

## TERMS OF REFERENCE

### THE NOMINATION AND REMUNERATION COMMITTEE OF THE GOVERNORS' COUNCIL

#### **Overall Purpose:**

To operate as a formal committee of the Governors' Council.

The Committee is responsible for advising and/or making recommendations to the Governors' Council in respect of:

- the recruitment process for the selection of candidates for the office of Chair and/or other Non-Executive Directors;
- the remuneration, allowances and other terms and conditions of office for the Chair and Non-Executives;
- the size and composition of the Board; and
- Board succession planning.

#### **Key Responsibilities:**

The Committee's key responsibilities are set out in the Trust's 'Working Together Strategy' (**Extract at APPENDIX A**) (based on Monitor's - Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors).

The Committee will act in accordance with the provisions of:

- the Trust's 'Working Together Strategy' (**Extract at APPENDIX A**), and
- Monitor's Code of Governance (**Extract at APPENDIX B**)

#### **Accountability:**

The Nomination and Remuneration Committee will be accountable to the Governors' Council.

The Governors' Council will approve the Committee's Terms of Reference, which will be reviewed annually.

The Governors' Council shall not delegate any of its powers to the Committee and the Committee shall not exercise any of the powers of the Governors' Council.

#### **Relationships:**

The Nomination and Remuneration Committee will have relationships with:

- The Governors' Council
- The Board of Directors
- Non-Executive Directors
- Specialist Recruitment Service Providers (as appropriate)
- Independent External Advisor (as appropriate)

## **Membership:**

At least;

- The Chair (The Nomination and Remuneration Committee will determine whether the Committee will be chaired by the Trust Chair or a governor and will appoint the Chair)
- 4 Public Governors
- 1 Staff Governor
- 1 Appointed Governor

Maximum number of voting members: 10

## **In attendance – as appropriate**

- Senior HR advisor

The Committee may invite an Independent External Advisor to attend and advise, in accordance with the provisions of the Trust's Working Together Strategy.

An independent external advisor shall neither be a member of, nor have a vote on the Nomination and Remuneration committee.

## **Chair**

The Nomination and Remuneration Committee will determine whether the Committee will be chaired by the Trust Chair or a governor and will appoint the Chair. Where the Chair's reappointment, recruitment or remuneration is being dealt with, then the Senior Independent Director or Vice Chair will chair the committee unless the committee determines that the committee shall be chaired by a governor.

## **Attendance:**

Members are requested to give apologies to the FT Office, if they are unable to attend a meeting.

## **Rules:**

- Meetings will be held as required
- Agendas and papers will be published 5 working days in advance of the meeting, where possible.
- Proceedings will be minuted and separate action points recorded and circulated.
- Quorum - Chair and 3 Governors, two of whom must be publicly elected governors (4 in total).
- The minutes will be reported at the next Governors' Council meeting following a committee meeting.
- Meetings will be held in closed session.

## **Support:**

Support for the Nomination and Remuneration Committee will be provided by the FT team.

The Committee may commission the procurement of the services of a specialist recruitment organisation, in line with budgetary provision.

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<b>Next Review:</b>	<b><u>November 2020</u></b>

## WORKING TOGETHER STRATEGY PROVISIONS

## APPENDIX A

**Appointment of the Non-Executive Directors (NED Appointments)**

(i) The Governors' Council will set up a Nomination and Remuneration Committee to oversee the process of the appointment and remuneration of the Non-Executive Directors and to make recommendations for appointment and remuneration to the Governors' Council. The committee will comprise at least:

- The Trust Chair
- 4 public governors
- 1 staff governor
- 1 appointed governor

The Nomination and Remuneration Committee will determine whether the Committee will be chaired by the Trust Chair or a governor and will appoint the Chair.

The Nomination and Remuneration Committee may be advised by a Human Resources Business Partner and/or the Trust Secretary.

(ii) Where a vacancy for a NED arises or is expected due to a NED coming to the end of his/her term of office and the existing non-executive director seeks re-appointment, the Board of Directors will review its skills gap analysis to determine the skills, knowledge and experience required by candidates for the vacancy taking into account the views of the Governors. The Nomination and Remuneration Committee will:

- a. assess the existing office holder against the current role description and person specification and identify Board skills/experience requirements
- b. assess the post-holder's on-going independence
- c. assess the post holder's performance appraisal outcomes (to be confirmed by the Chair)
- d. assess whether the skills and experience of the post-holder continue to contribute to the skill-set required on the Trust Board (determined by current strategic position)
- ed. proceed to stage (xi) if assessment criteria A (ii) a. – de. are met

(iii) Where the current post holder does not seek re-appointment or where assessment criteria A (ii) a. – d. are not met, the Board of Directors will, through the Trust Chair, propose a timetable for recruitment to the vacancy.

(iv) The Trust Chair will present the skills, knowledge and experience profile and the timetable for recruitment to the Nomination and Remuneration Committee.

(v) The Human Resources Business Partner and / or Trust Secretary will prepare a draft role description, person specification, advertisement for the vacancy and proposed advertising campaign (e.g. where will the role be advertised?), based on the skills, knowledge and experience profile. Additional support will be secured from the Communications Team where required.

(vi) The Nomination and Remuneration Committee will approve the role description, person specification and advertisement, timetable for recruitment and advertising methodology.

(vii) The Nomination and Remuneration Committee will appoint a Selection Panel, which will include the Trust Chair. The Nomination and Remuneration Committee will determine the governor membership of the Selection Panel.

The Nomination and Remuneration Committee will appoint the panel Chair.

The panel may appoint an independent advisor (the independent advisor could be a NED from another Trust or a professional recruitment advisor). The independent advisor will not be a member of the panel and will not have a vote.

**Note:** Members of the Selection Panel will ideally have experience of, or will have undertaken training and development in recruitment and selection / interviewing techniques and equality and diversity.

The Selection Panel may be advised by a Human Resources Business Partner and/or the Trust Secretary.

(viii) The Selection Panel will review applications against the criteria of the Role Description and Person Specification and will shortlist candidates for interview.

(ix) The Selection Panel will undertake interviews and will report the outcome of the interviews, including the panel's preferred candidate to the Nomination and Remuneration Committee for approval. This stage may take place via email communication.

(x) The Human Resources Business Partner will take up references and take reasonable steps to confirm the eligibility of the candidates to become a Non-Executive Director in accordance with the provisions of the Constitution, Annexes and CQC Fit and Proper Persons Regulation. Advice, where appropriate will be sought from the Trust Secretary.

(xi) The Nomination and Remuneration Committee will present the summary process and recommendations on the reappointment/appointment of the preferred candidate to the Governors' Council for approval.

(xii) The Governors' Council will consult the Board of Directors before a final decision is made.

(xiii) The Trust Chair will notify the Board of Directors and successful applicant.

## Appointment of the Chair

(i) The Governors' Council will set up a Nomination and Remuneration Committee to oversee the process of the appointment and remuneration of the Chair and to make recommendations for appointment and remuneration to the Governors' Council. The committee will comprise at least:

- The- Senior Independent Director (SID) or an Independent Non-Executive Director (NED)
- The Chief Executive Officer
- 43 Public Governors
- 1 Staff Governor
- 1 Appointed Governor

The Committee may co-opt an independent advisor and / or a specialist 'search' agent. Neither an independent external adviser nor a search agent will be a member of, or have a vote on the Nomination and Remuneration Committee.

The Nomination and Remuneration Committee may be advised by a Human Resources Business Partner and/or the Trust Secretary.

(ii) Where a vacancy for the Chair arises or is expected due to the Chair coming to the end of his/her term of office and the existing Chair seeks re-appointment, the Nomination and Remuneration Committee will review its skills gap analysis to determine the skills, knowledge and experience required by candidates, taking into account the views of the Governors. The Nomination and Remuneration Committee will:

- a) assess the existing office holder against the current role description and person specification
- b) assess the post-holder's ongoing independence
- c) assess Performance Appraisal outcomes (to be confirmed by the Senior Independent Director)
- d) assess whether the skills and experience of the post-holder continue to contribute to the skill-set required on the Trust Board (determined by current strategic position)
- e) proceed to stage (xi) if assessment criteria (ii) a. – d. are met

(iii) Where the current post-holder does not seek re-appointment or where assessment criteria B (ii) a. – d. are not met, the Board of Directors will, through the SID, propose a timetable for recruitment.

(iv) The SID will present the skills, knowledge and experience profile and the timetable for recruitment to the Nomination and Remuneration Committee.

(v) The Human Resources Business Partner and Trust Secretary will prepare a role description, person specification, advertisement for the vacancy and proposed recruitment and advertising campaign (e.g. where will the role be advertised).

(vi) The Nomination and Remuneration Committee will approve the role description, person specification and advertisement, timetable for recruitment and recruitment and advertising methodology.

(vii) The Nomination and Remuneration Committee will establish a Selection Panel, which will include the Senior Independent Director (SID) / Independent NED and the Chief Executive Officer.

The Nomination and Remuneration Committee will determine the governor membership of the Selection Panel.

The appointment of an Independent Advisor shall be undertaken in line with the requirements of the Regulator.

The Nomination and Remuneration Committee will determine whether the panel will be chaired by the SID/Independent NED or a governor and will appoint the panel chair.

**Note:** Members of the Selection Panel will ideally have experience of, or will have undertaken training and development in recruitment and selection / interviewing techniques and equality & diversity.

The Selection Committee will be supported by a Human Resources Business Partner, the Trust Secretary and the Search Agent.

(viii) The Selection Panel will review all applications against the advised criteria and Person Specification and shortlist candidates for interview.

(ix) The Selection Panel will undertake interviews and will report the outcome of the interviews, including the panel's preferred candidate to the Nominations and Remuneration Committee. -This stage may take place via email communication.

(x) The Human Resources Business Partner will take reasonable steps to confirm the eligibility of the candidates to become a Non-Executive Director in accordance with the provisions of the Constitution, Annexes and CQC Fit and Proper Person Regulation. Advice, where appropriate will be sought from the Trust Secretary.

(xi) The Nominations and Remuneration Committee will report the summary process and recommend the re-appointment/appointment of the preferred candidate to the Governors' Council for approval.

(xii) The Governors' Council will consult the Board of Directors and the Regulator before a final decision is made.

(xiii) The SID will notify the Board of Directors and the successful applicant.

#### **NB – Appointing the Vice-Chair**

The Governors' Council may agree to appointing an existing Non-Executive Director as Vice-Chair at a meeting of the Council. Alternatively a separate appointment to the role of Vice Chair may be made.

In this case and due to the fact that the Vice-Chair may be required to stand in for the Chair, the appointment will be made using the same process as for the Chair, with one notable difference:

- The Chair will sit on the Committee and selection panel

#### **Setting the Remuneration and Allowances of the NEDs and Chair**

(i) The Governors' Council will set up a Nomination and Remuneration Committee to oversee the process of the appointment and remuneration of the NEDs and the Chair and to make recommendations for appointment and remuneration to the Governors' Council. The committee will comprise at least:

- The Chair or SID (The Chair will participate in respect of NED remuneration and the SID will participate in respect of the Chair's remuneration)
- 43 Public Governors
- 1 Staff Governor
- 1 Appointed Governor

The Committee will determine whether the Committee will be chaired by the Trust Chair or a governor and will appoint the chair

- (ii) In respect of remuneration for Non-Executive Directors, the Trust Chair will consult with the Director responsible for Human Resources to establish a timetable for review of NED remuneration and to benchmark and identify current remuneration and allowances for comparable positions.
- (iii) In respect of remuneration for the Chair, the Director responsible for Human Resources will work directly with the Nominations and Remuneration Committee, excluding the Trust Chair, to establish a timetable for review of the Chair's remuneration and to benchmark and identify current remuneration and allowances for comparable positions.
- (iv) The Nomination and Remuneration Committee will agree terms to be recommended to the Governors' Council
- (v) The Governors' Council will approve terms in respect of the remuneration and allowances of the Chair and NEDs
- (vi) The Trust Human Resources Team will issue letters to Non-Executive Directors on behalf of the Governors' Council, setting out revised remuneration and allowances.



## **MONITOR'S [\(subsumed into NHSi\)](#) CODE OF GOVERNANCE [\(updated July 2014\)](#) – PROVISIONS [Appendix B](#)**

*These guidelines support the Nominations and Remuneration Committee (GC) Terms of Reference. They comprise relevant extracts from The Monitor NHS Foundation Trust Code of Governance, specifically the following Code Provisions:*

### **B.1 The composition of the Board**

#### **Main principle**

B.1.a The board of directors and its committees should have the appropriate balance of skills, experience, independence and knowledge of the NHS foundation trust to enable them to discharge their respective duties and responsibilities effectively.

#### **Supporting principles**

B.1.b The board of directors should be of sufficient size that the requirements of the organisation can be met and that changes to the board's composition and that of its committees can be managed without undue disruption, and should not be so large as to be unwieldy.

B.1.c The board of directors should include an appropriate combination of executive and non-executive directors (and in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking.

B.1.d All directors should be able to exercise one full vote, with the chairperson having a second or casting vote on occasions where voting is tied.

B.1.e The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding chairpersonship and the membership of committees. The value of appointing a non-executive director with a clinical background to the board of directors should be taken into account by the council of governors.

B.1.f Only the committee chairperson and committee members are entitled to be present at meetings of the nominations, audit or remuneration committees, but others may attend by invitation of the particular committee.

#### **Code provisions**

B.1.1. The board of directors should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. The board of directors should state its reasons if it determines that a director is independent despite the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the NHS foundation trust within the last five years;
- has, or has had within the last three years, a material business relationship with the NHS foundation trust either directly, or as a partner, shareholder, director or senior

employee of a body that has such a relationship with the NHS foundation trust;

- has received or receives additional remuneration from the NHS foundation trust apart from a director's fee, participates in the NHS foundation trust's performance-related pay scheme, or is a member of the NHS foundation trust's pension scheme;
- has close family ties with any of the NHS foundation trust's advisors, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- has served on the board of the NHS foundation trust for more than six years from the date of their first appointment; or
- is an appointed representative of the NHS foundation trust's university medical or dental school.

B.1.2. At least half the board of directors, excluding the chairperson, should comprise non-executive directors determined by the board to be independent.

B.1.3. No individual should hold, at the same time, positions of director and governor of any NHS foundation trust.

B.1.4. The board of directors should include in its annual report a description of each director's skills, expertise and experience. Alongside this, in the annual report, the board should make a clear statement about its own balance, completeness and appropriateness to the requirements of the NHS foundation trust. Both statements should also be available on the NHS foundation trust's website.

## **B.2 Appointments to the Board**

### **Main principle**

B.2.a There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. Directors of NHS foundation trusts must be "fit and proper" to meet the requirements of the general conditions of the provider licence.

### **Supporting principles**

B.2.b The search for candidates for the board of directors should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board and the requirements of the trust.

B.2.c The board of directors and the council of governors should also satisfy themselves that plans are in place for orderly succession for appointments to the board, so as to maintain an appropriate balance of skills and experience within the NHS foundation trust and on the board.

### **Code provisions**

B.2.1. The nominations committee or committees, with external advice as appropriate, are

responsible for the identification and nomination of executive and non-executive directors. The nominations committee should give full consideration to succession planning, taking into account the future challenges, risks and opportunities facing the NHS foundation trust and the skills and expertise required within the board of directors to meet them.

B.2.2. Directors on the board of directors and governors on the council of governors should meet the "fit and proper" persons test described in the provider licence. For the purpose of the licence and application criteria, "fit and proper" persons are defined as those without certain recent criminal convictions and director disqualifications, and those who are not bankrupt (undischarged). ~~In exceptional circumstances and at Monitor's discretion an exemption to this may be granted.~~ Trusts should also abide by the updated guidance from the CQC regarding appointments to senior positions in organisations subject to CQC regulations.

B.2.3. There may be one or two nominations committees. If there are two committees, one will be responsible for considering nominations for executive directors and the other for non-executive directors (including the chairperson). The nominations committee(s) should regularly review the structure, size and composition of the board of directors and make recommendations for changes where appropriate. In particular, the nominations committee(s) should evaluate, at least annually, the balance of skills, knowledge and experience on the board of directors and, in the light of this evaluation, prepare a description of the role and capabilities required for appointment of both executive and non-executive directors, including the chairperson.

B.2.4. The chairperson or an independent non-executive director should chair the nominations committee(s). At the discretion of the committee, a governor can chair the committee in the case of appointments of non-executive directors or the chairperson.

B.2.5. The governors should agree with the nominations committee a clear process for the nomination of a new chairperson and non-executive directors. Once suitable candidates have been identified the nominations committee should make recommendations to the council of governors.

B.2.6. Where an NHS foundation trust has two nominations committees, the nominations committee responsible for the appointment of non-executive directors should consist of a majority of governors. If only one nominations committee exists, when nominations for non-executives, including the appointment of a chairperson or a deputy chairperson, are being discussed, there should be a majority of governors on the committee and also a majority governor representation on the interview panel.

B.2.7. When considering the appointment of non-executive directors, the council of governors should take into account the views of the board of directors and the nominations committee on the qualifications, skills and experience required for each position.

B.2.8. The annual report should describe the process followed by the council of governors in relation to appointments of the chairperson and non-executive directors.

B.2.9. An independent external advisor should not be a member of or have a vote on the nominations committee(s).

B.2.10. A separate section of the annual report should describe the work of the nominations committee(s), including the process it has used in relation to board appointments. The main role and responsibilities of the nominations committee should

be set out in publicly available, written terms of reference.

### **Relevant statutory requirements**

B.2.13 The governors are responsible at a general meeting for the appointment, re-appointment and removal of the chairperson and the other non-executive directors.

## **B.3 Commitment**

### **Main principle**

B.3.a. All directors should be able to allocate sufficient time to the NHS foundation trust to discharge their responsibilities effectively.

### **Code provisions**

B.3.1. For the appointment of a chairperson, the nominations committee should prepare a job specification defining the role and capabilities required including an assessment of the time commitment expected, recognising the need for availability in the event of emergencies. A chairperson's other significant commitments should be disclosed to the council of governors before appointment and included in the annual report. Changes to such commitments should be reported to the council of governors as they arise, and included in the next annual report. No individual, simultaneously whilst being a chairperson of an NHS foundation trust, should be the substantive chairperson of another NHS foundation trust.

B.3.2. The terms and conditions of appointment of non-executive directors should be made available to the council of governors. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the council of governors before appointment, with a broad indication of the time involved and the council of governors should be informed of subsequent changes.

B.3.3. The board of directors should not agree to a full-time executive director taking on more than one non-executive directorship of an NHS foundation trust or another organisation of comparable size and complexity, nor the chairpersonship of such an organisation.

## **B.7 Re-appointment of directors and re-election of governors**

### **Main principle**

B.7.a All non-executive directors and elected governors should be submitted for re-appointment or re-election at regular intervals. The performance of executive directors of the board should be subject to regular appraisal and review. The council of governors should ensure planned and progressive refreshing of the non-executive directors.

### **Code provisions**

B.7.1. In the case of re-appointment of non-executive directors, the chairperson should confirm to the governors that following formal performance evaluation, the performance of the individual proposed for re-appointment continues to be effective and to demonstrate commitment to the role. Any term beyond six years (e.g., two three-year

terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may, in exceptional circumstances, serve longer than six years (e.g., two three-year terms following authorisation of the NHS foundation trust) but this should be subject to annual re-appointment. Serving more than six years could be relevant to the determination of a non-executive's independence.

### **Relevant statutory requirements**

B.7.4 Non-executive directors, including the chairperson should be appointed by the council of governors for the specified terms subject to re-appointment thereafter at intervals of no more than three years and subject to the 2006 Act provisions relating to removal of a director.

## **REMUNERATION**

### **D.1 The level and components of remuneration**

#### **Main principle**

D.1.a Levels of remuneration should be sufficient to attract, retain and motivate directors of quality, and with the skills and experience required to lead the NHS foundation trust successfully, but an NHS foundation trust should avoid paying more than is necessary for this purpose and should consider all relevant and current directions relating to contractual benefits such as pay and redundancy entitlements.

#### **Code provisions**

D.1.1. Levels of remuneration for the chairperson and other non-executive directors should reflect the time commitment and responsibilities of their roles.