

## Nominations and Remuneration Committee (NRC) Report

<b>Presented by</b>	Governor, Nominations and Remuneration Committee	
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<b>Governance responsibility</b>	Council of Governors	
<b>Purpose of the paper</b>	To provide a routine report to the Council of Governors on matters discussed by the NRC and; to present the 'process for Appointing a NED/Chair ' to the Council of Governors for Approval following the annual review by the NRC.	
<b>Action required</b>	Approval	
<b>Previously discussed at/informed by</b>	Governors Nominations and Remuneration Committee held 7 June 2019	
<b>Previously approved at:</b>	<b>Committee/Group</b>	<b>Date</b>
	N/A	

### 1. Membership of the NRC

1.1 The Nominations and Remuneration Committee comprises the following members.

- Dr Max Mclean, Chairperson (NRC Committee Chair)
- Mr Alan Edmonds, Public Governor
- Mr Alan English, Public Governor
- Ms Wendy McQuillan, Public Governor
- Ms Hardev Sohal, Patient Governor
- Mr David Wilmshurst, Public Governor
- Ms Ruth Wood, Staff Governor

1.2 The following are 'in attendance' at the NRC.

- Mr John Holden, Acting Chief Executive
- Ms Tanya Claridge, Director of Governance and Corporate Affairs
- Ms Pat Campbell, Director of Human Resources
- Ms Jacqui Maurice, Head of Corporate Governance

### 2. The items considered by the NRC on 7 June 2019

2.1 Board Evaluation Update: This item was deferred to later in the year and to be considered following the appointment of the new Chief Executive.

2.2 Chair / NED Appointment Process - Annual Review: this item is attached at Appendix 1. It has been considered by the NRC and is presented here for approval by the Council of Governors.

2.3 Chair / NED Remuneration: the recommendation presented for approval from the NRC will be considered in the closed Council of Governors meeting.

2.4 Insight Programme (Gatenby Sanderson): Committee agreed that the Trust should engage with this programme through the office of Corporate Governance which supports the development of aspiring Non-Executive Directors.

### 3. Next meeting of the NRC

The next meeting of the NRC is scheduled for Friday 13 September 2019.

Council of Governors: 18.7.19

Agenda Item: CGo.7.19.10

<b>Recommendation</b>
<p>The Council of Governors is asked to approve the Process for Appointing a Chair or NED 2019 presented at Appendix B (page 7).</p>

## Appendix 1

### **Process for appointing a Chair / Non-Executive Director Annual Review 2019**

#### **Situation and Background**

The 'Process for appointing a Chair / Non-Executive Director' is subject to annual review and approval by the Council of Governors.

The process was last reviewed and approved by the Council on 19 July 2018 following receipt of a recommendation from the Governors' Nominations and Remuneration Committee (NRC).

The Council of Governors is asked to note that there has been no change in the advice and guidance regarding the appointments process available from NHS Improvement and set out within 'Your Statutory Duties: A reference guide for NHS Foundation Trust Governors'. The relevant extracts are attached at Appendix A (page 3).

The Process for appointing a Chair / Non-Executive Director Chair previously approved by the Council of Governors is attached at Appendix B (page 7).

The NRC reviewed the process at its meeting on 7 June 2019 and confirmed that it would recommend the inclusion of reference to the 'Associate NED role' to the Council of Governors and then request that the Council approves the Process.

## Appendix A

### NHS Improvement advice and guidance

'Your Statutory Duties: A reference guide for NHS Foundation Trust Governors' is published by Monitor (NHS Improvement). The following extracts include advice and guidance with regard to:

1. the process for NED/Chair appointments
2. the setting of NED/Chair terms and conditions

#### 1. Process for NED/Chair appointments

##### Appointing the chair and other non-executive directors

The *Code of Governance* states that: "There should be a formal, rigorous and transparent procedure for the appointment or election of new members to the boards of directors."

As the chair leads both the board of directors and council of governors, governors will need to do a considerable amount of work to ensure that their NHS foundation trust has the right chair in place. The governors must also ensure that the other non-executive directors are fit and proper persons to serve the NHS foundation trust in this role.

##### General considerations

The procedure for all appointments or reappointments must be formal, rigorous and transparent. The appointment must be awarded on merit and based on objective criteria developed in the best interests of the trust. The process should be described in the NHS foundation trust's annual report.

As part of the process, the governors should consider the relevant aspects of the NHS foundation trust's constitution and the *Code of Governance*, such as:

- the requirements of the NHS foundation trust's constitution concerning the number of non-executive directors;
- the independence of non-executive directors;
- any specific skills and experience requirements such as the need to ensure relevant and recent financial experience when appointing non-executive directors to the audit committee; and
- the balance of executive and independent non-executive directors on the board of directors.

##### Triggers for action

The most common trigger for action will be the impending expiry of the existing chair or other non-executive director's term of appointment.

- If the chair or non-executive director decides to seek reappointment, the council of governors will need to decide whether it is in the best interests of the NHS foundation trust for this to happen.
- If the current chair or non-executive director does not seek reappointment or the council of governors decides that reappointment is not appropriate, the council of governors will need to make a new appointment.
- Governors also have the power to remove an existing chair or non-executive director. If they use this power, they will need to make a new appointment.

### **Agree process and establish criteria**

The governors and nominations committee should together agree a clear process for nominating a new non-executive director or reappointing an existing non-executive director. This process should include taking appropriate advice from within the NHS foundation trust, for example, from the trust's own HR department where necessary and from the chair in the case of other non-executive directors.

Where there is a second, specific nominations committee dealing with the chair and the other non-executive directors, the council of governors should agree a process with that committee.

The committee should decide a job description and person specification defining the role and capabilities required, including an assessment of the time commitment required to perform the role. The committee should propose terms and conditions for the post and, if appropriate, the post may be advertised.

The committee should take into account the views of the board of directors (particularly the non-executive directors in the case of the chair's appointment) on the process in general and the qualifications, skills and experience required for the position. For example, during the non-executive directors' appointment process, if the directors advise that the board of directors lacks specific professional experience (e.g., legal, clinical or accountancy); the recruitment process should reflect the need for that experience. In the same way, the committee should consult other key stakeholders as appropriate.

## **2. Setting of NED/Chair terms and conditions**

### **Terms and conditions of the chair and other non-executive directors**

Significant factors in attracting, retaining and motivating the chair and other non-executive directors are the terms and conditions on offer to them, including levels of pay. This section provides advice on how governors should strike a balance between motivating the right candidates and paying no more than is necessary.

#### **What are the terms and conditions?**

The terms and conditions will form the chair and other non-executive directors' contract for services with the NHS foundation trust. They will cover a variety of issues, the most important of which will include the:

- term that the chair and non-executive director will serve;
- responsibilities of the chair and non-executive director;
- remuneration and allowances that the chair and non-executive director will receive – this will include any pay that the individual receives, but can also include non-taxable elements;
- location of work;
- hours of work expected; and
- termination provisions, including notice periods.

The most common point at which the terms and conditions are set is on appointment. However, they can be reviewed and altered throughout the term of office, provided the correct processes are followed.

### **How should the process work?**

There should be a transparent procedure for deciding the terms and conditions of the chair and individual non-executive directors. The nominations committee will formulate the terms and conditions relating to a new appointment.

The council of governors as a whole at a general meeting must make the final decision on the relevant appointment's terms and conditions, and it could choose to reject the proposals. Similarly, the council of governors as a whole makes the final decision on any revised terms and conditions for existing appointments.

### **New appointments: how do governors meet their responsibilities?**

All money paid to non-executive directors is taxpayers' money; an NHS foundation trust should therefore ensure that value for public money is obtained.

The nominations committee should agree the process for setting terms and conditions as part of the overall appointments process. They should do this after finalising the job description but before the post is advertised.

The factors that the nominations committee and, eventually, the council of governors, will need to examine will vary depending on the position. However, central factors will be the:

- time commitment required by the role;
- responsibilities covered by the role; and
- terms and conditions available at similar NHS foundation trusts and other comparable organisations.

In addition to seeking the advice and support available from the NHS foundation trusts own HR specialists; the council of governors may need to take professional advice, particularly on prevailing terms and conditions. The council of governors may also want to look at advice provided by other relevant bodies such as the NHS Providers.

### **When should terms and conditions be reviewed or changed?**

It may be necessary to change the terms and conditions of the existing chair, non-executive director or a group of non-executive directors. Such changes will need to be handled carefully and councils of governors may need to take legal advice as a poorly run process could lead to disputes and, possibly, litigation. Changes to existing terms and conditions may be needed when:

- market conditions change – a significant change may mean existing terms and conditions should be reviewed. Even if market conditions do not change significantly, governors should consult external professional advisers to market-test the pay levels and the other terms and conditions of the chair and other non-executive directors at least once every three years; and
- individual responsibilities change – there may be a marked change in the range of an individual's responsibilities or in the time he or she can commit to the role. The governors should take the lead in conducting a review of the chair or other non-executive directors' terms and conditions in the light of any such change. If it seems to merit a significant alteration to the chair's terms and conditions, particularly with regards to pay, the governors should seek external professional advice (including legal advice) before making any alterations.

**Who triggers the review?**

As governors have the statutory duty to decide the remuneration and other terms and conditions of the non-executive directors, the council of governors should determine whether a review is required. This should be an informed decision, made with the advice and support of bodies such as the NHS foundation trust's HR specialists and external professional advice (where market conditions have changed), the chief executive (where a chair's responsibilities have changed) or the chair (where individual non-executive director responsibilities have changed).

**How will the final decision be made?**

Any new or changed set of terms and conditions for the chair or other non-executive directors will require a decision by the council of governors at a general meeting. This meeting should be informed by a report (including recommendations) of the nominations committee.

When terms and conditions are revised in relation to a new appointment, the council of governors' decision on them should form part of the appointment decision.

## Appendix B

### Process for the appointment of a Chair / Non-Executive Director

The Nominations and Remuneration Committee (NRC) will meet prior to the end of the term of office of the Chair / Non-Executive Director in sufficient time to enable an appointment / reappointment to be made.

Where a Chair / Non-Executive Director resigns mid-term, or is removed, then a meeting of the NRC (as defined within the NRC Terms of Reference) will be convened to confirm the process to be undertaken.

#### Actions

#### 1. Review of the structure, size and composition of the Board of Directors

1.1 The Nominations and Remuneration Committee will, as part of its remit, regularly review the structure, size and composition of the Board of Directors and make recommendations for changes where appropriate.

1.2 With regard to each appointment / reappointment, views will be sought from the Board of Directors on the qualifications, skills and experience required for each position.

#### 2. The process regarding reappointments

2.1 The Chair / Senior Independent Director should present to the NRC the outcomes from the appraisal of the Non-Executive Director / Chair in question and should advise the NRC if the person is seeking a further term (and that they are eligible). The Chair / Senior Independent Director would then be expected to confirm, following a formal performance evaluation, that;

The performance of the individual proposed for reappointment continues to be effective and the individual demonstrates commitment to the role, *or not*, and provide a recommendation with regard to their reappointment.

2.2 If the recommendation from the Chair / Senior Independent Director supports a reappointment and that is then supported by the NRC then a recommendation to the full Council of Governors should be made for reappointment along with a recommendation regarding the Terms and Conditions.

2.3 If the recommendation from the Chair / Senior Independent Director supports a reappointment and that is not supported by the NRC then an open appointments process will be instigated and the person in question will be at liberty to take part in the open appointments process.

If the recommendation from the Chair / Senior Independent Director does not support reappointment then an open appointments process will be instigated.



### **3. The process regarding new appointments**

3.1 The NRC may consider procuring the services of an independent recruitment agency to assist with the recruitment process.

3.2 Where a conflict of interest is declared by a member of the NRC they are to withdraw from the appointment process.

3.3 The NRC will, with regard to each appointment;

3.3.1 Confirm the job description and person specification

3.3.2 Confirm the Terms and Conditions which will form the Chair / Non-Executive Directors' contract for services with the NHS Foundation Trust.

3.3.3 Confirm the associated recruitment campaign

3.3.4 Carry out shortlisting in line with the person specification and involving all members of the NRC.

3.3.5 Confirm the interview panel membership ensuring the panel is comprised of a majority of Governors and conduct interviews.

*All panel members are required to have completed learning / development sessions with regard to 'equality and diversity' and 'interviewing and recruitment'.*

### **4. Decision making process**

4.1 A recommendation for approval will be presented to the Council of Governors from the NRC regarding reappointment / appointment, or not.

4.2 Where a reappointment / appointment is recommended for approval the NRC will also recommend for approval the associated Terms and Conditions.

4.2 Where no recommendation is forthcoming the process in relation to new appointments will begin again.

July 2019