

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

Appointment of the External Auditor

Presented by	Tanya Claridge, Director of Governance and Corporate Affairs		
Author	Jacqui Maurice, Head of Corporate Governance		
Governance responsibility	Council of Governors		
Purpose of the paper	To approve the establishment of an Audit Appointment Working Group that would, in line with the available advice and guidance, present a recommendation to the Council of Governors regarding the appointment of the BTHFT External Auditor for the 2020/21 audit year onwards.		
Action required	Approval		
Previously discussed at/informed by	N/A		
Previously approved at:	Committee/Group	Date	
	N/A		

Situation and Background

1. Governors' Statutory duty

In accordance with the 2006 NHS Act, the Council of Governors' has a statutory duty to **'appoint and, if appropriate, remove the NHS foundation trust's auditor'**.

The Foundation Trust Code of Governance states under section C.3.3. that;

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.

Advice and guidance for Governors regarding the appointment and or removal of the external auditor has been provided in **'Your Statutory Duties: a reference guide for Governors'**. The relevant chapter is available at Appendix 1.

2. External Audit Appointment of Deloitte LLP

The Council of Governors appointed Deloitte LLP as the Foundation Trust's external auditor at in May 2017 following a competitive tendering exercise. This exercise was overseen by a working group comprised of Governors, members of the Audit Committee and the Director of Finance.

The Council of Governors approved the extension of the contract with Deloitte LLP to 31 May 2019 following a recommendation received from the Audit and Assurance Committee.

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

3. Proposal to establish an Audit Appointment Working Group

The Council of Governors is asked to approve the establishment of an **Audit Appointment Working Group** that would, in line with the available advice and guidance, present a recommendation to the Council of Governors regarding the appointment of the external auditor for the 2020/21 audit year onwards.

Starting the process now should allow sufficient time to develop and implement a schedule for the appointment with full Governor involvement, leading to a decision about the appointment being made in January 2020.

It is proposed that the Audit Appointment Working Group should have the following composition:

- Three Governors
- Audit Committee (3 Non-Executive Directors)
- The Director of Finance

The Audit Appointment Working Group (AAWG) will be supported by the Corporate Governance Team.

The first order of business would be for the AAWG would be to establish the work programme and schedule leading up to the presentation of a recommendation regarding the appointment to the Council of Governors. This would include an assessment of the training and development needs of Governors.

Recommendation/s

The Council of Governors is asked to approve the establishment of the Audit Appointment Working Group and confirm the Governor members.

Regulation, Legislation and Compliance relevance
NHS Improvement: (please tick those that are relevant) <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> Risk Assessment Framework <input checked="" type="checkbox"/> Code of Governance </div> <div> <input checked="" type="checkbox"/> Quality Governance Framework <input checked="" type="checkbox"/> Annual Reporting Manual </div> </div>
Care Quality Commission Domain: Well Led
Care Quality Commission Fundamental Standard: Good Governance
NHS Improvement Effective Use of Resources: Corporate Services, Procurement, Estates & Facilities
Other (please state):

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

Appendix 1

Your Statutory Duties: Reference Guide for Governors

Chapter 7: Appointing and removing the NHS foundation trust's external auditor

The external auditor of an NHS foundation trust has important duties concerning the trust's annual accounts. This chapter sets out the governors' role in relation to the NHS foundation trust's external auditor. This chapter covers:

- what the auditor does;
- who the auditor can be; and
- appointing and removing the auditor.

7.1 Background

What are the legal requirements?

The 2006 Act says that every NHS foundation trust must have an auditor that is appointed by the council of governors. The law states that it is for the council of governors to appoint or remove the auditor at a general meeting of the council.

That means the whole council of governors, rather than, for example, a committee or a working group, must appoint or remove the auditor.

Governors will need to do a lot of work to make sure they choose the right external auditor and monitor their performance. However, they are 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 role of the audit committee

The audit committee is responsible for monitoring and reviewing matters including the integrity of financial statements of the NHS foundation trust, its internal financial controls and internal audit function.

The audit committee must consist of non-executive directors. The *Code of Governance* states that the committee should have at least three independent non-executive directors and that at least one member of the audit committee should have recent and relevant financial experience.

In order to support the underlying statutory duty of choosing the right external auditors, the *Code of Governance* states that the audit committee should report to the council of governors. The reports should:

- identify any matters relating to the external auditor where it considers that action or improvement is needed; and
- recommend what steps to take.

The governors will need to consider such reports closely, particularly in fulfilling their duty to hold the non-executives to account for the performance of the board.

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

The governors will also want to look at Monitor's [Audit Code for NHS Foundation Trusts](#) (the *Audit Code*), especially the criteria for auditors that it prescribes.

What does the auditor do?

The auditor has statutory duties to ensure that:

- the accounts of the NHS foundation trust are prepared in accordance with all relevant directions set by Monitor and any other statutory provisions;
 - proper practices are observed in compiling the accounts; and
 - the NHS foundation trust is using its resources economically, efficiently and effectively.
- Further details on the auditor's role are set out in the *Audit Code*.

Who can be the auditor?

When an NHS foundation trust is authorised, it will have in post an auditor appointed by the Audit Committee of the NHS trust. This auditor will remain in post until the council of governors of the new NHS foundation trust has had a chance to discuss appointing a replacement.

The new NHS foundation trust is free to appoint whichever auditor it considers the most appropriate. However, to avoid having no auditor in place the new trust and the incumbent auditors must agree an engagement letter for the period before a new auditor is appointed, or the old one reappointed.

The auditor can either be an individual, or from a firm of auditors or other professional firm. However, the auditor (or in the case of a firm, each of its members) must be a member of one of the professional bodies specified in law (Audit Commission Act 1998), as below:

- a) the Institute of Chartered Accountants in England and Wales;
- b) the Institute of Chartered Accountants of Scotland;
- c) the Association of Certified Accountants;
- d) the Chartered Institute of Public Finance and Accountancy;
- e) the Institute of Chartered Accountants in Ireland; and
- f) any other body of accountants established in the United Kingdom and for the time being approved by the Secretary of State for this purpose.

The *Audit Code* sets out the particular criteria that an auditor must meet, not only on appointment but throughout its term as auditor. The auditor must:

- have an established and demonstrable standing within the health care sector and show a high level of experience and expertise – the work is specialised, so general audit experience is not enough to meet this standard;
- comply with the *Audit Code*; and
- subject the audit to internal quality control procedures that are sufficiently robust to test whether the audit work complies with the *Audit Code*.

If the auditor fails to meet, or believes it will not be able to meet, the criteria set out in the *Audit Code* at any point during its appointed term, the auditor must resign.

Governors need to consider when to change the team at the auditor's firm because a team that has been in place for too long may no longer be sufficiently independent from the NHS foundation trust. Governors can seek advice from the Auditing Practices Board (APB) on

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

when to rotate teams, informed by APB ethical standard 3.

Annual process

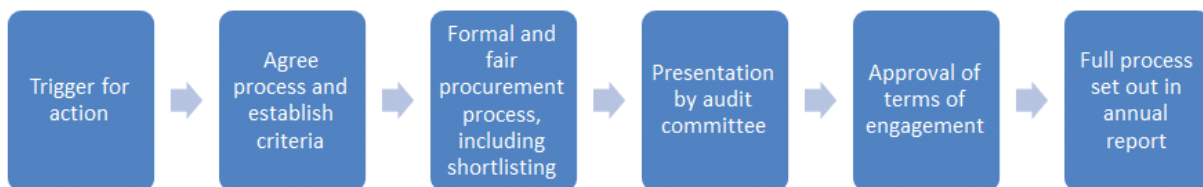
The audit committee should make a report to the council of governors on the auditor when the annual audit is completed.

This report should assess whether the auditor's work is of a sufficiently high standard and its fees are reasonable.

The audit committee must make a recommendation to the council of governors on retaining or removing the auditor. The council of governors should then consider whether to retain or remove the auditor.

7.2 Appointing the auditor

Figure 6: Key stages for appointing the auditor



Trigger for action

The impending end of the existing auditor's contract term will trigger a new appointment process, whether or not the existing auditor is seeking reappointment.

Governors also have the power to remove an existing auditor and, in certain situations, an auditor can or should resign. In either event, governors will need to make a new appointment.

Agree process and establish criteria

The council of governors should take the lead in agreeing with the audit committee the criteria for appointing, reappointing or removing auditors. As with all appointments or reappointments, the procedure must be formal, rigorous and transparent.

The audit committee will run the process but the final decision on any appointment rests with the council of governors. Having established objective criteria, the audit committee should:

1. agree with the council of governors a clear process for nominating a new auditor or reappointing the existing one, including a timetable showing the deadline by which a new appointment should be made; and
2. prepare a specification defining the role and capabilities required, including the necessary qualifications, skills and experience, and agree the specification with any governors' audit working group or similar.

Procurement process

The audit committee should run a formal procurement process to obtain the best candidate as fairly and transparently as possible. The process may vary depending on the NHS foundation trust's particular procurement rules but it must be within procurement law. This is

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

complex and the audit committee and the governors' audit working group are likely to need legal advice before embarking on a procurement process.

Re-appointment

If the audit committee and the governors' audit working group have followed a correct process and the existing auditor meets the appropriate criteria, then the existing auditor may appear on the shortlist of final candidates. The same criteria should be applied to all those that express an interest in becoming the auditor of the NHS foundation trust.

Shortlist

The audit committee should draw up a shortlist of at least two appointable candidates in conjunction with the governors' audit working group.

Presentation by the audit committee

The audit committee and any governors' audit working group should present to the council of governors:

- the procurement process they have followed;
- the results of the procurement process; and
- recommendations.

The recommendations should describe in full the shortlisted candidates and assess their relative strengths and weaknesses. The appointment must be based on merit and objective criteria. The committee should also recommend the preferred candidate and set terms of engagement for the external auditor.

How will the council of governors make a final decision?

The council of governors should then make a final decision in line with its statutory obligations.

If the council of governors chooses to make an appointment, the audit committee will need to approve the auditor's terms of engagement. The council of governors and the audit committee should consider in particular how long the appointment should last. Best practice is to appoint an auditor for a period which allows it to develop a strong understanding of the NHS foundation trust, normally three to five years (see "Who can be the auditor?" above).

Should the council of governors feel unable to make an appointment, for example, because it is unwilling to accept the audit committee's recommendations or believes the procurement process was flawed, then the audit committee and the governors' audit working group must set to work again at speed. The law requires the NHS foundation trust to have an auditor at all times, so they should adhere to the appointment timetable they will have drawn up at the start of the process. However, they may need to consider extending the incumbent auditor's contract to ensure that the trust is never without an auditor.

Next steps

In any event, the full process must be set out in the NHS foundation trust's annual report. In particular, if the council of governors does not accept the audit committee's recommendation, the board of directors should include in the annual report a statement from the audit committee explaining its recommendation and the reasons the council of governors took a different position.

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

7.3 Removing the auditor

Removing the auditor is a very serious step and the council of governors must follow a rigorous and transparent process in taking it.

What are the possible reasons for removing the auditor?

The council of governors will recognise that removing the auditor is rarely likely to be appropriate, particularly as the auditor plays an independent role within the NHS foundation trust.

If the auditor demonstrably does not meet the criteria set out in the *Audit Code* the governors may have grounds for removal, although the governors must, of course, clearly understand those grounds before they embark on the removal process.

What is the process?

The council of governors should only exercise its power to remove the auditor after exhausting all other means of resolving any dispute. If it cannot resolve the issue, we suggest it pursues the following process.

Figure 7: Process for governors to remove the auditor



Proposal

The council of governors should put together a proposal to consider removing the auditor. This will not necessarily result in removal, but will start the formal process.

Investigation, advice and consultation

The audit committee should investigate the issue, including allegations made against the auditor, if any. The investigation should consider the views of key personnel within the NHS foundation trust, including the NHS foundation trust's finance director and his or her staff. The audit committee should seek legal advice on the legality of the removal process and any eventual removal throughout the process.

Report

The audit committee should present the findings of the investigation and consultation to the council of governors. The council of governors must ensure that the auditor is given adequate opportunities to respond to any allegations.

Making a final decision

Once the council of governors is satisfied that a full and proper process has been followed, it should vote on whether to remove the auditor. If governors have any doubts at all about the process, they must remedy any deficiencies in the process before voting. A majority of the council of governors must vote to remove the auditor at a general meeting before a removal can go ahead.

After the auditor's removal

When the council of governors ends an auditor's appointment in disputed circumstances, the chair of the NHS foundation trust should write to Monitor giving the reasons for the decision.

Meeting Title	Council of Governors		
Date	18 July 2019	Agenda item	CGo.7.19.7

After a removal, the NHS foundation trust will need to appoint a new auditor. The removal process and the reasons for it will also need to be set out in the NHS foundation trust's annual report.