

Meeting Title	Council of Governors		
Date	16 July 2020	Agenda item	CGo.7.20.10

Non-Executive Director Terms and Conditions

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 present the non-executive director terms and conditions to the council of governors for approval.		
Action required	For approval		
Previously discussed at/informed by	Governors nominations and remuneration committee held 2 July 2020.		
Previously approved at:	Committee/Group	Date	
	Council of Governors	18 July 2019	

Situation and Background

The council of governors is required to review and confirm the generic non-executive director terms and conditions on an annual basis.

The generic terms and conditions are attached at appendix 1.

The council is reminded that, as part of each recommendation made to the council of governors regarding an appointment or reappointment; there is also a requirement that the nominations and remuneration committee also presents for approval the specific terms and conditions associated with the non-executive director appointment or reappointment.

The nominations and remuneration committee considered the generic terms and conditions at its meeting held on 2 July 2020 and required no amendments.

Recommendation

The nominations and remuneration committee would like to recommend to the council of governors that it approves the generic non-executive director terms and conditions.

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Appendix 1

Terms and Conditions

The following reflects the current generic NED terms and conditions. These are reviewed annually by the Council of Governors and were approved in July 2019.

Dear

TERMS OF ENGAGEMENT

These are the terms and conditions on which your engagement as Non-Executive Director of Bradford Teaching Hospitals NHS Foundation Trust (the Trust) has been made. Please indicate your acceptance of these terms of engagement by signing one copy and returning to the Director of Human Resources.

1. **Basis of Appointment** - Non Executive Directors of the Trust hold office under the Constitution of the Trust. Your appointment gives rise to a contract for services between yourself and the Trust. The appointment and tenure of office of the Non-Executive Directors of the Trust are governed by the Trust's Constitution and the Trust's Standing Orders for the Board of Directors (available on request from the Trust Board Secretary).
2. **Employment Law** - This appointment does not create a contract of employment and is not within the jurisdiction of Employment Tribunals. Neither is there any entitlement for compensation for loss of office through employment law.
3. **Appraisal** – Annual appraisal will be led by the Chairman of the Trust within a framework agreed by the Council of Governors and taking into account the views of directors and governors.
4. **Tenure of office** – Your appointment is effective from **[date]** for an initial period of **[period]** years unless terminated by either party giving to the other **[three month's]** prior written notice.
5. **Time Commitment** – You will be expected to devote such time as is reasonably necessary and appropriate for the performance of your duties as Non-Executive Director. It is estimated that you will devote a minimum of [] days a month to your board level responsibilities including both day and evening work according to the requirements of the Trust.
6. **Re-appointments** – Non-Executive Directors are eligible to be considered for re-appointment at the end of their period of office in accordance with the Trust's Constitution, but you have no absolute right to be reappointed. Any reappointment after a period of six years will only be in exceptional circumstances and will be subject to annual re-appointment.
7. **Termination of appointment**
 - 7.1 The Trust's Constitution sets out the circumstances that disqualify an individual from holding a directorship. Should any of those circumstances become applicable to you; your appointment will be terminated with immediate effect.

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- 7.2 If the Council of Governors is of the opinion that it is no longer in the interests of the National Health Service that you continue to hold office then, subject to the provisions of the Constitution your appointment may be terminated with immediate effect
- 7.3 For the purposes of paragraph 7.2, the following list provides examples of matters, which may indicate to the Council of Governors that it is no longer in the interests of the health service that the Non-Executive Director continues in office. The list is not intended to be exhaustive or definitive; the Council of Governors will consider each case on its merits, taking account of all relevant factors:
- 7.3.1 If you fail to meet the requirements of the Fit and Proper Persons Test as set out in Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended or supplemented from time to time) ("the Regulations");
- 7.3.2 If an annual appraisal or sequence of appraisals is unsatisfactory;
- 7.3.3 If the Non-Executive Director no longer enjoys the confidence of the Council of Governors;
- 7.3.4 If the Non-Executive Director loses the confidence of the public or local community in a substantial way;
- 7.3.5 If the Non-Executive Director fails to deliver work against pre-agreed targets incorporated within their annual objectives;
- 7.3.6 If there is a terminal breakdown in essential relationships, for example, between a Non-Executive Director and the Board of Directors.
- 7.4 Your appointment may also be terminated **[with three months' notice] [or] [with immediate effect]** if:
- 7.4.1 You do not properly comply with the requirements of the Standing Orders of the Trust with regard to pecuniary interests in matters under discussion at meetings of the Trust (e.g. a failure to disclose such an interest).
- 7.4.2 You do not attend a meeting of the Trust for a period of three months unless the Council of Governors is satisfied that your absence was due to a reasonable cause and you will be able to attend within such time as is considered reasonable.
- 7.4.3 You do not comply with the requirements of the Standing Orders with regard to pecuniary interests under discussion at meetings, for example, you fail to disclose an interest.
- 7.4.4 You cease to be independent within the meaning of the NHS Foundation Trust Code of Governance.
- 7.5 If any of the above conditions are applicable to you must notify the Board Secretary in writing as soon as reasonably practicable of the circumstances of the issue.

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7.5.1 The Trust may suspend you from the performing of your functions of Non-Executive Director while consideration is given as to whether your appointment should be terminated.

7.5.2 On termination of your appointment you shall at the Trust's request resign from your office as Director of the Trust and all other offices held by you connected with Trust.

8. Your Role as Non-Executive Director – Your role and responsibilities as a Non-Executive Director are set out in the Trust's Constitution and the role description (copy attached). Non-Executive Directors have the same general legal responsibilities to the Trust as any other director and you will exercise your powers in your role having regard to relevant obligations under the Companies Act 2006, the Trust's Constitution and Standing Orders and the Trust's policies and procedures. The Board of Directors is collectively responsible for promoting the success of the Trust and supervising the Trust's affairs. As part of your role you will be required to comply with the NHS Foundation Trust Code of Governance, the Quality Governance Framework and the Nolan Principles plus other guidance and regulations as issued by Monitor (NHS Improvement) or other relevant bodies from time to time.

9. Remuneration - As a consequence of your appointment, you are entitled to be remunerated by the Trust for so long as you continue to hold office as Non-Executive Director, at the rate set by the Council of Governors of the Trust. You are entitled to receive remuneration only in relation to the period for which you hold office. There is no entitlement to compensation for loss of office.

The current rate fixed for your remuneration is £ [] per annum and relates to the time commitment of approximately [] days per month.

10. Mileage Allowances – Non-Executive Directors are eligible to claim mileage allowance for travel and subsistence costs necessarily incurred on Trust business equivalent to those set under Agenda for Change.

11. Outside Interests/Conflict of Interest – It is accepted and acknowledged that you have business interests other than those of the Trust and that you have declared any conflicts that were apparent on appointment. The Standing Orders of the Board of Directors require the Chairman and members of the Board of Directors to declare on a regular basis any business interests, position of authority in a charity or voluntary body in the field of health and social care, and any connection with bodies contracting for NHS services. In addition, any material interests (as defined in the Trust's Constitution) must be notified to the Board Secretary as soon as you become aware of them. These must be entered into a register which is available to the public.

12. Indemnity – You will be indemnified by the Trust in the event of any claim against you for a wrongful act, including associated, reasonable defence costs, providing that your actions were honest, not fraudulent and in good faith, and you have not acted recklessly. This indemnity will not extend to any civil or criminal fines or penalties imposed by law.

13. Fit and Proper Persons Warranty- You warrant that you are a fit and proper person as defined by Regulation 5 of the Regulations to hold a Board level appointment within the Trust. You understand there is an ongoing duty to advise the Trust immediately if you become aware of any facts or circumstances that may mean you are no longer a fit and proper person to hold the position you hold. In the event you may not be a fit and proper person the Trust, in accordance with paragraph 7 above may terminate your appointment.

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14. **Criminal Matters** – You are required to declare immediately to the Chairman if you are ever arrested or interviewed under caution, any pending prosecutions or convictions (including driving offences) and any cautions. Failure to disclose the fact of an arrest, a caution, pending prosecution or conviction may result in termination of your appointment and this contract for services by the Council of Governors.

 15. **Confidentiality** – All information, including patient and staff records, and any details of contract prices and terms, acquired during your appointment is confidential to the Trust and should not be released, communicated or disclosed, either during your appointment or following termination to any unauthorised person or persons without prior consent. This restriction will cease to apply to any confidential information which may (other than by reason of your breach) become available to the public generally. Nothing in this paragraph shall prevent you from disclosing information which you are entitled to disclosure under the Public Interest Disclosure Act 1998, provided the disclosure is made in accordance with the provisions of that Act and you have complied with Trust policy. Upon termination for whatever reason you will deliver to the Trust all documents, records, papers or other Trust property which may be in your possession or control and which relate in any way to the business of the Trust and you shall not retain any copies thereof.

 16. **No Smoking Policy** – In the interests the health of staff, patients and visitors, the Trust is a non-smoking organisation. It is a condition of your terms of engagement that you do not smoke within the Trust's premises and grounds.

 17. **Health and Safety/Risk Management** - You must comply at all times with the Trust's Health and Safety policies, in particular by following agreed safe working procedures and reporting incidents using the Trust's Risk Incident Reporting System.

 18. **Equality and Diversity** - You are required to abide by the Trust's policies and procedures and to actively support the Trust's commitment to equality and diversity in both employment and the delivery of services. All patients, staff and visitors must be treated equitably, with dignity and respect taking into account their race, gender, ethnic origin, religion, age, disability, sexuality or marital status.

 19. **Environment and Sustainability** - You have a responsibility to promote sustainability and carbon reduction within the Trust adhering to our Sustainable Development Strategy and therefore ensuring that all our business is conducted in a sustainable manner

 20. **Infection Prevention and Control** - You have a personal responsibility to comply with Trust's Infection Prevention and Control policies to protect your own health, the health of patients, visitors and other employees and to prevent health care associated infections. [This includes a requirement to maintain a safe, clean and tidy work environment and to complete mandatory Infection Prevention and Control training as provided by the Trust]

 21. **Safeguarding Children and Adults** -You have a responsibility to safeguard and promote the welfare of children and adults. You will be responsible for ensuring you undertake the appropriate level of training in accordance with the Trust's safeguarding policy training strategy and that they are aware of and work within the safeguarding policies of the Trust.

 22. **Data Protection** – You consent to the Trust holding and processing information about you for legal, personal, administrative and management purposes and in particular to the processing of any sensitive personal data (as defined by the Data Protection Act 1998). You will at all times comply with the Trust's data protection policy, a copy of which will be provided to you.

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23. **Change of Personal Details** – You shall advise the Trust Board Secretary promptly of any change in your address or other personal contact details.

24. **Rights of Third Parties** – The Contracts (Rights of Third Parties) Act 1999 shall not apply to the letter containing details of your terms and conditions. No other person other than you and the Trust shall have any rights under this letter and the terms shall not be enforceable by any person other than you and the Trust.

25. **Law** – This constitutes the entire terms and conditions of your appointment and no waiver or modification shall be valid unless in writing and signed by both parties.

Yours sincerely

[signed]

Trust Chairman

Acceptance Statement

I have read and accept the terms and conditions of appointment.

Signed: _____

Dated: -----