

Fundamental Review of the Council of Governors Final Report

Introduction

1. It is over six years since the formation of the Council of Governors as part of the RDEFT. As a first wave FT there was little available guidance on the role of COGs and both the Trust and the Governors have had to establish ways of working within the governance structure. For much of this period, Governors have focused mainly on their statutory role as well as contributing to the RD&E's future priorities and providing a stakeholder perspective. Governors have also been involved in developing the Trust's membership base.
2. More recently, questions have emerged as to whether the Governors could operate more effectively. By mid-2009, it was clear that both the Trust and the COG were keen to re-examine the role of Governors as part of a process to maximize their contribution (see Annex One).
3. The proposal to undertake a fundamental review of the Council of Governors was agreed by the Trust Board and the CoG in mid 2009. In October, the CoG agreed to the formation of an interim Steering Group (SG) whose principal role was to both oversee and undertake the review (see Annex Two). The work carried out by the SG included:
 - A survey of COG members
 - A review of COG work since it was established
 - A working party of NEDs and governors, led by the Chair
4. The fundamental review provided an opportunity to take a comprehensive look at the role of governors in a process that was led by the governors themselves (Annex Three provides an overview of the project's objectives). It was recognised that securing significant changes to the governance structures and to the role of governors required genuine consensus to be achieved between the Trust Board and the whole COG, requiring close collaboration with the wider COG.

Initial outcomes of the Fundamental Review process

5. The outcomes of the Fundamental Review cover two broad areas:
 - A. Defining and clarifying the role of the governors/COG
 - B. Improving COG structures and processes
6. Good progress in addressing these two broad areas has been made by the SG since last October although some work will be on-going. The recommendations to be made in July 2010 fall into five broad categories:
 - 6.1. Recommendations to changes in the role of governors or the structure of the governance arrangements that require the agreement of the COG and the endorsement of the Board
 - 6.2. Recommendations to changes in the role of governors and working practices that require the agreement of the full COG
 - 6.3. Issues that are best referred the Constitution Review
 - 6.4. Issues that can be dealt with as part of the normal ongoing business of the Council of Governors
 - 6.5. Issues that require further ongoing development work.

The recommendations in this report will be referenced to these categories

Defining the role of the COG

7. One of the key drivers for the review was to more clearly define the role of governors and how they can add value to the Trust. Inevitably there will always be areas in which the respective roles of governors and the Board will remain somewhat unclear. Nevertheless, the maxim that the Governors “acknowledge the overall responsibility of the board for running the FT and should not try to use the powers of the COG to veto the decisions of the Board” is a clear starting point in setting parameters around what Governors do not do. In regards the role of Governors the NHS 2006 Act sets out two broad functions, namely:
 - A. holding the board of directors to account for the performance of the trust including ensuring the board of directors acts so that the FT does not breach its terms of authorisation as well as a number of roles specifically set out in statute relating to their role on audit, non-executive and chair appointments
 - B. representing the members’ and stakeholders interests and bringing these to bear on the governance of the NHS FT as well as feeding back information about the trust, its vision and performance to the communities that it serves.
8. Thus, governors have both an internal facing “assurance” role involving holding the Board (though not the organization as a whole) to account and having some limited but significant powers over the composition of the Board together with an externally facing role.

The inward facing role

9. Considerable effort has been expended by the SG in improving its understanding of the distinct internally facing role of the governors. The SG has examined good practice from elsewhere and looked at the experience that the RD&E has developed over the last six years to inform its understanding. It is clear in the answers to the questions in the survey of Governors completed as part of the review process, that defining the inward facing role remains a significant challenge.
10. This can be explained in a number of ways:
 - 10.1. The role continues to evolve and has been established in a way that allows different interpretations particularly given a lack of central guidance (until recent times)
 - 10.2. The role is part of a governance structure that includes in-built tensions and a lack of demarcation between the strategic / operational role played by the Board and the assurance role played by COG.
 - 10.3. There is a reasonably rapid turnover of governors which means that maintaining corporate memory and ensuring that governors have a similar basis of knowledge about the role is challenging
 - 10.4. The concept of “holding to account” implies for some governors the need to ensure that the COG is given the same level of information and assurance as the Board.
 - 10.5. An important element of the governance arrangements in FTs is the relationship between the Board and the COG. NEDs have a complex role involving holding Directors accountable, having legal responsibility and liability for the organisation, ensuring that they are satisfied with the overall

performance of the organisation and that this is backed up by a robust assurance framework, leading the organisation and setting the strategic aims of the organisation. In addition, NEDs have a particular role in assuring the COG that they are performing these duties appropriately. The assurance that the COG seeks will emerge from a number of sources but the NED – COG relationship is pivotal. It is therefore inherent that there needs to be close contact and trust built between the COG and the NEDs. Despite a lot of efforts, it is arguable that this relationship has not been well understood or invested in sufficiently.

- 10.6. The training and induction process has not offered new governors an adequate understanding of their role, nor has there been sufficient focus on ongoing training and development of governors. It is clear that the Trust staff involved with governors have also been developing their understanding of the role over time.
11. Based on the 2006 Act, good practice elsewhere, Monitor's and FTGA guidance, it is possible to conclude that the COG's assurance role has two components:
 - A. That the COG has the necessary confidence in the Board's ability to ensure that the organisation is performing effectively; and
 - B. That the COG is satisfied that the Trust's Board has the right people with the best mix of skills to perform this role to the best of their abilities.
12. The Monitor guidance on the role of the Governor is reasonably explicit about the latter half of this responsibility and how it can be exercised. Indeed, many of the governors statutory duties/good practice focuses on appointments, removals and appraisal of the Chairman and NEDs to ensure that the COG can be satisfied that it has recruited and is content with the performance of the non-executive component of the Board.
13. Where the guidance is less clear is on the question of holding the board collectively to account for the performance of the FT. The lack of clarity in this area has arguably been one of the issues that has driven the fundamental review process itself.

Holding the Board to Account

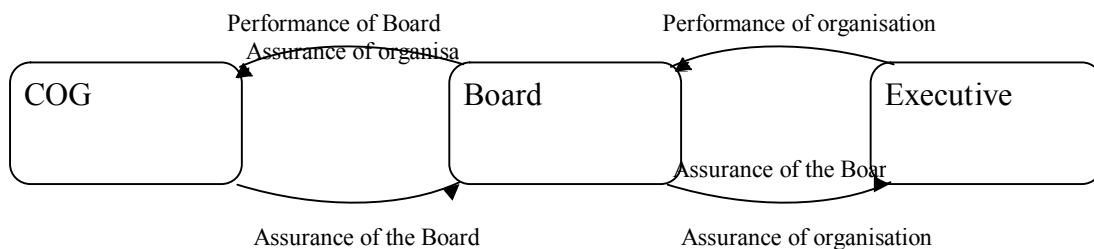
14. The Monitor publications - both the reference guide on statutory duties and the revised Code of Governance – suggest that scrutiny and accountability of the Board is carried out to ensure that the FT does not breach its terms of authorisation and that this role can be carried out by:
 - 14.1. "Receiving the annual report and accounts
 - 14.2. Receiving the quality report and accounts
 - 14.3. Receiving in-year information updates from the board
 - 14.4. Receiving performance appraisal information on the Chair and NEDS
 - 14.5. Inviting the chief executive and other directors to attend COG meetings"
15. The COG already receives this information (as a minimum) and undertakes these duties. Nevertheless, it has become clear that there is a need to consider further how the COG could more effectively and proactively hold the Board to account.
16. One way of understanding the COG's role in is to analyse how the COG can most effectively "hold the board of directors collectively to account for the performance of the NHS foundation trust, including ensuring the board of directors acts so that the NHS FT does not breach its terms of authorisation."

The terms of authorisation relate to the conditions set out by Monitor that an FT must put in place. When these conditions are breached then Monitor has identified powers allowing it to intervene as appropriate. FTs are required each year to submit three year plans to Monitor which set out what the Trust will do to improve its services, a financial forecast and any risks it has identified that may impact on its terms of authorisation. Monitor assigns risk rating both to the finance and governance aspects of the Trust which are broad enough to take stock of overall performance. Monitor then updates these risk ratings on information provided by the FT every three months and these risk assessments are then published.

17. A key component of the way on which COG holds the Board to account relates to ensuring that the Board – and in particular the NEDs – can articulate to the COG that they have confidence in the performance data and assurance processes in place so that the Trust does not breach its terms of authorisation or that action is being taken by the Board to ensure that any risks identified that may cause a breach have or are being taken.
18. Therefore, the COG role on performance is one on which it provides what could be described a “double lock assurance”. COG provides a tier of independent assurance that the Board, particularly the NEDs, have effective performance and assurance mechanisms in place and have acted on any concerns in relation to issues in Trust performance that might affect the Trust’s risk rating / or a shift from the planned risk levels / or any other issues that might concern the regulator.
19. The Governors’ role is sufficiently distinct from the role of *directors* who are ultimately responsible and legally liable for the Trust’s performance. So the COG role is not to act as a shadow Board but to assure themselves that the Board has the right processes and frameworks in place and is taking the necessary action to maintain or improve performance. Thus governors are not performance managing the Trust by proxy through the directors but assuring themselves that the Board is acting in such a way so as to assure the overall performance of the Trust.

19.1.1.

Double lock assurance



20. Effective assurance requires a number of elements to be present together:
 - 20.1. the right governance framework and risk culture and a clear understanding of strategic objectives and risks
 - 20.2. good internal controls and evidence that internal controls are operating effectively; and
 - 20.3. good data quality

21. Therefore in enabling Governors to effectively engage in its “double lock assurance” role it is important that Governors have:
 - 21.1. The right level and type of information. In particular that governors understand past and future trends in performance on a quarterly basis linked to Monitor’s risk ratings (ideally delivered by an Executive Director) and the analysis and actions undertaken by the NEDs in challenging performance where this may cause a material breach
 - 21.2. A good understanding of the governance framework and their distinctive role within it
 - 21.3. An understanding of corporate risks and what is being done by the Board to manage and mitigate risk particularly in regard those that may affect the terms of authorisation
 - 21.4. A good understanding of the Trust’s strategic objectives, that the Board articulates progress against these objectives, and are broadly satisfied with the pace of progress
 - 21.5. Assurance from the Board that it has in place a proactive assurance framework
 - 21.6. Access to information from internal audit that assesses assurance mechanisms and provides another perspective of assurance against plan.

22. Inevitably, clarifying this distinct role will have implications which are addressed in the recommendations. However, it is also worth noting that the role of “holding the Board to account” also involves some additional areas already in place:
 - 22.1. The COG currently has access to part one Board documentation including detailed performance monitoring. Having sight of this information allows governors to take a view on some of the more detailed issues considered by the Board and, with the minutes, the course of action taken by the Board and the level of scrutiny applied by NEDS.
 - 22.2. Monitor have highlighted the role that the Governors play in having the annual report and accounts presented to them is an important aspect of the accountability relationship.
 - 22.3. Approving and removing the Trust auditor. The COG has successfully undertaken this role and the SG has identified improvements to the process (see below).

23. The issue of open boards and whether or not there is governor involvement in Board meetings is clearly relevant in considering the role of governors and how they hold the Board to account. The issues highlighted in the evidence collated by the SG suggest that this is an important issue for some governors and that a lack of access to formal Board Meetings impedes their ability to hold the Board collectively to account (although for the most part the focus on this issues arises more from governors interests in assessing the performance of NEDs). As this issue is currently under consideration by the Board no further comment is made in this report.

Recommendations

24. On the basis of the analysis above the following recommendations have been developed to strengthen and clarify the COG’s role in holding the Board to account.
 - 24.1. **Information:** The COG requires specifically developed performance measures and information linked to Monitor’s risk rating and an assessment of whether the trends going forward will be consistent

- against plan with a clear explanation if there is a risk of variance and an action plan to address the variance (4)
- 24.2. **NED engagement:** It is proposed that the NEDs provide a quarterly overview (on a rotational basis or chair of governance committee?) of the assurances/ assurance processes they have sought through their work at Board level concerning the performance of the Trust. This may entail a broad overview of some of the key issues that have emerged over three months and what has been done by the Board to address issues of concern or to assure itself collectively that the data and analysis it has at its disposal was robust and relevant (1)
 - 24.3. **Annual Board to Council meeting:** There should be an Annual Board to Council meeting focusing on the Annual Report and Accounts in which the Board provide an overview of performance on which Governors can collectively comment. Monitor guidance suggests that there is an annual opportunity for the Board to provide an overall picture of the performance of the Trust over the course of the year and for Governors to provide feedback. This should be carried out in relation to the presentation of the Annual Report and Accounts and primarily focus on progress against the Trust's strategic objectives (1)
 - 24.4. **Stakeholder Concerns:** There should be a clear and unambiguous process for raising specific issues with the Board/Trust on matters that arise from the Governors external engagement with stakeholders or performance/reputation issues that may be being raised in the local media.(4,5)
 - 24.5. **Board effectiveness and development:** Given that the COG has a role in holding the Board to account, it would add value to this role to have the Chairman (or other nominated NED) present an annual report to the COG on the results of any Board effectiveness review. This will help governors take stock of the relative effectiveness of the Board and hold them to account for improving and enhancing their performance. Similarly, it would be useful, either linked or separately, for the COG to receive a report on an annual basis on how it intends to develop over the course of the year and what development needs it has identified. This will again provide information against which the Board can be held accountable and also gives governors a reasonably clear idea about the Board's key priorities. (1)
 - 24.6. **Induction and training:** induction processes should more sharply distinguish the particular role of governors and include the development of a "governor charter" which sets out the core role and functions on one side of A4. This would include setting out the "double lock" approach to accountability and assurance. Regular updates on governor's role and the linkage to Monitor's terms of authorization need to be programmed into the governors' annual timetable (4,5)
 - 24.7. **Annual/Quality Report:** Governors should provide an independent "assurance" commentary on the Trust's Annual and Quality Report (4,5)
 - 24.8. **CQC assurance:** CQC have yet to give guidance on governor involvement, but it could be linked to governor involvement in quality account reporting
 - 24.9. **Code of governance:** The COG should have an input into the code of governance compliance declaration before it is submitted to the Board for approval particularly in relation to the code provisions as they relate to governors and relationships with stakeholders (1)
 - 24.10. **Assurance framework:** The COG should receive an annual overview of the key risks to the organisation (particular where these may impact on

terms of authorisation) and what the Board have done to manage and mitigate these risks.(1)

- 24.11. **Audit engagement:** A COG nominee should shadow the Audit Committee and the Committee itself should review how it wants to engage with governors. There is a need for regular reporting by governors involved in the Audit Committee back to the full COG. COG should approve process and have advice on suitable criteria for appointment/removal of the Auditors (4,5).

Statutory role on the composition and effectiveness of the Board

25. The second element of the accountability relationship between the COG and the Board relates to the governors role in the composition and effectiveness of Board members and in particular that the COG is satisfied that the Trust's Board has the right people with the best mix of skills to perform this role to the best of their abilities. This covers some of the governors core statutory duties including:

- 25.1. Appoint and, if appropriate, remove the Chair
- 25.2. Appoint and, if appropriate, remove the other NED's
- 25.3. Decide on the remuneration, allowances, terms & conditions of office, of the chair and the other NEDs of the Chief Executive
- 25.4. As well as the need for Governors to "take a lead on determining a process for the evaluation of the chairman and non execs" and actively participate in the performance appraisal of the Chair and the NED's.

26. Over the years since it was first established the Council of Governors has been involved in most though not all aspects of these duties. In considering this experience and taking into account Monitor guidance and good practice from elsewhere, the working party that involved two NEDs, the Chairman and three governors looked in detail at how the Trust's current practices could be enhanced or developed. This group has highlighted a number of issues that need to be undertaken to strengthen this aspect of the COGs work.

27. Recommendations

- 27.1. **Appoint & remove chair and NEDs:** Nominations Committee to review policy on removal of the Chairman and make recommendations based on the approach used by other trusts. Any changes developed which impact on the current constitution need to be fed into the Constitution review process (3,4)
- 27.2. **Appraisal of NEDs and Chair:** The Appraisals Working Group needs to work with the Director of HR to take forward the new arrangements that need to be put in place for appraisals for next year. The process must set out clearly how governors will be involved in the process. The proposals set out in the review process would enable closer contact and joint working with NEDs which will give governors a much clearer perspective on the relative effectiveness of the individual NEDs. (1,4)
- 27.3. **Decide remuneration and terms and conditions of Chair and NEDs:** The NEDRC needs to establish a policy on NED remuneration and conditions as well as reviewing its TORs. The membership of the Committee needs to be reviewed in July 2010. (4)
- 27.4. **Approve appointment of Chief Executive:** There is not currently an approach established to approve the appointment (and of course it has not been required). However, drawing on Monitor guidance and good practice elsewhere, the Nominations Committee should develop and agree an approach. In developing the process the specific role of the governors needs to be established and agreed and the Chairman has

indicated that she is open to formal and informal governor involvement in the process. (1,4)

The external facing role

28. The other essential aspect of the COG's role relates to its external facing role. This role is seen as critical in providing a stakeholder perspective at the heart of the FT and a component of making a reality of being a public benefit corporation. There is little in the way of central guidance on this role and FTs have developed differing approaches over the last six years. The SG recognised governors' difficulties and concerns with this part of their role including:
- 28.1. Identifying and broadly representing the views and options of members has proved to be problematic. Poor attendance at locally based constituency meetings, for example, has underlined the difficulty in effectively engaging members.
 - 28.2. The codification of governor's statutory duties makes it much easier to focus on implementing this aspect of governor's roles in comparison to the more nebulous external facing role.
 - 28.3. Effective engagement is difficult and time consuming and can only be done as part of the stakeholder strategy owned by the Trust itself. Although the Trust has sought to combine its user and patient interactions with that of members, this has not solidified into a joined up and coherent engagement approach.
29. The governors have a number of roles in relation to members and the Trust's stakeholders:
- 29.1. They have a quasi-representational role in that they are expected to broadly provide feedback to the Trust on issues of interest or concern to members. However, although elected, Governors do not represent the views and opinions of members but use their judgement, expertise and mandate to provide input into the Trust.
 - 29.2. Governors have specific areas of expertise which can provide added value to the Trust. This may entail providing feedback to the Trust on how it is perceived or viewed by the wider public and to ensure that in its strategic positioning, the Trust can continue to command the support of the community it serves. Another area of added value may be the particular locus that Governors represent in the area of stakeholder engagement and patient experience.
 - 29.3. Governors have an ambassadorial role ensuring that communications from the Trust are translated into the wider community through local representation.
 - 29.4. Governors have a particular role on Trust membership recruitment and strategy.
 - 29.5. One specific aspect of the role (which spans the internal/external axis) relates to Governors involvement in the annual plan and broader strategy development. In relation to the annual plan, the role of governors is to ensure that stakeholder views and opinions are properly reflected in the forward planning (and broader strategy) of the Trust.
30. In the past, other than a consultation with members that was undertaken as part of the organisation's development of its strategy four years ago, the Trust has not had a strong record of listening and involving members in its work. Efforts to try and better understand members' views were occasional and insufficient and the attempts to engage member constituents with governors largely failed. New and apparently more successful approaches to engaging with members have been trialled this year and this has helped to begin to reframe the relationship between

members and governors. As the answers to the questionnaire to governors demonstrated, governors are clear that they have an advocacy role in respect of the local community, patients and members but are less clear that they are effective in performing this role. Despite this, governors have been well placed to raise concerns that they divine from the members or the wider community particularly in respect of both strategic change to services and also in identifying particular issues or trends that emerged from their own or relatives experiences of the hospital.

31. Both these roles raise additional questions however. What the FTGA research on governors shows is that PCTs have a role that is little understood by many governors (let alone in the wider community) and given their commissioning role, it may be useful to see if there can be a linkage made between governors and the PCT management (at least as a starting point). Recent top down changes to the NHS may redirect this question to the way the NHS will commission services in the future but the point remains valid. The other issue that governors concerns have raised is when, and on what basis specific concerns can be raised with the hospital management. These issues are dealt with reasonably well by the Trust but more work is required on how this could be improved in the future.
32. The COG has had a membership development group which has sought to undertake some activities in connection with growing membership. It is only over recent months however, that this group has begun to redefine a new sense of purpose. Despite the creation of linkages between the COG and the Involving People Steering Group, there has not been a coherent approach to how governors tap into patient views or user groups in any meaningful way. Similarly, the governors have not sought to develop any relationship with LINKs. Other than the recent Members Say! Event, governors have not, except in local situations, been able to overtly support and explain Trust strategy to the wider community served by the Trust.

Developing the external role

33. It is proposed that the external role of governors can be developed in the following ways:

Recommendations

- 33.1. **Intensifying the engagement with and understanding of members' concerns, priorities and key issues.** The governors have an opportunity through the Members Say! format, other means of engaging with members and regular surveys to build a picture of the issues that are most important to them. Using these methodologies effectively will enable governors to much better represent the views of their members (in an indirect way) and to have an advocacy platform or basis on which to propose changes to the Trust. This will provide governors with a much clearer sense of legitimacy when proposing particular courses of action or raising specific issues.(1)
- 33.2. **Joint NED/Governors working groups.** Given the particular locus of governors and the expertise (collective as opposed to individual) that they bring to the Council, there is a compelling case to develop some new working groups made up of Directors, Governors and supported by Trust staff to examine some specific and valid issues which are directly relevant to governors. There are two key areas that would benefit from a joint working group approach:

- 33.3. **Stakeholder engagement:** This working group will jointly develop an approach to stakeholder engagement for the Trust taking into account how the Trust can best engage with the wider community, members, patients, user groups, institutions etc. The strategy will provide an overall umbrella for a wide range of stakeholder engagement. The stakeholder strategy should include clarity about how COG will relate to the PCT and to LINKs.
- 33.4. **Quality care and patient experience:** Both components of the governance structure at the Trust – the Board and Governors – have a strong interest in ensuring that quality care and patient experience are well understood and acted upon. The precise terms of reference for such a group would need further development but may include consideration of the development of quality accounts/report; examination of complaints; incident/accidents; how to tap into patient experience at the governance level etc.
The benefit of these two joint groups would also include ongoing and regular contact with Board members on key issues for the Trust. This joint work, alongside the other recommendations made in this report, will help to strengthen the relationship and mutual trust between the Board and governors. (1)
- 33.5. **Member development.** The Membership group should become the main vehicle in which the governors have a say over the development of membership strategies, plans and outreach as well as involvement in the development of new ways of understanding members' views through surveys and focus groups. The group should also develop some innovative ways of ensuring that membership is in line with the broader community served by the Trust. Thought should be given to making the membership development group a Committee that reports through the Joint Stakeholder working group and involve NEDs. This is important given the NEDs consideration of membership views (and wider stakeholders) in their decisions and the move towards making a reality of social ownership/public benefit corporation. Further options could be to make other Committees or groups report to the broader stakeholder engagement working group (such as a more narrowly defined Involving People Steering Group that would focus on ensuring user groups views are taken into account). (1,4)
- 33.6. **Information to members and governors:** Governors need to have input in the information that goes to members. Governors need to look at how best to communicate with members and provide information about the Trust's work. One option for example, is to initiate a blog that the Directors could regularly contribute to that Governors would receive on a regular basis. Consideration also needs to be given to establishing a governor only part of the website.(4)
- 33.7. **Question time:** The report provided by the Chief Executive to Governors at the quarterly COG meetings has gone some way to providing an overview of some of the key strategic/operational issues facing the Trust. This is a new innovation and could be supplemented by a regular question and answer session after this which would allow governors to raise any areas of concern with the Chief executive for direct answer or, when necessary, further investigation. The Trust secretariat should also be asked to consider ways to less formally allow questions to be raised by governors and how specific issues raised by governors can be tracked over time. (1,4)
- 33.8. **Annual plan.** The Governors have a role in influencing the three year annual plan. In the RD&E the Governors have been also been involved in

the development of the Trust strategy. The Board of Directors is obliged to have regard to the views of governors in developing its planning. On the basis that the Governors along with the Trust are able to better understand and articulate member and wider users concerns and issues, this should help inform the input into the development of the Trust's plans and longer term strategies. (1,4)

- 33.9. **Engage LINKs:** The relationship between governors and LINKs should be strengthened given their overlapping mandate. It is proposed that LINKs be asked to provide a 6 monthly update to the COG on some of the issues they have identified in the work that they have undertaken. (4)

Improving COG structures and processes

34. As well as clarifying the central role of governors it was envisaged that the review would consider whether the architecture and processes underpinning the COG was fit for purpose going forward. Although there has been some evolution in its way of working since the formation of the RDEFT, it was felt appropriate, particularly given that the Constitution was due to be reviewed, to put in place structures and processes that were fit for purpose. While some of the changes may require changes to the Constitution others may require either the agreement of the Board and the COG or, in some cases, just the COG.

Recommendations:

35. In the earlier sections of this report a number of structure and process recommendations are made which will have an impact on the way the COG organises and transacts its business. Other issues that have emerged from the SG review are summarised in the following recommendations/options:
- 35.1. **Annual business plan:** A number of attempts have been made to put down a clear planning process and implementation plan for the COG. Nevertheless, it is still felt that more work needs to go into this to ensure that governors can be clear about when they contribute to specific areas and how this links to the work they need to undertake during the course of their year. It is proposed that the Trust secretariat develop this plan and that the plan is managed by the business management group with the Chairman presiding. (4)
- 35.2. **Steering Group:** The Steering Group has been a useful mechanism both for pulling together the evidence underpinning the review process but also in helping to oversee and manage the ongoing business of the Governors (although this latter role was not an explicit part of the role). However, some governors who have not been members of the SG have not been adequately updated with progress on the review. Several options have been proposed to continue some form of steering group but no decision has yet been taken because further debate will be necessary with the COG as a whole during the autumn. The COG will be asked at its July meeting to continue with the interim Steering Group until its October meeting when a debate about how the governors can be fully involved in managing their own workload – linked to the recommendation 35.1 - can take place.(4)
- 35.3. **COG composition:** A number of issues on the size of constituencies, specific issues in regard staff governors, issues concerning the particular role of stakeholder governors, the geographical coverage of the Trust and the number of governors were raised during the research phase of the review. However, there has not been any clarity about whether any of these issues should be addressed. It is therefore proposed that many of

these issues are tackled as part of the Constitution review but that some work continues specifically on staff governor engagement and on the role of stakeholder governors.

- 35.4. **COG Committees:** The SG reviewed the Committee architecture of the COG as an early part of its work and made a minor change to the attendance committee by abolishing it and appointing an attendance monitor. This process has worked well and it is recommended that it should continue. Other than the ongoing management and replenishment (including shadowing) of Committees, there are no other changes that have been recommended for the existing Committees.
- 35.5. **Time allocated to COG activities:** Some consideration has been given to the regularity and time allocated to COG meetings and development days. COG meetings are now two and a half hours preceded by a COG only meeting. It is proposed that this remain. Development Days are sufficiently regular but in addition it is proposed that some time in the morning of each COG is given over to training and development issues for the governors perhaps focused on specific issues such as NHS finance, an understanding of specific aspects of the hospital, the role of Monitor etc.

Next Steps

36. The Governors believe that in taking forward this analysis and the recommendations that flow from this analysis that it will help:
 - 36.1. Clarify the role of the CoG in regards holding the Board to account and its external facing role
 - 36.2. Improve the effectiveness and impact of the COG as a key component of the Trust's governance
 - 36.3. Improve the relationships between the various components of the governance structure and in particular the Board and the COG
 - 36.4. Help to define an agenda for the next phase of the development of the COG
37. The outcomes of the Fundamental Review as a package of recommendations clearly need to be considered and approved by the full COG. As well as focusing on the specific outputs, it would also be helpful to fully consider the resource implications that implementing the measures may entail not only for governors but also for NEDs and the Trust Secretariat. Resourcing, in this case, means both financial and people resources. It would be useful to consider the implications of putting in place the various recommendations and to take a view on relative priorities. Such a prioritisation process would inform the Board discussion on the outcomes.

Annex 1: Drivers of the Fundamental Review

The key drivers behind the Fundamental Review were:

Learning from elsewhere: There is now a growing body of experience and expertise on the various aspects of the FT model including the role and functions of governors. As a first-wave FT it is therefore appropriate to consider whether the RD&E can learn from others about the nature and role of governors from other FTs. In addition, there is now clearer guidance emanating from Monitor about the role of Governors as well as good practice being disseminated by the FT Governors Association and the Foundation Trust Network.

Maximising added value: The Department of Health and Monitor have stressed the importance of FTs making more use of their freedoms, flexibilities and governance arrangements to meet the challenges of an evolving health economy which is likely to face severe constraints in the future. Six years after forming the Council of Governors it is timely to consider what progress has made and whether there is more to do to realise more of the benefits of its changed status as a public benefit organisation.

Collective assessment: Monitor's Code of Governance recommends that the Council of Governors should assess its own collective performance and its impact in the NHS foundation trust. The RD&E last undertook such an assessment in the first half of 2008 and an action plan to address the outcomes of this assessment was developed although the conclusions were not fully implemented.

Governors' views: It is clear that many of the Governors have reached the conclusion that it is timely to consider their role, their contribution to the Trust, their key relationships, and what the limits of their influence are over the Trust. In many respects, this process is inevitable and healthy given the nature of FT governance arrangements. It is therefore appropriate to use these concerns constructively to develop the role of governors in a way that contributes to the overall direction of the RD&E.

Stakeholder perspectives: Foundation Trusts were established on the basis that they would be firmly rooted in the concept of local accountability rather than accountability to the centre and would become over time a socially-owned institution. The Governors have focused on their statutory functions and less, for understandable reasons, on linking in with and representing the views of the stakeholders they represent. The Fundamental Review provides a good opportunity to examine the ways in which the Governors currently seek to consider stakeholder views, what other FTs have done to address this, and develop a forward plan for being more outward looking in the future.

Annex Two: Background to the Fundamental Review of the role of Governors

The proposal to undertake a fundamental review of the Council of Governors was agreed by the Trust Board and the CoG in mid 2009. In October, the CoG agreed to the formation of an interim Steering Group (SG) whose principal role was to both oversee and undertake the review.

The SG identified a number of work streams and allocated small groups of governors to work on these different areas. It also set a timetable for the work and met on a monthly basis to chart progress. The workstreams focused on the following areas:

- Reviewing the past and current effectiveness and impact of the Council of Governors in meeting their various roles both formal and informal. This should include examining what has worked well and what has not worked as well as could be expected which will help inform the future development of the role of governors.
- Setting out how the roles of the Governors could be clarified and strengthened. This work must draw on the statutory duties and guidance available and be clear, from the outset, about the distinctive and differing roles of the Board and Non Executive Directors compared to the role of Governors.
- Reviewing good practice in managing the role and contribution of governors in other foundation trusts. There is a considerable wealth of differing experiences that can be drawn on which will help identify good or best practice.
- Examining the founding decisions made about the make up, size, constitution, working methods etc at the time of the process leading up the application for Foundation Trust status to consider whether they remain fit for purpose and the implications for the constitution.
- Examining the role of members and the link between members and governors to ensure that governors are reflecting the wishes and views of their constituency.

Five workstreams were established to examine these questions:

- Clarify the strategic roles laid down in Monitor's latest guidelines
- Review the past 5 years of experience at the RD&E
- Search for 'best practice' in other FT's
- Examine the skills/ knowledge mix of Governors and identify training /information needs
- Review and invigorate Membership engagement primarily through the existing Membership Development Group

In addition, staff governors were asked to consider their own role as part of the fundamental review.

From October 2009, the SG and its workstreams carried out a great deal of work to answer these questions and to provide input into the emerging outcomes of the review. An interim report to the Board in February 2010 outlined progress to date and also established a small working party made up of three governors, two non executives and the Chairman to discuss the findings of the work undertaken by the SG particularly in relation to the COGs statutory role and to identify an agreed way forward on these issues. This working part met three times between March and May 2010.

Annex Three: Aims and objectives of the Fundamental Review

The aim of the fundamental review was to consider how the RD&E maximises the added value of governors both in the interests of increasing the quality of healthcare provided by the RD&E (primarily by providing a level of scrutiny and accountability over the Board) and also, critically, to ensure that the wider stakeholder voice is properly integrated into the governance structures of the RD&E.

The overarching research question the review aimed to tackle was:

What can be done to strengthen and clarify the future role of governors at the RD&E as a core component of the organisation's governance structure and its link to its wider constituency?

The review set the following objectives:

1. To clarify the role of governors/CoG both in their formal statutory duties, the wider role implied in the 2003 Act and subsequent guidance by setting out the key duties of governors and how these duties will be implemented as well as the limits to the role;
2. To examine and understand some of the key drivers of change and the barriers to further development of the governor's role
3. To identify ways in which the effectiveness, impact and added value of the CoG can be strengthened;
4. To evaluate the structures and framework that underpin the work of the CoG to ensure that they are fit for purpose going forward;
5. To develop a framework for the future strategic development of the role of the RD&E's governors.
6. To critically evaluate and refine the RD&E's membership strategy to ensure that it is fit for purpose and is consistent with the Trust's wider aim and obligations around involving people.
7. To consider the role the Governors' should play in both maximising the opportunities that emerge from the freedoms given to Foundation Trusts and the evolution of the organisation towards becoming a public benefit organisation.

In considering these objectives, it was recognised that the review needed to focus on the role of governors and their relationships including governor's interactions with the Board, the NEDs, members and the wider Trust.