Audit Code for NHS Foundation Trusts

October 2007
Foreword

This Audit Code for NHS Foundation Trusts (the code), which is published by Monitor, prescribes the way in which auditors of NHS foundation trusts are to carry out their functions as set out in the National Health Service Act 2006 (the 2006 Act). This code applies to all audit work relating to financial years beginning on or after 1 April 2007. It is guidance which must be followed, as set out in Condition 22 of the Terms of Authorisation for NHS foundation trusts.

In the previous Audit Code for NHS Foundation Trusts, which was issued in December 2005, Monitor indicated that the code would be subject to review to take account of the implications arising from any new and relevant documents published. This revised code is the result of that review.
1. Introduction

Background

1.1 This Audit Code for NHS Foundation Trusts (the code) prescribes the way in which auditors of NHS foundation trusts are to carry out their functions as set out in the National Health Service Act 2006 (the 2006 Act). This code applies to all audit work relating to financial years beginning on or after 1 April 2007. This code replaces the 2005 code which was issued on 20 December 2005.

1.2 This code is produced by Monitor under its powers under paragraph 24(5) of Schedule 7 of the 2006 Act which states that in auditing the accounts the auditor is to comply with any directions given by Monitor as to the ‘standards, procedures and techniques’ to be adopted.

1.3 Monitor will consider periodically whether the code needs to be amended. There is no presumption that the code will be changed each year.

Statutory responsibilities of the auditors of NHS foundation trusts

1.4 The statutory responsibilities and powers of the auditors of NHS foundation trusts are set out in the 2006 Act. In discharging these specific statutory responsibilities and powers, auditors are required to carry out their work in accordance with the code. The statutory functions of auditors are summarised in appendix A to this code.

Legislative background of NHS foundation trusts

1.5 The statutory duties and responsibilities of NHS foundation trusts are set out in the 2006 Act. Those with respect to audit are summarised in appendix A.

1.6 An NHS foundation trust is a public benefit corporation which is authorised to provide goods and services for the purposes of the health service in England.

1.7 Monitor authorises and regulates NHS foundation trusts. Monitor issues terms of authorisation to each NHS foundation trust which set out the requirements, duties and standards that will apply to each NHS foundation trust. These may be varied by Monitor from time to time.

1.8 Monitor has powers to intervene if Monitor is satisfied that an NHS foundation trust is in breach of its terms of authorisation, or has failed to comply with any requirement of the Act or other legislation, and the breach or failure is significant.

Accounting requirements

1.9 The accounting and reporting requirements for NHS foundation trusts are set out in the NHS Foundation Trust Financial Reporting Manual which is issued annually and is available on Monitor’s website www.monitor-nhsft.gov.uk.
2. General principles underpinning the audit

Scope and application of the Code

2.1 This code prescribes the way in which auditors of NHS foundation trusts are to carry out their functions as set out in the 2006 Act. This code applies to all audit work relating to financial years beginning on or after 1 April 2007.

2.2 The code has been prepared having due regard to the principles of public audit as set out by the Public Audit Forum.

2.3 The auditors of NHS foundation trusts must comply with the principles set out in this code in all instances. The application of the principles in any particular case must however depend on the specific circumstances of that case and on the auditors’ assessment and judgement of what is reasonable and appropriate in those circumstances. All the provisions of the code are to be read and applied with that necessary qualification.

2.4 The auditors’ primary responsibility is to the NHS foundation trust’s board of governors. Auditors may also be responsible to Monitor for the exercise of some functions, as set out in paragraph 2.17, and will have responsibilities to the members of the NHS foundation trust, as well as the wider public, in the case of public interest reports (see section 5).

Professional standards and guidance

2.5 In carrying out their audit in accordance with the code, auditors of NHS foundation trusts, unless otherwise stated in the code, are required to comply with International Statements on Auditing (UK and Ireland) (ISAs (UK&I)) currently in force, and as may be amended from time to time, and have regard to any relevant Practice Notes (PNs) and other guidance and advice issued by the Auditing Practices Board (APB). Monitor has chosen to adopt the APB’s engagement standards and quality control standards as the basis of its approach to the audit of financial statements.

2.6 In particular, auditors are required to comply with the latest version of APB Practice Note 10: ‘Audit of financial statements of public sector entities in the UK’. This code interprets this guidance for the NHS foundation trust sector, as well as expanding upon the additional statutory responsibilities placed on the NHS foundation trust auditors by the 2006 Act.

2.7 Auditors are also required to comply with relevant ethical standards and guidance issued or adopted by their professional accountancy bodies. This includes the Ethical Standards issued by the APB, which applied to all audits of financial statements for periods commencing on or after 15 December 2004.

Integrity, independence and objectivity

2.8 The ethical standards and guidance require that a member of a professional accountancy body should behave with integrity in all professional, business and financial relationships. Integrity implies not merely honesty but fair dealing and truthfulness.

2.9 Auditors must carry out their work with independence and objectivity. The auditors’ opinions, conclusions and recommendations should both be, and be seen to be, impartial. Auditors and their staff should exercise their professional judgement and act independently of the NHS foundation trust. They should ensure that they maintain an objective attitude at all times and that they do not act in any way that might give rise to, or be perceived to give rise to, a conflict of interest.
2.10 In particular, no member of the audit team may be a member or governor of the NHS foundation trust, as this could result in an independence issue.

2.11 Auditors should also resist any improper attempt to influence their judgement in the conduct of the audit. If auditors believe that an improper attempt to influence their judgement has been made, they should report this to the NHS foundation trust board of governors. If the attempt has been made by a member of the NHS foundation trust board of governors, they should report this to Monitor.

2.12 The auditor may, with the approval of the board of governors, provide the NHS foundation trust with services which are outside of the scope of the audit as defined in this code (additional services). The trust shall adopt and implement a policy for considering and approving any additional services to be provided by the auditor.

2.13 Auditors must comply with their professional guidance and with the requirements of ISA (UK&I) 220: ‘Quality control for audits of historical financial information’ when considering whether they are able to perform additional services. In this instance it is deemed beneficial for any such work to be reported to those charged with governance in accordance with paragraph 11 of ISA (UK&I) 260: ‘Communication of audit matters to those charged with governance’. Auditors of NHS foundation trusts must therefore comply with this paragraph of ISA (UK&I) 260.

2.14 It is the auditors’ decision to determine who are ‘those charged which governance’ at an NHS foundation trust. It is expected however that this will be the Audit Committee in the first instance and the board of governors if the auditors feel that the issue is significant.

Confidentiality

2.15 Auditors of NHS foundation trusts must ensure that they and their staff comply with paragraph 8 of Schedule 10 of the 2006 Act, which restricts the disclosure of information received or obtained during the audit. Auditors should document their compliance with these requirements on the audit file.

Right to documents and information

2.16 Auditors of NHS foundation trusts have a right of access at all reasonable times to every document relating to the NHS foundation trust which appears to them necessary for the purposes of their functions under Chapter 5 of Part 2 of the 2006 Act. Auditors’ rights of access to documents and information are set out in detail in appendix B.

Undertaking work on behalf of Monitor

2.17 Monitor may require the auditors to undertake work on its behalf at NHS foundation trusts. In this situation, a tripartite agreement between Monitor, the auditor and the NHS foundation trust will be agreed. This agreement, which will include details of the subsequent work and reporting arrangements, will be in accordance with the principles established in the guidance issued by the Institute of Chartered Accountants in England and Wales (ICAEW) in Audit 05/03: Reporting to Regulators of Regulated Entities.

Liaison with internal auditors

2.18 The NHS Foundation Trust Accounting Officer Memorandum requires NHS foundation trusts to have an internal audit function. It is expected that the auditors will liaise with the internal audit function in order to obtain a sufficient understanding of internal audit activities to assist in planning the audit and developing an effective audit approach. The auditors may also wish to place reliance upon certain aspects of the work of internal audit in satisfying their statutory responsibilities as set out in the 2006 Act and this code. In particular the auditors may wish to consider the work of internal audit when undertaking their procedures in relation to the statement on internal control.
3. **Appointment of auditors**

**Appointment process**

3.1 The NHS foundation trust board of governors is responsible for appointing auditors. The NHS foundation trust is required to ensure that, as part of the appointment process, their appointed auditors meet criteria included by Monitor as set out in appendix C. The auditors must agree the terms of engagement with the NHS foundation trust in the form of a letter (letter of engagement).

3.2 If the auditors fail to meet, or have cause to believe that they will not be able to comply with, the criteria set out in the terms of authorisation at any point during their appointment, they must resign as auditors.

3.3 On establishment as an NHS foundation trust the auditors appointed by the Audit Commission to the predecessor NHS trust (the incumbent auditors) will continue to be appointed until the board of governors has had an opportunity to discuss the matter. An engagement letter must therefore be agreed between the NHS foundation trust and the incumbent auditors for that interim period so that there is not a period during which the NHS foundation trust has no auditor in place.

3.4 The board of governors must discuss at their first meeting after establishment whether they wish to extend the appointment of the incumbent auditors or whether they wish to undertake a competitive tender exercise to appoint their auditors. Both auditors and NHS foundation trusts should consider the impact of the APB ethical standard 3 “Long association with the audit engagement” when determining how long the incumbent auditors’ appointment can be extended for. This consideration must include the time that the auditor was appointed under the Audit Commission appointment arrangements as well as the length of the appointment by the board of governors of the NHS foundation trust. References to “the auditor” in this paragraph refer to the individual engagement members rather than their employer. The change of status of the NHS foundation trust and the different mechanism for appointing auditors does not override the ethical standards in relation to rotation of individuals. Further guidance on rotation of auditors and assessment of their work and fees is contained in appendix C.

3.5 NHS foundation trusts must provide Monitor with details of their auditors on authorisation and whenever a change to the auditors is made. This information should include the name and address of the organisation.

3.6 When the auditor’s appointment ends, the auditor has the right to write to Monitor to explain the reasons behind the ending of the appointment.
4. Audit process

Audit scope

4.1 In auditing the accounts of an NHS foundation trust the auditors must, by examination of the accounts and otherwise, satisfy themselves:

- that they are prepared in accordance with directions under paragraph 25(2) of Schedule 7 of the 2006 Act;
- that they comply with the requirements of all other provisions contained in, or having effect under, any enactment which is applicable to the accounts;
- that proper practices have been observed in the compilation of the accounts; and
- that the NHS foundation trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

4.2 The following table demonstrates how the outcomes of the auditors’ work to satisfy themselves in relation to the requirements above are reported:

<table>
<thead>
<tr>
<th>Requirement to satisfy themselves that:</th>
<th>Scope of work</th>
<th>Reporting of material exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The accounts are prepared in accordance with directions under paragraph 25(2) of Schedule 7 of the 2006 Act</td>
<td>Paragraph 4.3</td>
<td>Qualification of the audit opinion and audit certificate Reporting in line with ISAs (UK&amp;I)</td>
</tr>
<tr>
<td>The accounts comply with the requirements of all other provisions contained in, or having effect under, any enactment which is applicable to the accounts</td>
<td>Paragraph 4.3</td>
<td>Qualification of the audit opinion and audit certificate Reporting in line with ISAs (UK&amp;I)</td>
</tr>
<tr>
<td>Proper practices have been observed in the compilation of the accounts</td>
<td>Paragraph 4.3</td>
<td>Qualification of the audit opinion and audit certificate Reporting in line with ISAs (UK&amp;I)</td>
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<tr>
<td>Requirement to satisfy themselves that:</td>
<td>Scope of work</td>
<td>Reporting of material exceptions</td>
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<tr>
<td>The NHS foundation trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources</td>
<td>Paragraphs 4.4 – 4.12</td>
<td>If the statement on internal control is not consistent with the auditors’ knowledge of the NHS foundation trust, the auditors must refer to this fact, and the supporting reasons, in the audit opinion and qualify the audit certificate. If the statement of internal control is consistent with the auditor’s knowledge but the auditor cannot conclude that the NHS foundation trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources, the auditor must qualify the audit certificate.</td>
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4.3 In relation to the first three requirements above, auditors must perform the audit in accordance with the Auditing Practice Board’s (APB’s) International Standards on Auditing (ISAs (UK&I)) currently in force, and as may be amended from time to time, and have regard to any relevant Practice Notes (PNs) and other guidance and advice issued by the APB. The applicability of the ISAs (UK&I) to bodies in the public sector is defined in the APB practice note 10: ‘Audit of financial statements of public sector entities in the United Kingdom’. Auditors should have particular regard to this PN while undertaking the audit of NHS foundation trusts.

4.4 In relation to the fourth requirement above, auditors are not required to comply with ISAs (UK&I) for this part of the audit but must follow the procedures indicated below.

**Economy, efficiency and effectiveness**

4.5 An NHS foundation trust has a duty to exercise its functions economically, efficiently and effectively.

4.6 The Healthcare Commission has the general function of encouraging improvement in the provision of health care by and for NHS bodies, including NHS foundation trusts. This includes the effectiveness of, and the economy and efficiency of the provision of, the health care. In each financial year the Healthcare Commission must conduct a review of the provision of health care at each NHS foundation trust and must publish an annual assessment of the performance of each such body.

4.7 In auditing the accounts of any NHS foundation trust the auditors must, by examination of the accounts and otherwise, satisfy themselves that the NHS foundation trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

4.8 It is important that there is a minimum of duplication of effort between the auditors and regulatory bodies, whilst ensuring that the auditors can discharge their responsibilities. In discharging the responsibility set out above, the auditors must:

- review the statement made by the chief executive of the NHS foundation trust, as part of the statement on internal control, which includes details of the arrangements put into place to secure economy, efficiency and effectiveness in the use of resources and making a negative statement within the audit opinion if the statement on internal control is not consistent with their knowledge of the NHS foundation trust;

- review the results of the work of relevant regulatory bodies, for example the Healthcare Commission, to determine if the results of the work have an impact on their responsibilities; and

- in discharging the responsibility set out above, the auditors must undertake any specified pieces of work mandated by the Healthcare Commission.
The Healthcare Commission is not the only regulatory body whose work may be relevant to the auditors’ work to discharge this responsibility. The Commission for Social Care Inspection for example may also be relevant, as may the National Institute for Health and Clinical Excellence. In addition, any work undertaken by regulatory bodies in relation to other organisations within the local health economy may be relevant. Auditors have a responsibility to review and consider the results of the work of all relevant regulatory bodies. Auditors should obtain the results of the work from the NHS foundation trust where it is not publicly available.

If the statement on internal control is not consistent with the auditors’ knowledge of the NHS foundation trust, the auditors must refer to this fact, and the supporting reasons, in the audit opinion. This is covered in more detail in the section below.

If the auditors are not able to satisfy themselves that the NHS foundation trust has made proper arrangements for securing economy, efficiency and effectiveness they must refer to this fact, and the supporting reasons, in the audit certificate. This is covered in section 5 below.

In either case, the auditors must report these matters to those charged with governance. The auditors must report any such matters to those charged with governance in advance of issuing the audit opinion and/or certificate, where possible, to allow the NHS foundation trust the opportunity to respond formally to the auditor. The auditors must consider any response before issuing the audit opinion and/or certificate, which must be reported as a final version to those charged with governance.

Audit responsibilities in relation to the statement on internal control

The NHS foundation trust is required to include a statement on internal control (SIC) within its financial statements. This requirement is set out in the NHS Foundation Trust Financial Reporting Manual.

The auditors of NHS foundation trusts have a responsibility to:

- consider the completeness of the disclosures in meeting the relevant requirements; and
- identify any inconsistencies between the disclosures and the information that they are aware of from their work on the financial statements and other work.

Appropriate evidence regarding the disclosures will usually be obtained by:

- considering whether the disclosures are consistent with the auditors’ review of minutes of relevant committees;
- reviewing supporting documents prepared for the board, the accounting officer (the chief executive of the NHS foundation trust) and audit committee that are relevant to disclosures made in the SIC;
- gaining an understanding of the processes defined in the SIC through enquiry of appropriate members and officers, and comparing their understanding to the statements made in the SIC;
- attending audit committee meetings at which corporate governance, internal control, risk management and value for money matters are considered;
- reviewing work undertaken by internal audit in relation to internal control; and
- relating the disclosures made in the SIC to the auditors’ knowledge of the NHS foundation trust obtained during the audit of the financial statements in accordance with this code.
4.16 In carrying out their review, the auditors will have regard to the knowledge of the NHS foundation trust they have obtained from their audit work. To enable them to perform their audit and express an audit opinion on the financial statements, auditors are required by ISAs (UK&I) to understand the NHS foundation trust’s control environment and to assess the components of audit risk. The assessment of the control environment only considers the NHS foundation trust’s control of risk to the extent that the auditors expect to be able to rely upon this assessment as part of their audit procedures. The auditors are not performing a management task in undertaking this assessment. Consequently the auditors’ assessment will be considerably narrower in scope than the work undertaken by the NHS foundation trust to prepare the SIC.

4.17 Auditors are not therefore expected to assess whether all risks and controls have been addressed by the SIC or that risks are satisfactorily addressed by internal controls. This fact should be referred to in the audit opinion.

Audit responsibilities in relation to annual reports

4.18 The NHS foundation trust is required to prepare an annual report. This requirement is set out in paragraph 26 of Schedule 7 of the 2006 Act.

4.19 The auditors of NHS foundation trusts have a responsibility to read the information contained within the annual report and consider the implications for the audit opinion and/or certificate if there are apparent misstatements or material inconsistencies with the financial statements.

Audit responsibilities in relation to directors’ reports

4.20 From 1 April 2007, the NHS foundation trust Financial Reporting Manual will require directors of an NHS foundation trust to produce a directors’ report akin to that required by paragraph 234 of the Companies Act 1985. Auditors are required to follow the requirements of section B of ISA(UK&I)720 in relation to the directors’ report.

Cooperation with other bodies

4.21 In discharging their duties, the auditors will need to cooperate with other relevant regulatory bodies and the auditor of the consolidated accounts of NHS foundation trusts.

4.22 The Comptroller and Auditor General (C&AG) of the National Audit Office (NAO) has the right to examine the accounts, any records relating to them and any report of the auditor on them. In addition, the C&AG has a duty in relation to value for money within the NHS. The auditors must, where requested, provide the C&AG with the report on the accounts. The C&AG should request the accounts or records relating to them from the NHS foundation trust itself. A memorandum of understanding between the C&AG and the auditors of NHS foundation trusts is included at appendix D and auditors of NHS foundation trusts are required to comply with it.

4.23 The Healthcare Commission will be responsible for undertaking inspections and studies of economy, efficiency and effectiveness of NHS foundation trusts. The auditors should receive information from the Healthcare Commission in relation to the performance of the NHS foundation trust and must consider the implications of this information for their audit. As specified in paragraph 4.8, auditors of NHS foundation trusts should discharge their responsibility surrounding economy, efficiency and effectiveness of NHS foundation trusts by undertaking any specified pieces of work mandated by the Healthcare Commission. Monitor and the Healthcare Commission have agreed that a formal relationship ie a Memorandum of Understanding between the Healthcare Commission and the NHS foundation trust auditors may be negotiated in the future.

4.24 The Audit Commission appoints auditors to other NHS bodies. The appointed auditors to other NHS bodies within a local health economy which includes an NHS foundation trust may wish to liaise with the auditors of the NHS foundation trust in order to discharge their responsibilities as set out in the Audit Commission’s Code of Audit Practice. This may particularly be the case in relation to the appointed auditors of strategic health authorities and primary care trusts. In this instance, the auditors of the NHS foundation trust may respond to any liaison requests, after
obtaining permission from the NHS foundation trust. The auditors of the NHS foundation trusts may implement legal agreements as deemed appropriate in the individual circumstances, for example ‘hold harmless’ letters.
5. Audit reporting

Audit certificate and opinion

5.1 When the auditors of an NHS foundation trust have concluded their audit of the NHS foundation trust’s accounts, they must enter on the accounts:

- a certificate that they have completed the audit in accordance with Chapter 5 of Part 2 of the 2006 Act; and
- an opinion on the accounts.

5.2 The certificate and opinion should be addressed to the board of governors of the NHS foundation trust. It is expected that the certificate and opinion will be issued together unless there are exceptional circumstances.

5.3 From 1 April 2008, the senior statutory auditor should sign the audit report with his or her name as well as the firm of auditors (where appropriate) in accordance with the requirements of section 503 of the Companies Act 2006.

5.4 Where the NHS foundation trust’s annual report and accounts are to be published on the web then auditors should take account of the requirements of the appendix Electronic Publication of the Auditor’s Report to section A of ISA(UK&I)720 (revised).

5.5 Where the NHS foundation trust publishes an annual report and summarised financial statements then auditors should provide the relevant report, taking into account extant auditing guidance.

5.6 The auditors must also provide a statement that the consolidation schedules required by Monitor are consistent with the audited accounts. In light of Monitor’s consolidation requirements, due consideration should be given to the figures in the consolidation schedules for balances and transactions with other bodies. This statement should refer to any qualification of the certificate or opinion on the accounts.

Audit opinion

5.7 The opinion must be in a standard ‘true and fair’ format in accordance with current best practice in line with ISA (UK&I) 700: ‘The Auditor’s Report on Financial Statements’ or subsequent guidance. Any qualification to the audit opinion must be made in accordance with the requirements of ISA (UK&I) 700 and APB Bulletin 2006/06 Auditor’s Reports on Financial Statements in the United Kingdom. A qualification will arise if the auditors are not able to satisfy themselves that:

- the accounts are prepared in accordance with directions under paragraph 25 of Schedule 7 of the 2006 Act;
- the accounts comply with the requirements of all other provisions contained in, or having effect under, any enactment which are applicable to the accounts; and
- proper practices have been observed in the compilation of the accounts.

5.8 Where the SIC does not meet the disclosure requirements set out in the NHS Foundation Trust Financial Reporting Manual or is misleading or inconsistent with other information of which they are aware from the audit, the auditors must refer to this in the audit opinion, although this does not result in a qualification to the accounts.
Audit certificate

5.9 The certificate must confirm that the audit has been completed in accordance with the requirements of the 2006 Act. If the auditors have completed the audit in accordance with these requirements but have been unable to satisfy themselves in relation to the requirements set out in the audit scope section of the code, they must state this fact in the certificate, i.e. qualify the certificate.

The certificate may be qualified where one of the following instances has occurred:

- the auditors have issued a qualification to the audit opinion, either through a limitation of audit scope or through a disagreement on accounting treatment or disclosure;
- the auditors have issued an adverse opinion through a disagreement on accounting treatment or disclosure;
- the auditors have referred, in the audit opinion, to the fact that the SIC does not meet the disclosure requirements set out in the Accounts Direction or is misleading or inconsistent with other information of which they are aware from the audit;
- the auditors have not been able to satisfy themselves that the NHS foundation trust has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources; or
- the auditors believe that a qualified certificate is required for another reason.

5.10 Where the findings of the Healthcare Commission, or another regulatory body, indicate that the NHS foundation trust has not made proper arrangements for securing economy, efficiency and effectiveness in its use of resources, the auditors must consider the significance of the issues raised when determining whether the certificate needs to be qualified.

5.11 Where the auditors have issued a report in the course of the audit that covers the audit certificate qualification issues, they may refer to that report in the audit certificate to avoid duplication.

5.12 Other than in exceptional circumstances, the audit opinion and certificate will normally be issued as a single document at the same time. If auditors wish to use a different format of audit opinion and/or certificate, the auditors must inform Monitor of the reasons behind the decision to use a non standard format. It is expected that this would be in exceptional circumstances only.

5.13 Where an opinion and/or certificate is qualified, the auditors must submit a copy of the opinion and/or certificate to Monitor within 14 days of issue.

Reporting the audit

5.14 Paragraph 11 of ISA(UK&I)260 requires auditors to report the findings of their audit to those charged with governance. A copy of this report must be sent to Monitor by the NHS foundation trust with the audited summarisation schedules and the relevant certificates on those schedules.

Public interest reporting

5.15 In auditing the accounts of an NHS foundation trust, the auditors must consider:

- whether, in the public interest, they should make a report (a public interest report) on any matter coming to their notice in the course of the audit, in order for it to be considered by the members of the NHS foundation trust or brought to the attention of the public; and
- whether the public interest requires any such matter to be made the subject of an immediate report rather than of a report to be made at the conclusion of the audit.

5.16 Whether or not to issue a public interest report and the content of any such report are matters for the auditors to decide. There is no duty on the auditors to seek out matters to report in the public interest.
5.17 Auditors should not be deflected from making a public interest report because its subject matter is critical or unwelcome, if they consider it to be in the public interest to do so. Auditors are able to form an independent and impartial view on how an NHS foundation trust is conducting its affairs and these reports are an important means of informing the public. Auditors should bear these considerations in mind when deciding whether or not to make a public interest report. It is not, however, a function of auditors to express an opinion as to the wisdom of particular decisions taken by the NHS foundation trust in the lawful exercise of their discretion. Any report relating to such decisions should refer only to any facts that have not previously been brought to the notice of the NHS foundation trust, or which ought to be brought to the attention of the public. Appendix E contains some examples of when a public interest report may be considered to be appropriate and the processes which should be followed when producing such a report.

5.18 A public interest report should be made only where auditors consider a matter sufficiently important to be brought to the notice of the members of the NHS foundation trust or the public. The concept of materiality, as defined in ISA (UK&I) 320 ‘Audit materiality’ which applies to auditors’ work in relation to the financial statements, is not relevant when auditors are deciding whether to issue a public interest report.

5.19 The auditors should address a public interest report to the board of governors and board of directors of the NHS foundation trust and to the regulator. Where auditors make a public interest report to the NHS foundation trust at the conclusion of the audit, they may include the certificate and opinion, detailed above, in that report.

5.20 If the auditors issue a public interest report, it is expected that the auditor will refer to this fact in the audit certificate. It may also be the case that the auditors may need to qualify the audit opinion.

5.21 The auditors must send any public interest report to the board of governors and board of directors of the NHS foundation trust and to Monitor:
- at once if it is an immediate report; or
- otherwise not later than 14 days after conclusion of the audit.

5.22 The NHS foundation trust must respond to any public interest report issued within 30 days or such shorter period that Monitor may determine.

5.23 It is expected that any work required to issue a public interest report will be costed by the auditors and charged to the NHS foundation trust, including the cost of any legal advice.

Referral to Monitor

5.24 In addition to the requirements above in relation to public interest reporting, the auditor has a duty under paragraph 6 of Schedule 10 to the 2006 Act to report certain matters to Monitor.

5.25 If auditors of an NHS foundation trust have reason to believe that the NHS foundation trust or a director or officer of the NHS foundation trust:
- is about to make, or has made, a decision which involves or would involve the incurring of expenditure which is unlawful; or
- is about to take, or has taken, a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency
they must refer the matter at once to Monitor.

5.26 There is no duty on auditors to seek out matters for referral to Monitor. Auditors should give consideration to matters arising in the course of their work and matters raised by members, governors, directors and officers of the NHS foundation trust and by others. Auditors should give particular consideration to any report that is made by any officer of the NHS foundation trust, which draws attention to possible unlawful expenditure or an unlawful course of action leading to a loss or deficiency.
5.27 There is no statutory requirement on the auditors to consult with the NHS foundation trust or individual concerned before referring a matter to Monitor. In some circumstances, it may not be appropriate to give notice to the NHS foundation trust or individual concerned prior to taking action. However, so far as is consistent with the prompt exercise of their powers and duties in the public interest, and where auditors consider it appropriate, they should give the NHS foundation trust or individual concerned an opportunity to respond to the matters that give cause for concern, even if it may be possible to give the NHS foundation trust or individual concerned only a very short period to respond.

5.28 The auditors should still consider the need for a public interest report in respect of the matters they have referred to Monitor.

Information received from members of the public

5.29 The auditors of NHS foundation trusts may receive information from members of the public. The auditors should take the information into account when performing their duties, where it is relevant. There is no requirement for the auditors to investigate the matter. Where information is received that may be relevant to Monitor or a regulatory body, the auditor should forward this information to the appropriate body. Where the information is an allegation of fraud it should be reported to the Counter Fraud and Security Management Service at the earliest opportunity.
6. Audit technical support and quality assurance

Technical support

6.1 The financial results of NHS foundation trusts will be included in *Whole of Government Accounts* (WGA). Whilst the *NHS Foundation Trust Financial Reporting Manual* will provide guidance on the format of the financial statements and the appropriate accounting principles to adopt in the preparation of the financial statements, there may still be problems of interpretation.

6.2 It is therefore important to ensure consistency between different auditors in the approach taken to particular accounting issues, whilst not reducing the independence of the auditor to conclude on the audit.

6.3 Each audit supplier appointed as auditors of NHS foundation trusts must therefore ensure senior participation in a technical issues forum. This forum will consider technical auditing and accounting issues relevant to NHS foundation trusts. Whilst auditors are not required to comply with the decisions made by this forum, any differences in auditing judgement or opinion likely to lead to material variation in the reported results across NHS foundation trusts must be reported to Monitor for information, together with an explanation for the reasons why the forum’s guidance has not been followed.

6.4 In addition to Monitor’s representative(s) and the senior representatives from each of the audit suppliers appointed as auditors of NHS foundation trusts, each of the following organisations will be invited to send a representative to the forum:

- National Audit Office;
- Audit Commission;
- Department of Health; and
- HM Treasury.

Monitoring arrangements

6.5 As NHS foundation trusts are classified as being in the public sector, the work of auditors in performing an audit of NHS foundation trusts will not be subject to the external quality monitoring regimes of audit suppliers’ commercial audits. Monitor, however, will want assurance that the audit complies with the code and that it is of a suitable quality. In addition, the C&AG will need to know that reliance can be placed on the work of the NHS foundation trust auditors for the WGA process.

6.6 Auditors must comply with the monitoring regime set up by Monitor with the ICAEW Quality Assurance Directorate.

6.7 The results of the monitoring must be reported to the audit firm involved, with a copy of the report being sent to Monitor. If this report highlights issues of non-compliance with the code or inadequate quality of audit work, the audit supplier must respond to the issues raised, to Monitor in writing, within 30 days.
### Appendix A: Statutory responsibilities of NHS foundation trusts and auditors in relation to accounting and audit

#### Part A: Statutory responsibilities of NHS foundation trusts

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Derived from</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is for the board of governors to appoint or remove the auditor at a general meeting of the board</td>
<td>Schedule 7, 23 (2)</td>
</tr>
<tr>
<td>To establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate</td>
<td>Schedule 7, 23 (6)</td>
</tr>
<tr>
<td>To keep accounts in such form as Monitor may with the approval of the Treasury direct</td>
<td>Schedule 7, 24 (1)</td>
</tr>
<tr>
<td>To prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Treasury direct</td>
<td>Schedule 7, 25 (1)</td>
</tr>
<tr>
<td>In preparing its annual accounts, to comply with any directions given by Monitor with the approval of the Treasury as to: (a) the methods and principles according to which the accounts are to be prepared, (b) the information to be given in the accounts</td>
<td>Schedule 7, 25 (2)</td>
</tr>
<tr>
<td>To: (a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and (b) once it has done so, send copies of those documents to Monitor</td>
<td>Schedule 7, 25 (4)</td>
</tr>
<tr>
<td>To prepare annual reports and send them to Monitor</td>
<td>Schedule 7, 26 (1)</td>
</tr>
<tr>
<td>To give information as to its forward planning in respect of each financial year to Monitor</td>
<td>Schedule 7, 27 (1)</td>
</tr>
<tr>
<td>To provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Chapter 5 of Part 2 of the 2006 Act</td>
<td>Schedule 10, 2 (4)</td>
</tr>
<tr>
<td>The directors must take any public interest report into consideration as soon as practicable after receiving it</td>
<td>Schedule 10, 5 (2)</td>
</tr>
</tbody>
</table>
Part B: Statutory responsibilities of Auditors of NHS foundation trusts

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Derived from</th>
</tr>
</thead>
<tbody>
<tr>
<td>To be satisfied that the accounts comply with the directions provided, i.e.</td>
<td>Schedule 10, 1(a)</td>
</tr>
<tr>
<td>that the accounts comply with *The NHS Foundation Trust Financial Reporting</td>
<td></td>
</tr>
<tr>
<td>Manual*.</td>
<td></td>
</tr>
<tr>
<td>To be satisfied that the accounts comply with the requirements of all other</td>
<td>Schedule 10, 1(b)</td>
</tr>
<tr>
<td>provisions contained in, or having effect under, any enactment which are</td>
<td></td>
</tr>
<tr>
<td>applicable to the accounts</td>
<td></td>
</tr>
<tr>
<td>To be satisfied that proper practices have been observed in compiling the</td>
<td>Schedule 10, 1(c)</td>
</tr>
<tr>
<td>accounts</td>
<td></td>
</tr>
<tr>
<td>To be satisfied that proper arrangements have been made for securing economy,</td>
<td>Schedule 10, 1(d)</td>
</tr>
<tr>
<td>efficiency and effectiveness in the use of resources</td>
<td></td>
</tr>
<tr>
<td>To comply with any directions given by Monitor as to the standards, procedures</td>
<td>Schedule 7, 24 (5)</td>
</tr>
<tr>
<td>and techniques to be adopted, i.e. to comply with the code</td>
<td></td>
</tr>
<tr>
<td>To consider the issue of a public interest report</td>
<td>Schedule 10, 3</td>
</tr>
<tr>
<td>To certify the completion of the audit</td>
<td>Schedule 10, 4(1)(a)</td>
</tr>
<tr>
<td>To express an opinion on the accounts</td>
<td>Schedule 10, 4(1)(b)</td>
</tr>
<tr>
<td>To refer the matter to Monitor when an NHS foundation trust, or an officer or</td>
<td>Schedule 10, 6</td>
</tr>
<tr>
<td>director of an NHS foundation trust, makes or is about to make decisions</td>
<td></td>
</tr>
<tr>
<td>involving potentially unlawful expenditure or takes or is about to take</td>
<td></td>
</tr>
<tr>
<td>potentially unlawful action likely to cause a loss or deficiency</td>
<td></td>
</tr>
</tbody>
</table>
Appendix B: Auditors’ rights of access to documents and information

Auditors of NHS foundation trusts have a right of access at all reasonable times to every document relating to the NHS foundation trust which appears to them necessary for the purposes of their functions under Chapter 5 of Part 2 of the 2006 Act.

The auditors may require a person holding, or accountable for, any such document to give them such information and explanation as they think necessary for the purposes of their functions. If they think it necessary, they may also require the person to attend before them in person to give the information or explanation or to produce the document.

The auditors may also require any director or officer of the NHS foundation trust to give them such information or explanation as they think necessary for the purposes of their functions under Chapter 5 of Part 2 of the 2006 Act. If they think it necessary, they may also require the director or officer to attend before them in person to give the information or explanation.

In respect of services contracted out by the NHS foundation trust to third parties, all contracts between the NHS foundation trust and third parties shall include a clause whereby the third party shall grant access to the auditor for the purpose of audit and certification of the NHS foundation trust accounts. The said clause shall be in the following or similar terms:

‘For the purpose of the examination and certification of the NHS foundation trust accounts, the auditor of the NHS foundation trust may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the contractor and may require the contractor to provide such oral and/or written explanations as the auditor considers necessary’

For the avoidance of doubt, it is not intended that the auditor should have access to records relating to the contractor’s affairs nor that the auditor should conduct an audit of the contractor.

Access to patient records

As set out above, under Schedule 10, paragraph 2 of the 2006 Act, auditors of NHS foundation trusts have the right to access patient identifiable information where necessary. However, auditors are also required to observe a statutory duty of confidentiality as set out above and are required to be mindful of the confidentiality, security and data protection requirements in relation to patient identifiable information that the NHS foundation trust maintains.
Appendix C: Criteria for the selection of auditors of NHS foundation trusts and rotation of auditors

Appointment of auditors

The board of governors of the NHS foundation trust is responsible for appointing an auditor.

The NHS foundation trust must ensure that the auditor appointed by the board of governors meets the following criteria, at the date of appointment and on an on-going basis throughout the term of their appointment:

1. The auditor must satisfy the criteria for appointment as an auditor of an NHS foundation trust, as set out in paragraph 23(4) of Schedule 7 of the 2006 Act;

2. The auditor must have an established and demonstrable standing within the healthcare sector and be able to show a high level of experience and expertise. The work is of a specialised nature, and so general audit experience is not sufficient;

3. The auditor must comply with the Audit Code for NHS foundation trusts; and

4. The auditor must subject the audit to internal quality control procedures which are sufficiently robust to monitor the compliance of the audit work with the Audit code for NHS foundation trusts.

Rotation of auditors

The audit committee of the NHS foundation trust established in accordance with paragraph 23(6) of Schedule 7 must assess the auditor’s work and fees on an annual basis to ensure that the work is of a sufficiently high standard and that the fees are reasonable. Performance measures may be used as part of the assessment.

The audit committee shall then make a recommendation to the board of governors with respect to the re-appointment of the auditor.

If the auditor’s work has been satisfactory and the charges reasonable, the board of governors may re-appoint the auditor for the following year without the need for a formal selection process. However, Monitor recommends that the NHS foundation trust should undertake a market-testing exercise for the appointment of an auditor at least once every five years.

Auditors must comply with the relevant ethical standards in relation to rotation of key individuals within the audit team.

When the board of governors ends an auditor’s appointment in disputed circumstances, the chair of the board of governors must write to Monitor informing it of the reasons behind the decision.
Appendix D: Memorandum of understanding between the Comptroller and Auditor General and the auditors of NHS foundation trusts

Background
1. The Comptroller and Auditor General (C&AG) is the head of the National Audit Office (NAO), and is the statutory auditor of a wide range of central government bodies. He reports directly to Parliament on the spending of public money.

2. Schedule 7 (paragraph 24) of the National Health Service Act 2006 (the “Act”) provides the C&AG with access rights to foundation trusts, which allow his representatives to inspect the accounts and any records relating to them, including the auditor’s report. Although he is not the appointed auditor of individual foundation trusts, he may wish to examine financial aspects of one or more NHS foundation trust in the context of his wider roles in providing assurance to Parliament over the proper use of public monies.

3. The C&AG has roles defined in other legislation which may impact on foundation trusts. For example, the Treasury will prepare an account consolidating all public sector bodies and the Government and Resources Act 2000 appoints the C&AG as auditor of this Whole of Government Account (WGA).

4. In addition, the National Audit Act 1983 allows the C&AG to carry out examinations into the economy, efficiency and effectiveness with which Government bodies (including NHS foundation trusts) use their resources in discharging their functions, and he may report his findings to Parliament.

Aim of this Memorandum
5. This Memorandum sets out the arrangements for the co-operation and the exchange of information between the C&AG and the auditors of the individual NHS foundation trusts in order to allow the C&AG to discharge his statutory role regarding:
   - his audit of the WGA which will consolidate all foundation trusts;
   - his general access rights to foundation trusts, which will enable him to address a wide range of parliamentary reporting needs;
   - his examinations into economy, efficiency and effectiveness across the NHS or the wider public sector.

6. In all aspects of this Memorandum, it is for the C&AG to decide on the extent of the work required to support his conclusions. The auditors’ work, reports and information provided to the C&AG are not designed to serve as a substitute for enquiries and procedures that the C&AG may carry out for the purpose of his own work.

Financial audit
7. Schedule 7 Section 24(3) of the Act gives the C&AG the right to examine:
   - the accounts of each foundation trust;
   - any records relating to them; and
   - any report of the auditor on them.

8. In addition, NHS foundation trusts are designated by the Treasury under Section 10 of the Government Resources and Accounts Act 2000 for inclusion in Whole of Government Accounts (WGA). Bodies designated for WGA will be required to prepare consolidation information and deliver it to the Treasury or another body nominated by the Treasury, for example the Independent Regulator. The Government Resources and Accounts Act 2000, Section 11(5), requires the auditors of bodies designated for WGA, for the purposes of the C&AG’s audit of the WGA, to “give the C&AG such information and explanations as he may reasonably require for the purposes of [the audit]”.

9. The NAO and the individual auditors of NHS foundation trusts will therefore need to co-operate to ensure consistency of approach and the extent of assurances provided in order to facilitate an effective audit of the consolidation of NHS foundation trusts within WGA.
10. The C&AG will not dictate how an audit of a foundation trust’s statutory accounts should be carried out, and in particular he will not:

- interfere with an auditor’s exercise of his professional skill and judgement in performing his statutory duties;
- substitute his own judgement for those of an auditor in the exercise of those functions; and
- direct an auditor to act or review his decisions.

11. In order to reach an opinion on the WGA, the C&AG is reliant on the auditors of all the designated bodies. He undertakes his audit of WGA in accordance with the UK Auditing Standards issued by the Auditing Practices Board. He therefore needs to consider and evaluate the assurances to be gained from the auditors of individual NHS foundation trusts in accordance with ISA(UK&I) 600 Using the Work of Another Auditor.

12. To fulfil his responsibilities in relation to WGA, the C&AG will need to obtain sufficient, appropriate audit evidence from foundation trust auditors on the consolidation information prepared by the trusts. He will also need to obtain evidence that the work of foundation trust auditors on the consolidation information is adequate for his purposes. The NAO will issue instructions each year to the auditors of all designated bodies, describing the evidence we require. This evidence may include a questionnaire or checklist issued to each auditor, and may cover such issues as:

- results of audit and form of opinion;
- key judgements made in reaching opinion, and fundamental issues addressed in the audit;
- the impact of events arising since the balance sheet date, and in particular in the period between the signing of the underlying accounts and the completion of the WGA;
- public Interest reports or reports on the accounts;

13. The extent and nature of the evidence sought will depend on issues arising within the audit of the WGA, and may not be limited to the list above. The NAO may require access to a foundation trust auditor’s working papers, subject to reasonable notice.

Other financial audit access

14. In order to fulfil his other duties in relation to his reviews of public sector spending, the C&AG may, from time to time, request other information from the auditors in respect of the latter’s role as auditors of foundation trusts. Such requests will be with the full knowledge of the foundation trust, and will not extend beyond the auditor’s direct role with that body. The auditors will be expected to co-operate and assist with the C&AG’s review.

15. Such requests will not compromise the independence or objectivity of the foundation trust auditors, and publication of attributable data will only be made with the auditor’s agreement.

Value for money reviews

16. The C&AG has a statutory right, under the National Audit Act 1983 to undertake examinations into the economy, efficiency and effectiveness to which any department, authority or other body designated within that act has used its resources in discharging its functions. He may report his findings to Parliament. These examinations encompass:

- economy: minimising the cost of resources used or required – spending less;
- efficiency: the relationship between the output from goods or services and the resources to produce them – spending well; and
- effectiveness: the relationship between the intended and actual results of public spending – spending wisely.
17. NHS foundation trusts fall within the scope of the C&AG’s VFM role, and he may undertake reviews encompassing:

- an individual foundation trust;
- issues cutting across all or some foundation trusts;
- issues within the wider NHS or government generally, that may impact on one or more foundation trust as part of a wider study.

18. From time to time the C&AG receives correspondence, and he has a duty to consider the issues raised and take appropriate action. He may consult with auditors to inform any resulting investigation, or pass on the correspondence to those auditors for their consideration.

19. The relationship between the C&AG and the individual auditors of the NHS foundation trusts will be built on mutual co-operation and, subject to data protection and client confidentiality considerations, will involve the sharing of relevant information to inform each other’s work. The C&AG may seek information from the auditors to aid a particular review. Such requests will be with the full knowledge of the foundation trust, and will not extend beyond the auditor’s direct role with that body. Equally, foundation trust auditors should bring issues of concern to the attention of the C&AG in relation to national audit issues.

20. Where the C&AG is to publish a report with explicit reference to an auditor or his work, the National Audit Office would normally supply the auditor with the draft report, or relevant extracts, to provide sufficient background and context to enable the named auditor to make valid judgements about factual accuracy and the balance of facts as presented.

**Legal authority**

21. This document is a guide for auditors of NHS foundation trusts regarding the relationship necessary to allow them and the C&AG to perform their responsibilities effectively. It is not necessarily a definitive interpretation of the C&AG’s legal powers, and should not be taken to diminish or limit these powers in any way. This document, itself, has no legal standing and reference should be made to governing legislation for the full position.

**Liaison**

22. Any requests for information or co-operation made by the National Audit Office on behalf of the C&AG, will be in writing to the auditor concerned. Auditors can address queries relating to the NAO’s role to Sid Sidhu on 0207 798 7489.

*National Audit Office*
*Buckingham Palace Road*
*Victoria*
*LONDON*
*SW1W 9SP*
Appendix E: Guidance on public interest reporting

Examples of when a public interest report may be required
Some examples of when a public interest report should be issued are detailed below, although this is not an exhaustive list and any decision to issue a public interest report remains with the auditors:

- An NHS foundation trust has misused public money to an extent that there has been a material impact on the funding available to treat patients;
- The financial position of the NHS foundation trust is such that it would not be considered to be a going concern;
- The management of the NHS foundation trust is not fulfilling its statutory obligations, resulting in a significant impact on the effective running of the NHS foundation trust; and
- There is evidence that a senior officer, director or governor of the NHS foundation trust is or has been perpetrating a fraud.

Process for preparing a public interest report
Auditors should consider the interests of the individuals whose acts or omissions have given rise to the subject matter of the report, and who may be exposed to criticism or other consequences through having been identified in the report. In reporting, the auditors have to strike a balance between those interests and the public interest.

Except in exceptional circumstances, as set out below, auditors should allow individuals to answer any criticism that they propose to make. Auditors should consider meeting with relevant individuals during the consultation stages of preparing a report. Such meetings provide an opportunity to discuss with the individuals concerned, and to consider, matters that auditors intend to include in the report in greater detail than may be practicable in a report. Auditors will then be in a position to take account of these discussions and, where appropriate, to indicate what action has been agreed.

Except in exceptional circumstances, auditors should also provide copies of draft reports to the individuals concerned. Where copies of the draft report have been provided and the force of the criticism of any individuals is subsequently changed as a result of discussions or further investigation, auditors should consider advising the individuals concerned of the changes and, where appropriate, allowing them a further opportunity to respond to them.

Where appropriate, matters that may give rise to a report may be conveyed to those responsible in writing during the progress of an audit, so that early corrective action can be taken. This does not relieve auditors of the duty to consider whether they should submit immediately a report in the public interest.

When the auditors conclude, after appropriate discussion and investigations, that a matter which has come to their attention gives rise to the need to issue a public interest report, they should bring the matter to the attention of Monitor without undue delay in a form and manner which will facilitate appropriate action by Monitor. When the initial report is made orally, the auditors should make a contemporaneous written record of the oral report and should confirm the matter in writing to Monitor. It is anticipated that, except in exceptional circumstances, a report would not be made to Monitor until the draft report has been discussed with the individuals involved.

Except in exceptional circumstances, auditors should seek to reach agreement with the board of directors of the NHS foundation trust on the circumstances giving rise to such a public interest report. However, where the auditor believes that it is appropriate to issue a public interest report, the auditors are required to make such a report regardless of:

- whether the matter has been referred to Monitor by other parties (including the NHS foundation trust, whether by its board of directors or otherwise); and
• any duty owed to other parties, including the NHS foundation trust board of governors.

Except in exceptional circumstances, auditors should send a copy of their written report to those charged with governance.

**Exceptional circumstances**

Generally, auditors would wish to communicate with Monitor with the knowledge and agreement of the NHS foundation trust. However, in some circumstances immediate notification will be necessary of the discovery of a matter giving reasonable grounds to believe that a reportable matter exists.

When the matter giving rise to the need to issue a public interest report casts doubt on the integrity of the governors or directors of the NHS foundation trust or their competence to conduct the business of the NHS foundation trust, the auditors should make their report to Monitor without delay and without informing the board of directors in advance.

Speed of reporting is essential where the circumstances cause the auditors no longer to have confidence in the integrity of the governors or directors of the NHS foundation trust. In these circumstances, it is not appropriate to provide the Governors or directors with draft copies of their report. Since such circumstances will be exceptional and extreme, the auditors may wish to seek legal advice as to their responsibilities and the appropriate course of action.

**Reporting**

Although criticism of past performance may sometimes be necessary when reporting, auditors should aim to be constructive and use careful and unambiguous language. The emphasis in reports should be on the steps that are necessary to bring about improvement.