

# **Governance over audit, assurance and accountability: guidance for foundation trusts**

**Accompanying the risk assessment framework**

## Background

Since 2004, Monitor has issued the 'Audit code for NHS foundation trusts'<sup>1</sup> and this continues to apply to audit work relating to 2014/15. From April 2015, NHS foundation trust auditors are required to follow an audit code issued by the National Audit Office (NAO) on behalf of the Comptroller and Auditor General. This will apply to audit work in relation to 2015/16 onwards.

Monitor's audit code was primarily guidance to auditors, but also contained provisions for NHS foundation trusts. The NAO audit code only contains guidance to auditors. This document therefore provides guidance to foundation trusts to replace the provisions applicable to them that were previously in the audit code, as well as covering other relevant guidance and requirements.

Condition 4 of the NHS provider licence as applied to NHS foundation trusts (condition FT4(3)) requires foundation trusts to have regard to guidance on good corporate governance issued by Monitor. This document constitutes guidance for the purposes of condition FT4(3). The guidance may also be relevant to foundation trusts' compliance with condition FT4(5)(a) and (d) – the requirements to establish and effectively implement systems and/or processes to ensure compliance with the trusts' duty to operate efficiently, economically and effectively and for effective financial decision-making, management and control. NHS foundation trusts are expected to comply with this guidance and must disclose in their annual report if they do not, together with the reasons for the divergence.

## Implementation of the Competition and Markets Authority audit services order

In September 2014, the Competition and Markets Authority (CMA) published an order relating to audit services for some companies following a Competition Commission investigation. The order relates to external audit in the private sector, but Monitor has reviewed its provisions to identify good practice for NHS foundation trusts and adopted some parts of it where they are relevant to NHS foundation trusts. Where this has led to a change in Monitor's guidance compared to that previously included in the 'Audit code for NHS foundation trusts', this is highlighted in **red text** in the following paragraphs.

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<sup>1</sup> Available at: [www.gov.uk/government/publications/nhs-foundation-trusts-audit-code](http://www.gov.uk/government/publications/nhs-foundation-trusts-audit-code)

## Contents

This document contains guidance on:

- the accounting officer memorandum for NHS foundation trusts
- the appointment of auditors of NHS foundation trusts and policy for non-audit services provided by the auditor
- rotation and re-appointment of auditors of NHS foundation trusts
- external assurance on quality reports.

### 1. The accounting officer memorandum for NHS foundation trusts

The NHS Act 2006 designates the chief executive of an NHS foundation trust as its accounting officer. Monitor issues a memorandum which sets out the role and responsibilities of an NHS foundation trust accounting officer. As part of the statement of the accounting officer's responsibilities included in the annual report, the accounting officer declares that their responsibilities as set out in the 'NHS foundation trust accounting officer memorandum' have been properly discharged.

The 'NHS foundation trust accounting officer memorandum' can be found here: [www.gov.uk/government/publications/nhs-foundation-trusts-accounting-officers-responsibilities](http://www.gov.uk/government/publications/nhs-foundation-trusts-accounting-officers-responsibilities).

### 2. The appointment of auditors of NHS foundation trusts and policy for non-audit services provided by the auditor

#### Appointing the external auditor

Paragraph 23(2) of Schedule 7 to the National Health Service Act 2006 (NHS Act 2006) provides that it is for the council of governors to appoint or remove the auditor at a general meeting of the council. Paragraph 23(6) provides that a foundation trust must establish a committee of non-executive directors as an audit committee, to perform such monitoring, reviewing and other functions as are appropriate.

Further guidance is set out in section C3 of '[NHS foundation trust Code of Governance](#)'.

The council of governors should take the lead in agreeing with the audit committee the criteria for appointing, re-appointing and removing external auditors. The council of governors will need to work hard to ensure they have the skills and knowledge to choose the right external auditor and monitor their performance. However, they should be supported in this task by the audit committee, which provides information to the governors on the external auditor's performance as well as overseeing the NHS foundation trust's internal financial reporting and internal auditing. The audit committee should make recommendations to the council of governors about the

appointment, re-appointment and removal of the external auditor and approve the remuneration and terms of engagement of the external auditor.

The foundation trust and the council of governors must ensure compliance with requirements of paragraph 23 of Schedule 7 to the Act as to who may be an auditor for an NHS foundation trust.

While the council of governors may be supported by the audit committee in running the process to appoint the external auditor, the council of governors must have ultimate oversight of the appointment process.

In appointing and monitoring the auditor, the council of governors should ensure that the audit firm and audit engagement leader have an established and demonstrable standing within the healthcare sector and are able to show a high level of experience and expertise.

### **Appointing the external auditor in the first period of operation as an NHS foundation trust**

When a trust is authorised as an NHS foundation trust, the auditor previously appointed by the Audit Commission<sup>2</sup> to the predecessor NHS trust (the incumbent auditors) will continue to be appointed until the council 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 auditor for that interim period so that there is not a period during which the NHS foundation trust has no auditor in place.

The council of governors must discuss at their first meeting after authorisation whether they wish to extend the appointment of the incumbent auditor or whether they wish to undertake a competitive tender exercise to appoint their auditor. NHS foundation trusts should be mindful of the Auditing Practices Board (APB) ethical standard 3 'Long association with the audit engagement'<sup>3</sup> when determining how long the incumbent auditor's 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 council 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 ethical standards in relation to rotation of individuals.

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<sup>2</sup> Appointments of auditors to NHS trusts were made under Audit Commission contracts. From April 2015 these contracts will be managed by Public Sector Audit Appointments Limited.

<sup>3</sup> Auditing ethical standards are now issued directly by the Financial Reporting Council (FRC), but APB ethical standard 3 remains on the FRC website.

## Non-audit services provided by the external auditor

The audit committee should review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements.

The **audit committee** should also develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm.

The council of governors should receive a report at least annually of non-audit services that have been approved for the auditors to provide under the policy (on the basis of services approved, regardless of whether they have started or finished) and the expected fee for each service.

## 3. Rotation and re-appointment of auditors of NHS foundation trusts

The audit committee should make a report to the council of governors in relation to the performance of the external auditor, including details such as the quality and value of the work and the timeliness of reporting and fees, to enable the council of governors to consider whether or not to re-appoint them. The audit committee should make a recommendation to the council of governors about the re-appointment of the external auditor.

The NHS foundation trust should appoint an external auditor for a period of time that allows the auditor to develop a strong understanding of the finances, operations and forward plans of the NHS foundation trust. The current best practice is for a three-to-five-year period of appointment and 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. **The external audit should be subject to a tender process at least every ten years, and in most cases more frequently than this.**

## 4. External assurance on quality reports

Monitor's 'Audit Code for NHS Foundation Trusts' continues to apply to audit work relating to the 2014/15 financial year. Monitor requires external auditors to perform assurance work on foundation trusts' quality reports for 2014/15.

More information on the requirements can be found in Monitor's publication 'Detailed guidance for external assurance on quality reports 2014/15'.<sup>4</sup>

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<sup>4</sup> Available at: [www.gov.uk/government/publications/nhs-foundation-trust-quality-reports-guidance-for-external-assurance-201415](http://www.gov.uk/government/publications/nhs-foundation-trust-quality-reports-guidance-for-external-assurance-201415)