Chapter 9
Governance in NHS Foundation Trusts:
Insights from Company Secretaries

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ABSTRACT

NHS Foundation Trusts (FTs) came into existence in 2004 as part of a suite of system reforms that reintroduced a healthcare market in England. Over the last decade over half of the 265 English NHS Trusts have made the transition to FT status and to a new form of corporate governance that is accountable to locally elected governors. Whilst research into the governance arrangements for these new entities has explored several theoretical frameworks, no model has satisfactorily explained the rationale for the adoption of a commercial governance code underpinned by a democratic accountability process. In this chapter, the authors draw on insights of FT company secretaries, through a series of semi-structured interviews and questionnaires, to explore alternative governance models and to make recommendations that might improve the functioning of elected governors within FTs.

INTRODUCTION

Integral to Labour's early 20th century NHS reforms, was the intention to move the balance of power away from Whitehall and towards patients and the public (Department of Health, 2000). When the first ten English FTs came into existence on 1st April 2004 they promised to deliver a radical new form of governance. This was intended to deliver Labour's vision of health services *owned by and accountable to local people* (Department of Health, 2002, p. 3), which evolved and was extended through the NHS market reforms (Dixon, 2010).

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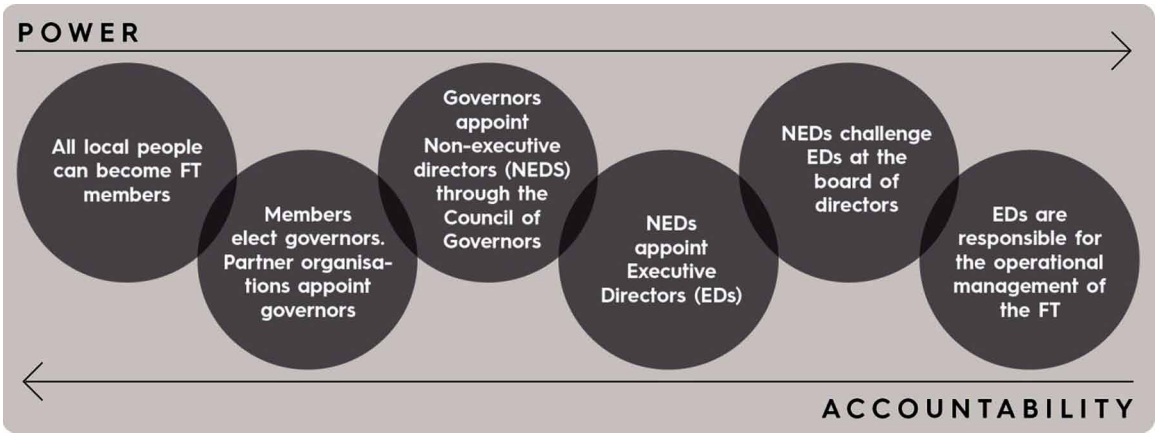
Figure 1. The chain of power and accountability within FTs



According to Monitor (2014b), FTs make up 149 of England's 265 NHS Trusts. They operate alongside private health care providers in a politically contested arena and, within this market, an FT is a public benefit corporation licensed by an economic regulator (Monitor) and a quality regulator (Care Quality Commission). Traditional NHS Trusts are accountable to central government via the NHS Trust Development Authority and have no direct democratic accountability to local people. FTs are more business-like with the freedom to raise funds on the open market and to form legally binding contracts with their customers (primarily Clinical Commissioning Groups). Unlike private sector providers that are nominally accountable to shareholders, FTs are democratically accountable to their members through their elected governors. Core to this new FT governance model is the concept of a chain of accountability to local people through the ballot box as shown in figure 1, in which governors (elected by local people/FT members) have the power to appoint and remove the FT's Chair and non-executive directors.

The use of the commercial board of directors' nomenclature and processes has led to comparisons with shareholders (Dixon, 2012). In her book, *Health Service Governance*, Lea (2012) describes in detail the powers and duties of directors under the Companies Act (*Companies Act*, 1985; 2006) and even discusses the Germanic commercial two tier board. The FT model core constitution itself echoes the Companies Act, and the FT Code of Governance (Monitor, 2014a) is strongly reflective of the UK Corporate Governance Code (UKCGC) (Financial Reporting Council, 2012) and explicitly states that Monitor's intention is to transfer commercial best practice into the FT sector.

Just as they are not under social ownership, FTs are not listed companies and members and governors are not shareholders. Against this confusing picture of mutual, democratic, and private sector knowledge frameworks, researchers have struggled to make sense of the governance model or the role elected governors play within it. Day and Klein (2005) concluded only that it was *the answer to a policy puzzle* (p. 3).

Advocates for the FT model have promoted a one-sided commentary on the success of governors (Monitor, 2008). However, the findings of independent researchers have contested this picture (Wright, Dempster, Keen, Allen, & Hutchings, 2012). A report by the Audit Commission and Healthcare Commission (2008) concluded that governors had had no significant impact on FT development, whilst Storey et al. (2010) found that governors were 'passive information receivers' who were readily controlled by their board of directors. Perhaps in the light of this role uncertainty, governor duties have been strengthened