of a contracted-out service versus procurement of workers / resource, is available in section 4 of the [Tax Centre of Excellence guidance](#) on off-payroll working in the public sector.

### Disclosure requirements

1. For all off-payroll engagements as of 31 March 2023, earning at least £245 per day, trusts should report:
  - i. the total number of existing engagements as of 31 March 2023

- ii. the number that have existed for less than one year at time of reporting
- iii. the number that have existed for between one and two years at time of reporting
- iv. the number that have existed for between two and three years at time of reporting
- v. the number that have existed for between three and four years at time of reporting; and
- vi. the number that have existed for four or more years at time of reporting.

Reporting of this should follow the format of Table 1 below. To determine the length of the appointment, trusts should use the time engaged under the current contract including all extensions to that contract. Breaks in appointments that are no more than the typical period of a holiday should be ignored.

2. For all off-payroll appointments engaged at any point during the year ended 31 March 2023 and earning at least £245 per day, trusts should report:
  - i. the number of appointments in force during the time period
  - ii. the number of these appointments to which the off-payroll legislation does not apply
  - iii. the number of these appointments to which the off-payroll legislation does apply and which were assessed as within the scope of IR35
  - iv. the number of these appointments to which the off-payroll legislation does apply and which were assessed as not within the scope of IR35
  - v. the number that were reassessed for consistency/ assurance purposes during the year and
  - vi. the number that saw a change to IR35 status following the assurance review.

Reporting of this should follow the format of Table 2 (below). For any off-payroll worker tax liabilities and/or HMRC penalties imposed upon the trust as a result of non-compliance with off-payroll worker legislation, trusts must disclose these as losses in the disclosure of losses and special payments note to the accounts. Reference to any such losses should also be disclosed in Table 2.

3. For any off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, between 1 April 2022 and 31 March

2023 trusts must also disclose:

- i. the number of off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, during the financial year<sup>1</sup>
- ii. details of the exceptional circumstances that led to each of these engagements
- iii. details of the length of time each of these exceptional engagements lasted and
- iv. the total number of individuals (both on and off-payroll) that have been deemed 'board members and/or senior officials with significant financial responsibility' during the financial year. This figure must include both off-payroll and on-payroll engagements.<sup>2</sup>

Reporting of this should follow the format of Table 3 (below).

<sup>1</sup> There should only be a very small number of off-payroll engagement of board members and/or senior officials with significant financial responsibility.

<sup>2</sup> As the total figure includes both on-payroll and off-payroll engagements, no entries here should be blank or zero.

## Table formats

**Table 1: Highly-paid off-payroll worker engagements as at 31 March 2023 earning £245 per day or greater**

|   |  |
|---|--|
| Number of existing engagements as of 31 March 2023                              |  |
| Of which...   |  |
| Number that have existed for less than one year at time of reporting.           |  |
| Number that have existed for between one and two years at time of reporting.    |  |
| Number that have existed for between two and three years at time of reporting.  |  |
| Number that have existed for between three and four years at time of reporting. |  |
| Number that have existed for four or more years at time of reporting.           |  |

**Table 2: All highly-paid off-payroll workers engaged at any point during the year ended 31 March 2023 earning £245 per day or greater**

|   |  |
|---|--|
| Number of off-payroll workers engaged during the year ended 31 March 2023 |  |
| Of which:   |  |



|   |  |
|---|--|
| Not subject to off-payroll legislation *  |  |
| Subject to off-payroll legislation and determined as in-scope of IR35 *               |  |
| Subject to off-payroll legislation and determined as out-of-scope of IR35 *           |  |
| Number of engagements reassessed for compliance or assurance purposes during the year |  |
| Of which: number of engagements that saw a change to IR35 status following review     |  |

\* A worker that provides their services through their own limited company or another type of intermediary to the client will be subject to off-payroll legislation and the Trust must undertake an assessment to determine whether that worker is in-scope of Intermediaries legislation (IR35) or out-of-scope for tax purposes

**Table 3: For any off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, between 1 April 2022 and 31 March 2023**

|  |  |
|--|--|
| Number of off-payroll engagements of board members, and/or, senior officials with significant financial responsibility, during the financial year.   |  |
| Number of individuals that have been deemed 'board members and/or senior officials with significant financial responsibility' during the financial year. This figure must include both off-payroll and on-payroll engagements. |  |

In any cases where individuals are included within the first row of this table the trust should set out:

- Details of the exceptional circumstances that led to each of these engagements.
- Details of the length of time each of these exceptional engagements lasted

NHS England  
Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG

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