



SCOTTISH EXECUTIVE
Health Department



Standards of conduct, accountability and openness



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Working together for a healthy, caring Scotland

Standards of conduct, accountability and openness

Throughout this document:

- 'members' refers to all members of a board – the Chair, the non-executives, the executives and trustees
- 'Directors' refers to the executive Directors of NHS Boards, Trusts or other health organisations: they are employees of the NHS Board, Trust or other health organisation
- 'board' refers to the governing board of a NHS Board, the management team of a Trust, and the governing board of a Special Health Board and other health organisations
- 'Chief Executive' refers to the General Manager of a NHS Board, the Chief Executive of a Trust, Special Health Board or other health organisation

Introduction

NHSScotland has standards of conduct, accountability and openness which govern its operation. This document pulls together the key standards detailed in the separate Codes of Conduct, Accountability and Openness for the National Health Service in Scotland which were published in 1994 and 1995. It states clearly the commitment to core values of conduct, accountability and openness which are at the heart of NHSScotland and reflects changes in operation of the NHS in Scotland since the Codes were published.

All those who are appointed as members to a board of a NHS Board, NHS Trust, Special Health Board or other health organisation must abide by these standards. Staff in NHSScotland, members of the boards and the staff of other health organisations in Scotland must abide by the principles of these standards. All will be judged on the way they apply them.

The 1994 and 1995 Codes will be revised in line with work on modernising the governance of NHSScotland, the requirements of the Ethical Standards in Public Life (Scotland) Act 2000 and following the outcome of the consultation on Freedom of Information.

Values

Public service values must be at the heart of NHSScotland. This means high standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the National Health Service since its inception. NHSScotland is publicly funded and is accountable to the Scottish Parliament for the services it provides and for the effective and economical use of taxpayers' money.

There are three crucial public service values which must underpin the work of the health service.

Conduct: There should be an absolute standard of honesty and integrity which should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers; in the use of information acquired in the course of NHSScotland duties; in dealing with the assets of NHSScotland.

Accountability: Everything done by those who work in NHSScotland must be able to stand the test of parliamentary and public scrutiny, judgements on propriety, and professional codes of conduct.

Openness: NHSScotland should be open about its activities and plans so as to promote confidence between the NHS Board, NHS Trust or other health organisation and its staff, patients and the public.

Conduct

Public service values matter in NHSScotland and those who work in it have a duty to conduct NHSScotland business with honesty and integrity. They have a responsibility to respond impartially to staff, patients, patient representatives and suppliers, to demonstrate high ethical standards of personal conduct and to achieve value for money from the public funds with which they are entrusted.

The success of these standards of conduct depends on a vigorous and visible example from boards and the consequential influence on the behaviour of all those who work within the organisation. Boards have a clear responsibility for corporate standards of conduct and compliance with these standards should inform and govern the decisions and conduct of all board members.

It is unacceptable for the board of any NHSScotland organisation, or any individual within the organisation for which the board is responsible, to ignore public service values in achieving results. The Chair and all members of the board have a duty to ensure that at all times the board conducts its business as efficiently and effectively as possible and that public funds are properly safeguarded. Proper stewardship of public services and monies requires value for money to be high on the agenda of all NHSScotland boards.

Employment, accounting and tendering practices within NHSScotland must reflect the highest professional standards. Public statements and reports issued by the board should be clear, comprehensive and balanced, and should fully represent the facts. Annual and other key reports should be issued in good time to all individuals and groups in the community who have a legitimate interest in health issues to allow full consideration by those wishing to attend public meetings on local health issues.

Public Business and Private Gain

Chairs and members of the board should act impartially and should not be influenced by social or business relationships. No one should use their public position to further their private interests. Where there is a potential for private interests to be material and relevant to NHSScotland business, the relevant interests, such as:

- directorships, including non-executive directorships, held in private companies or public limited companies;
- ownership of and majority or controlling shareholdings in companies and other organisations likely or possibly seeking to do business with NHSScotland;
- any position of authority in a charity or voluntary body in the field of health or social care; or
- any connection with a voluntary or other body contracting for NHSScotland services;

should be declared on appointment, recorded formally in the board minutes and be published in the public register of board members' interests. Any changes should be declared and recorded when they occur. Directorships and other significant interests held by board members should be published in the board's Annual Report.

Hospitality and Other Expenditure

Providing Hospitality: Chairs and other board members should set an example to their organisation in the use of public funds and the need for good value in incurring public expenditure. The use of NHSScotland monies for hospitality and entertainment, including hospitality at conferences or seminars, should be carefully considered. All expenditure on these items should be capable of justification as reasonable in the light of general practice in the public sector. NHSScotland boards should be aware that expenditure on hospitality or entertainment is the responsibility of management and is open to be challenged by the internal and external auditors, and that ill-considered actions can damage respect for NHSScotland in the eyes of the community.

Receiving Hospitality: NHSScotland boards should have an explicit procedure for the declaration of hospitality and sponsorship offered by, for example, suppliers. Their authorisation should be carefully considered and the decision should be recorded. NHSScotland boards should be aware of the risks of incurring obligations to suppliers at any stage of a contracting relationship. The Scottish Executive Health Department has issued guidance to NHS Boards and NHS Trusts about standards of business conduct.

Staff

Partnership working is an integral part of today's NHSScotland. NHS Trusts, NHS Boards and other health organisations are required to work in partnership and collaboration with their staff.

Recognising the changes in clinical practice and the modernisation programme it is essential that staff are involved in those matters which affect their working lives. They have the right to be involved, informed and have the ability to influence strategic and operational matters within NHSScotland. NHS Trusts, NHS Boards and other health organisations must be able to demonstrate their commitment to partnership working and have in place arrangements which facilitate this principle.

Boards should ensure that staff have a proper and widely publicised procedure for voicing complaints or concerns about maladministration, breaches of the standards of conduct and other concerns of an ethical nature. The Chair and members of the board in particular must establish a climate that enables staff to have confidence in the fairness and impartiality of procedures for registering their concerns.

Compliance

Board members should satisfy themselves that the actions of the board and its members in conducting board business fully reflect the values and standards of conduct and, as far as is reasonably practicable, that concerns expressed by staff or others are fully investigated and acted upon.

Chairs and members of boards are responsible for taking firm, prompt and fair disciplinary action against any Executive Director in breach of the Code of Conduct. Breaches of the Code by the Chair, trustees or non-executive members of the board should be drawn to the attention of the Head of the Scottish Executive Health Department who is also Chief Executive of NHSScotland (referred to subsequently as the Head of the Scottish Executive Health Department).

Chairs and all members of the board must comply with the requirements in relation to declaration of interests and where, during the course of conducting business, a conflict of interest is established, they should withdraw and play no part in the relevant discussion or decision. Boards should ensure, in accordance with guidance issued by the Scottish Executive Health Department, that members' interests are recorded in:

- minutes of meetings;
- a register that is available to the public; and
- the Annual Report.

Accountability

NHS Boards, NHS Trusts, Special Health Boards and other health organisations have to fulfil the duties and responsibilities conferred upon them by the Scottish Ministers and are directly accountable, through the Minister of Health and Community Care to the Scottish Parliament.

Legal Status

Each NHS Board, NHS Trust and Special Health Board is established under statute as a body corporate thus ensuring that they have a separate legal identity. Statutes and regulations prescribe their functions, responsibilities and structure and prescribe the way Chairs and members of the board are to be appointed.

Statutory Accountability

The Scottish Ministers have statutory responsibility for the health of the population of Scotland and use statutory powers to delegate functions to NHS Boards and NHS Trusts, who are accountable to the Scottish Ministers and to the Scottish Parliament through the Minister for Health and Community Care. The Scottish Executive Health Department is responsible for directing NHSScotland, ensuring national policies are implemented, and for the effective stewardship of NHSScotland resources.

NHS Boards are responsible for leading the development of plans to achieve effective and efficient healthcare services which meet the needs of patients, the wider community and improve the public's health and for commissioning health services. NHS Boards are subject to oversight through a performance management system to the Scottish Executive Health Department.

Trusts are responsible for providing healthcare and services to meet the needs of the people of Scotland. They assume responsibility for ownership and management of hospitals, or other establishments or facilities defined in the order which establishes them, by authority of the Scottish Ministers to whom they are accountable.

NHS Boards' and NHS Trusts' finances are subject to external audit, by auditors appointed by Audit Scotland. Boards must co-operate fully with the Scottish Executive Health Department and the external auditors when required to account for the use they have made of public funds, the delivery of patient care and other services, and compliance with statutes, directions, guidance and policies of Scottish Ministers. The Head of the Scottish Executive Health Department, as Accountable Officer for the Health Department, is accountable to the Scottish Parliament through the Audit Committee.

The board

NHS Boards and NHS Trusts are led by a board, which is made up of senior officers who are employed by their own, or by another NHSScotland, organisation (executive members) and part time lay people (non-executive members), who are appointed by the Minister for Health and Community Care, on behalf of the Scottish Ministers. All members of a NHS Board are appointed by the Minister for Health and Community Care. The board is led by a part time Chair, who is a lay person. All members of the board are accountable to the Scottish Ministers through the Scottish Executive Health Department and the Minister for Health and

Community Care. Boards are required to meet regularly and to retain full and effective control over the organisation. They are responsible for monitoring the executive management of the organisation and are responsible to the Scottish Ministers for the discharge of these responsibilities. The Scottish Executive Health Department has a key role in maintaining the line of accountability to the Scottish Ministers. The Head of the Scottish Executive Health Department is always available to Chairs and members of boards on matters of concern related to the effectiveness of their board.

A complementary relationship between the Chair of the board and the Chief Executive of the organisation is important. The Chief Executive is accountable to the Chair and the board for ensuring that its decisions are implemented, that the organisation works effectively in accordance with Government policy and public service values, and for the maintenance of proper financial stewardship. The Chief Executive should be allowed full scope, within clearly defined delegated powers, for action to fulfil the decisions of the board.

The Chair of the board

The Chair is responsible for leading the board and for ensuring that it discharges successfully its overall responsibility for the organisation as a whole.

It is the Chair's role to:

- provide leadership to the board;
- ensure that the board acts as a team and enable all board members to make a full contribution to the board's affairs;
- ensure that key and appropriate issues are discussed by the board in a timely manner;
- ensure the board has adequate support and is provided with all the necessary data on which to base informed decisions; and
- advise the Minister for Health and Community Care through the Head of the Scottish Executive Health Department on the performance of non-executive board directors.

Non-executive members of the board

Non-executive members are appointed by the Minister for Health and Community Care on behalf of the Scottish Ministers to bring an independent judgement to bear on issues of strategy, performance management, key appointments and accountability through the Scottish Executive Health Department to the Scottish Ministers and to the local community.

Non-executive members will contribute to board business from their wide experience and with critical detachment. They have a role in working with the Chair in the appointment of the Chief Executive and other executive board members to the board. In the case of NHS Boards and Special Health Boards, appointment of executives to the board is a matter for the Minister for Health and Community Care on behalf of the Scottish Ministers. With the Chair, they provide the members of committees which support the work of the board. The audit committee is drawn solely from non-executive directors and they are also members of the clinical governance committee.

In addition, they may undertake specific functions agreed by the board including oversight of relations with the general public and the media, participation in professional conduct and competency inquiries, and staff disciplinary appeals.

Executive members of the board

Executive board members are equal in status and carry corporate responsibility for the work that is done in their name. They are expected to contribute to the work of the board as a whole and not simply to speak on issues within their own sphere of professional or functional responsibility.

Functions of the board

Boards have key functions for which they are held accountable by the Scottish Executive Health Department on behalf of the Scottish Ministers:

- to set the strategic direction of the organisation within the overall policies and priorities of the Government and NHSScotland, define its annual and longer-term objectives and agree plans to achieve them;
- to oversee the delivery of planned results by monitoring performance against objectives and ensuring corrective action is taken when necessary;
- to ensure that there is effective dialogue within the organisation and between the organisation and the local community on its plans and performance and that these are responsive to the community's needs;
- to ensure effective financial stewardship through value for money, financial control and financial planning and strategy;
- to ensure that high standards of corporate governance and personal behaviour are maintained in the conduct of the business of the whole organisation; and
- to appoint, appraise and remunerate senior executives.

In fulfilling these functions the board should:

- specify its requirements in organising and presenting financial and other information succinctly and efficiently to ensure the board can fully undertake its responsibilities;
- be clear what decisions and information are appropriate to the board and draw up standing orders, a schedule of decisions reserved to the board and standing financial instructions to reflect this;
- establish performance and quality targets that maintain the effective use of resources and provide value for money;
- ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior officers for the main programmes of action and for performances against programmes to be monitored and senior officers held to account;

- establish committees, such as audit and remuneration, on the basis of formally agreed terms of reference which set the membership of the committees, the limit to their powers, and the arrangements for reporting back to the boards; and
- act within statutory, financial and other constraints.

Reporting and Controls

It is the board's duty to present, through the timely publication of an annual report, annual accounts and other means, a balanced and readily-understood assessment of the organisation's performance to:

- the Scottish Executive Health Department, on behalf of Scottish Ministers;
- Audit Scotland; and
- the local community.

The detailed financial guidance issued by the Scottish Executive Health Department, including the role of internal and external auditors, must be scrupulously observed. The standing orders of boards should prescribe the terms on which committees and sub-committees of the board may be delegated functions, and should include the schedule of decisions reserved for the board.

Employee Relations

NHSScotland boards must comply with legislation and guidance from the Scottish Executive Health Department on behalf of the Scottish Ministers, respect agreements entered into by themselves or on their behalf and establish terms and conditions of service that are fair to staff and represent good value for taxpayers' money. Fair and open competition should be the basis for appointment to posts in NHSScotland.

The terms and conditions agreed by the board for senior officers should take full account of the need to obtain maximum value for money for the funds available for patient care. The board should ensure, through the appointment of a remuneration committee, that Executive Directors' remuneration could be justified as reasonable. Board members' remuneration from the NHSScotland organisation of which they are a board member should be published in the annual report.

Openness

NHSScotland is a public service, as such it should be open about its activities and plans. Information about how it is run, who is in charge and how it performs should be widely available. Greater sharing of information helps to foster mutual confidence between NHSScotland and the public.

The principles underlying public access to information about NHSScotland reflect the Government's intention to ensure greater access by the public to information about public services and complement the Code of Access to Information which applies to the Scottish Executive Health Department. They will be further reviewed in relation to consultation on Freedom of Information and build on:

- the Patient's Charter which set out the rights of people to a range of information about NHSScotland; and
- the Data Protection Act 1998 which gives patients the right to access any personal data held about them, either on paper or computer files, and on the Code of Practice on Confidentiality of Personal Health Information.

Aims

The aims are to ensure that people:

- have access to available information about quality standards, performance against targets and the cost of the services provided by NHSScotland;
- are provided with explanations about proposed service changes and have an opportunity to influence decisions on such changes;
- are aware of the reasons for decisions and actions affecting their own treatment; and
- know what information is available and where they can get it.

Public meetings

NHS Boards and NHS Trusts must hold all their board meetings in public, though there is provision for certain issues (e.g. personnel and commercial issues) to be taken in a private part of the meeting. Public meetings must be held in easily accessible venues, and at times when the public are able to attend.

The agenda for board meetings of the NHS Board must always be provided to the press and on request to members of the public. NHS Trusts must give the public 3 days notice of the time and place of their board meetings, provide copies of the agenda and papers for the meeting, invite local press contacts to attend and send them the agenda and papers for the meeting.

Responding to requests for information

The fundamental principle is that NHSScotland should always respond positively to requests for information, except in certain clearly defined circumstances. For example, patient's records must be kept safe and confidential. Requests must be answered quickly and helpfully and steps should be taken to help the public know what information is available. There should be clear and effective arrangements to deal with complaints and concerns about local services and access to information and these arrangements should be publicised widely and monitored effectively.

Requests for information, whether made in person or in writing, must be answered promptly. An acknowledgement must be sent within 4 working days and, where possible, the information should follow within 20 working days. If the information is not to be provided under the terms of the Code of Practice on Openness in the NHS, an explanation must be provided within 20 working days of receipt of the request.

Each NHSScotland organisation must publish the name of an individual who has responsibility for the operation of the Code of Practice on Openness in the NHS. This should be a senior officer directly accountable to the Chief Executive of the organisation. Details of how to request information through this individual must also be publicised locally.

Information which must be provided

NHS Boards and NHS Trusts must publish or otherwise make available the following information:

- details of the services which are provided, the targets and standards set and results achieved, and the costs and effectiveness of services;
- details about important proposals on health policies or proposed changes in the way services are delivered, including the reasons for those proposals. This information will normally be made available when proposals are announced and before decisions are made;
- details about important decisions on health policies and decisions on changes to the delivery of services. This information, and the reasons for the decisions, will normally be made available when the decisions are announced;
- information about the way in which health services are managed and provided and who is responsible;
- information about how NHSScotland communicates with the public, such as details of public meetings, consultation procedures, suggestion and complaints systems;
- information about how to contact Local Health Councils and the Health Service Commissioner (Ombudsman); and
- information about how people can have access to their own personal health records.

Examples of some of the types of information available are listed in the Annex to this document.

Personal health records

In accordance with the Code of Practice on Confidentiality of Personal Health Information, NHSScotland must keep patients' personal details confidential but people normally have a right to see their own health records. Depending on who made the records, patients can obtain access through the relevant NHS Trust, NHS Board, GP or dentist. Access must be given within the timetable in the Access to Health Records Act 1990 (or, for records held on computer, the Data Protection Act 1998). Under these Acts, patients may be charged for access to their records.

Information which NHSScotland organisations are not required to make available

NHSScotland organisations are not required to make available:

- copies of the documents or records containing the information requested (although in some cases it may be simpler to do so if they contain nothing but the information requested);
- information which the organisation does not possess (e.g. comparable data of other organisations); and
- individual copies of documents or other forms of information which are already widely available publicly.

Information which may be withheld

NHS Boards and NHS Trusts must provide the information requested unless it falls within one of the following exempt categories:

- personal information: people have a right of access to their own health records but not to information about other people.
- requests for information which are manifestly unreasonable, far too general, or would require unreasonable resources to answer.
- information about internal discussion and advice, where disclosure would harm frank internal debate, except where this disclosure would be outweighed by the public interest.
- management information, where disclosure would harm the proper and effective operation of the NHSScotland organisation.
- information about legal matters and proceedings, where disclosure would prejudice the administration of justice and the law.
- information which could prejudice negotiations or the effective conduct of personnel management or commercial or contractual activities: this does not cover information about internal NHSScotland contracts.

- information given in confidence: NHSScotland has a responsibility to respect confidences except when it is clearly outweighed by the public interest.
- information which will soon be published or where disclosure would be premature in relation to a planned announcement or publication.
- information relating to incomplete analysis, research or statistics where disclosure could be misleading or prevent the holder from publishing it first.

Charging for information

NHS Boards and NHS Trusts may make a charge for providing information but are not required to do so. It is recommended that charging should be exceptional and that where charges are made the following ground-rules should be observed:

- no charge for individuals enquiring about services or treatment available to them; press and other media; Local Health Councils; MSPs, MPs and MEPs; Local Authorities; Citizen's Advice Bureaux; and
- for requests from people not listed above, no charge for the first hour and a charge not exceeding £20 per hour for each hour thereafter.

Complaining about the provision of information

People may wish to complain about a decision to refuse to provide information, a delay in providing information or levels of charges. In the first instance, complaints should be made within three months to the local individual responsible for the operation of the Code (see above). If the complainant remains dissatisfied, complaint should be made to the Chief Executive of the organisation (this will be the Chief Executive of the Primary Care NHS Trust in the case of GPs, dentists, community pharmacists and opticians). Local Health Councils may be able to help people to pursue their complaint.

NHS Boards and NHS Trusts must acknowledge complaints within 4 working days and reply within 20 working days.

The NHS Board or NHS Trust will provide people with information about how to take their complaint further to the Health Service Ombudsman if they remain dissatisfied. However, the Ombudsman does not investigate complaints about the withholding of information by GPs, dentists, pharmacists, opticians or Local Health Councils.

Annex

Examples of the Types of Information which is Published

NHS Boards and NHS Trusts must either publish or make available to the general public certain documents and are recommended to make available other pieces of information, as a matter of good practice, either through publication or on request.

Examples of these are:

- an Annual Report, describing the organisation's performance over the previous financial year, and including details of board members' remuneration; the report should be in a form that can be readily understood by members of the general public;
- agenda, papers and minutes of all board meetings;
- audited accounts published annually;
- a register of board members' private interests; and
- such information as required by the Patient's Charter.

NHS Boards must:

- publish an Annual Report by the Director of Public Health.

Other examples of information which may be published include:

- patient information lists;
- waiting times - by speciality or performance against national and local targets;
- clinical performance e.g. proportion of surgery done on day surgery basis;
- response time for ambulances;
- policies for staff e.g. equal opportunities and standards of conduct; and
- number of complaints dealt with and response times.

Lists of information which should be provided are available in the Code of Practice on Openness in the NHS.