

FTGA 'Experienced Governor, New Challenges' Conference 13 February 2013, in Manchester

Attended by Anna Milanec, Trust Secretary, and Claire Hankey, Head of Comms

With the hesitancy of lemmings approaching a very steep cliff edge, Claire and I entered a room holding approximately 150-200 Governors from various NHS Foundation Trusts. To less hardened souls, the prospect of quite so many Governors all together in any one place might have been quite frightening – but all were very welcoming, of course! Having found ourselves sat in between Governors from Basildon and also the Lead Governor from Mid Staffs, we felt privileged to be part of such an enthusiastic group.

The morning sessions were taken up by Oliver Pritchard, Head of Commercial Health from Browne Jacobson Solicitors, who also advises the Trust on various matters. In the afternoon, John Bruce, the Trust's former Chairman, gave an overview of Policy Governance.

This report will focus on the new roles for Governors, arising from Oliver Pritchard's presentation. We were interested to hear Oliver's views on the new duties owed by Governors, and how we might help our Governors to understand such duties.

Oliver began with an overview of existing duties owed by Governors. Questions were taken during the presentation, and I have to admit to being quite surprised at some of the questions being posed by Governors. Bearing in mind that the conference was for those Governors with 2 or more years' experience, I would not have expected to hear a Governor talk about the 'executive director' appointments that his Trust's Governors were seeking to make in the near future..... Neither would I have expected a Governor to comment on how he found it difficult to achieve the correct balance between providing appropriate challenge and "running the Trust....". The gentleman in question was promptly corrected by Oliver advising that Governors don't run the Trust!

Some detail, regarding the new commissioning landscape, was most welcome to those of us still waiting for some clarity as to what was going on at that stage. An **NHS Commissioning Board** first year budget of £96million reminded those of us in the room that the new measures would affect the whole of England, not just those of us just in Southend, or just in Essex, or just the East of England for that matter. And whilst the NHS Commissioning Board will commission primary care and specialist services, **Clinical Commissioning Groups (CCGs)** would commission most other health services for their patient constituents. CCGs are very new – and they are being supported by Commissioning Support Units.

Health and Wellbeing Boards – we'd all heard of them, but what would they do and where exactly would they fit in? Well, these would be the forums where key leaders from the health and

care system work together to improve the health and wellbeing of local populations and reduce health inequalities by:

- oversight of health vs social care interface / local priorities / joint commissioning / integrated services
- strategically influencing commissioning decisions across health, public health and social care.
- strengthening democratic legitimacy by involving democratically elected representatives and patient representatives in commissioning decisions alongside commissioners across health and social care;
- bringing together CCGs and Councils to develop a shared understanding of the health and wellbeing needs of the community. They would undertake the Joint Strategic Needs Assessment (JSNA) and develop a joint strategy for how these needs can be best addressed;
- providing recommendations for joint commissioning and integrating services across health and care.

So, what about **Healthwatch England**? This would be the national independent consumer champion for health and social care, with local Healthwatch groups:

- having the power to enter and view services.
- influencing how services are set up and commissioned by having a seat on the local health and wellbeing board.
- producing reports which influence the way services are designed and delivered.
- providing information, advice and support about local services.
- passing on information and recommendations to Healthwatch England and the Care Quality Commission.

The discussions then moved on to Governors' new powers, and began with Governors new general duties:

- to hold the non-execs to account for performance of the board of directors
- to represent the interests of the members *and the public as a whole*
- the ability to summon one or more directors (not only non-execs) to Governors' meetings (which must be for the purpose of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and for deciding whether to propose a vote on these matters)
- approval now required for:
 - "significant transactions"
 - merger, acquisition, separation or dissolution
- decide whether private patient work would "significantly interfere" with core NHS services
- approval required for any proposed increase in private patient income of 5% or more in any financial year
- amendments to the Constitution - Governor (not Monitor) approval needed.

Discussions regarding 'significant transactions' were interesting, with Oliver suggesting that Trusts should develop their own definition for clarity, which should be included in FT Constitutions. However, should the Trust decide not to include a definition in their governance documentation, this also needs to be mentioned, rather than simply being left out altogether.

One delegate advised that their Governors looked at what was "significant" during forward planning, and would then agree what was "significant" from the annual plan. Personally, I'm not

so keen on this idea – we would have to change the Constitution on an annual basis to suit that years’ definition of “significant”.

Some might ask, how could leaving out a definition of ‘significant transaction’ provide clarity?

Well, it may be helpful for Governors to be aware of the conditions provided by Monitor in their Compliance Framework 2013/14 document and relating to ‘significant’ and ‘material’ transactions, both of which would require the need for an exception report to be submitted to Monitor from the directors:

Material = UK health care investments, divestments or other transactions comprising > 10% of the assets, income or capital of the NHS foundation trust; or > 12.5% if non-healthcare related and / or international;

Significant = UK health care investments, divestments or other transactions comprising > 25% of the (gross) assets, income or capital of the NHS foundation trust; or > 12.5% if non-healthcare related and / or international; **or if a trust is in breach of the continuity of service or governance conditions, any investment / disinvestment comprising >10% of the (gross) assets, income or capital of the Trust.**

Monitor’s definitions do NOT have to be those that appear in the Constitution – but I thought it might be helpful to be aware of these, especially following the discussion that took place at Governance Committee a couple of weeks ago. And they might also help explain why a definition could be left out of the Constitution altogether – especially for a Trust in breach of governance conditions.

Under competition rules, Monitor has no right to block a merger or acquisition that is approved by Governors. As FT’s are now competing in the commercial world, they are now subject to the jurisdiction of the Office of Fair Trading who will look at applying the general principles of commercial law but mergers and acquisitions inevitably, will be delayed

Moving on:

Other changes that have now come into force;

- Before holding a Board of Directors’ meeting, the directors must send a copy of the agenda of the meeting “to the Council of Governors”. (Does this mean to “each member of the Council of Governors” or the Council in general....);
- As soon as practicable after the meeting, the board of directors must send a copy of the minutes of the meeting to the Council of Governors. (Ditto.);
- A PCT Governor may be replaced on Council by a CCG Governor – but this is not a necessity;
- FT must now hold an annual members meeting (most do already);
- a director must present the annual report and accounts at this meeting;
- new power for members to veto proposed amendments to the Constitution which relate to the powers, duties or roles of the Governors – hence, any changes to the Constitution regarding Governors, would have to be in consultation with the members, which could be done, one would argue, at the annual general meeting.

At the end of his presentation, Oliver provided a series of case studies, two of which I have replicated at the end of this report for your information.

Having spent the day with Governors from all over the country, I felt quite assured that we don't do a bad job here in Southend, even though I say it myself. There are things that we need to do with our Governors – as do all other Trusts to a greater or lesser extent.

One thing that was evident, was the degree of transparency by which this Trust operates. I heard Governors from elsewhere advise that they never see their NEDs, don't know their names in some cases. That certainly cannot be said for this Trust! Our Governors are allowed – no - encouraged to meet service users and members of the public through the events held for them – Governors from other Trusts do not interact with services users, members, through structured events, and member meetings, listening exercises, etc. are unheard of. Our Governors are about to embark on ward walkabouts – some FT Governors are a long way away from having this opportunity.

Governors from other FTs think that Southend is on the ball as far as their Governors are concerned – once aware that a Trust Secretary was in the room and having confirmed that “yes, our Governors appraise NEDs”, “yes, our Governors attend part 2 board meetings”, and “yes, our Governors meet with the NEDs in a special group we affectionately call NAGG”, I was approached by several Governors wanting to hear more. I've also been contacted by email by Governors and another Trust Secretary from an FT in the north, and was visited by the new Trust Secretary from Basildon Hospital less than a fortnight ago – prompted by Basildon Governors advising how great things are for Southend Governors.

However, the folks from Basildon also provided food for thought for me too – and what we could do to improve. But that's a story for another day!

I hope that this report has been useful.

Anna Milanec
Trust Secretary

Case study 1:

Holding the NEDs to account

New duties:

- to hold the non-execs to account for performance of the board of directors
- to represent the interests of the members and the public as a whole
- new power to summon one or more directors to governors' meetings

Key principles:

- Clarity: clear, measurable and agreed criteria by which to hold non execs to account
- Openness: be honest about the performance of the board and the individual non execs
- Realism: recognise the challenges facing the FT. Be sensible and reasonable

Questions:

- How and when might the Governors use these new powers effectively?

Suggestions:

- Do we understand enough about the Trust to be able to hold non execs to account for the performance of the board?
- Should we exercise these powers routinely or on an 'ad hoc' basis?
- Should we take steps to agree 'ground rules' with the Board around the new arrangements?

Case study 2:

Changes to the Constitution

What questions should the Governors ask before approving proposed amendments to the FT's constitution?

Suggestions:

- what is the purpose of the amendment?
- are the proposals likely to achieve those aims?
- are the proposals proportionate to the aims?
- what other interested / affected parties have been / should be consulted?
- has the Board given due consideration to the views of other interested parties?
- have other FTs made similar changes, and if so, what was the effect in practice?
- do the governors wish to propose any additional amendments?
- has the board taken appropriate professional advice?