The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust

NOMINATIONS AND REMUNERATION COMMITTEE (Executive Appointments)

TERMS OF REFERENCE

1. Establishment

The Trust has separate committees to deal with the respective nomination and remuneration of Non- Executive Directors and Executive Directors:

- The Nominations and Remuneration Committee (Non-Executive appointments) is a committee of the Trust Governors' Council; and
- The Nominations and Remuneration Committee (Executive Appointments) (the Committee) is a committee of the Trust Board of Directors (The Board)

Relevant legal and regulatory provisions, forming the framework for these terms of reference are at Appendix A.

2. Purpose

2.1 The Nominations and Remuneration Committee (Executive Appointments) reviews and makes recommendations to the Board on the composition, balance, skill mix and succession planning of the Board.

2.2 It has responsibility for overseeing the overall policy for the remuneration of all Trust staff.

2.3 It appoints the Executive Directors and recommends the appointment of the Chief Executive to the Governors' Council, for approval.

2.4 It approves the remuneration packages for the Chief Executive, the Executive Directors and other Directors reporting directly to the Chief Executive.

3. Membership

3.1 The Committee shall consist of all Non-Executive Directors of the Board of Directors and the Chief Executive. The quorum shall be ~~four~~ three members.

3.2 The Chair of the Committee shall be the ~~Senior Independent Director~~Trust Chair.

4. Attendance at Meetings

4.1 The Chief Executive will attend all meetings, except when her/his own performance and remuneration are under consideration. The ~~officer responsible for workforce issues~~Director of Human Resources and Organisational Development shall be in attendance when invited by the Committee and shall provide the Committee with such information as members require. The Company Secretary shall be the secretary to the meeting. Other Officers may be invited to the Committee as requested by the members.

5. Frequency of Meetings

5.1 Meetings of the Committee will be held at least twice a year.

5.2 Meetings will be convened by the Chair and may also be requested by the Chief Executive or nominated deputy.

6. Authority

6.1 The Committee is authorised by the Board to investigate any activity within its terms of reference.

6.2 The Committee is authorised by the Board to obtain ~~outside~~ legal or other independent advice, and to secure the attendance of external individuals with relevant experience and expertise if it considers this necessary.

7. Duties

7.1 To regularly review the composition of the Board, taking into account the future challenges, risks and opportunities facing the Trust and the skills and expertise required within the Board to meet them.

7.2 To ensure a succession plan is in place and appropriate actions are taken to ensure the continued leadership of the Trust.

7.3 To ensure appraisals are undertaken for all members of the Board.

7.4 To ensure an appropriate process is in place for the appointment of the Chief Executive and Executive Directors.

7.5 To appoint the Executive Directors and to recommend the appointment of the Chief Executive to the Governors' Council, for approval.

7.6 In conjunction with the Nomination and Remuneration Committee (Non-Executive Director Appointments) and the Governors' Council, ensure that the process for appointing the Trust Chair and Non-Executive Directors, and the process for appointing the Chief Executive and Executive Directors are aligned and comply with current legal and regulatory provisions.

7.7 To maintain an overview of the relationship between total remuneration and that of the market equivalents for the Chief Executive, the Executive Directors and other Directors reporting directly to the Chief Executive. The Committee will, where appropriate, commission the collection of market information on salaries and other forms of reward to allow it to consider whether remuneration packages

are sufficient to attract, retain and motivate the relevant individuals, whilst ensuring it is not more than is necessary for this purpose.

7.8 To determine appropriate remuneration and terms of service for the Chief Executive, the Executive Directors and other directors reporting directly to the Chief Executive, which will include:

- All aspects of salary (including any performance related element / bonuses);
- Provisions for other benefits, including relocation allowances, pensions and cars;
- Agreement of contracts of employment and if applicable terms of office;
- Arrangements for termination of employment and other contractual terms, including the proper calculation and scrutiny of termination payments taking account of such national guidelines as is appropriate.

7.9 To consider a report annually from the Chair on the performance of the Chief Executive and from the Chief Executive on the performance of Executive Directors and other Directors reporting directly to the Chief Executive and determine any adjustment to salary and PRP.

7.10 To agree the annual inflationary uplift on pay and reward of other staff throughout the Trust, where such uplift and reward are not subject to 'Agenda for Change' provisions.~~.~~

8. Reporting

8.1 The minutes of the Committee's proceedings and resolutions shall be formally recorded and, save for those items of individual confidentiality, circulated to the members of the Committee.

8.2 Minutes may also be made available to auditors and the Audit Committee with the prior approval of the Chair.

8.3 The Chair of the Committee shall report verbally to the Board after each meeting, outlining the key agenda items discussed, while having due regard for the sensitive or confidential nature of some of the Committee's discussions.

9. Urgent Decisions

9.1 Where it is necessary for urgent decisions to be taken between meetings, these decisions shall be taken in accordance with the provisions of Standing Orders 4.2 and 5.2, by the Chair of the Committee and the Chief Executive, having consulted with 2 other non-executive directors. Such urgent decisions shall be ratified and minuted at the next meeting of the Committee.

Owner:	**Trust Chairman**
Author:	**Company Secretary**
Ratified by:	**Board of Directors**
Date:	**~~December 2011~~May 2014**
Review Date:	**~~December 2012~~May 2017**

Appendix A

LEGAL AND REGULATORY PROVISIONS - relating to the nomination and remuneration of the Executive Directors

---

NHS Act 2006 – Schedule 7

17 (3) It is for the non-executive directors to appoint or remove the chief executive.

17 (4) It is for a committee consisting of the chairman, the chief executive and the other non-executive directors to appoint or remove the executive directors.

17 (5) The appointment of a chief executive requires the approval of the board of governors.

18 (2) The corporation must establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors; but the constitution may make provision for those matters to be decided pending the establishment of such a committee.

Monitor's Code of Governance

B.2 Appointment to the Board of Directors

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.

~~The 2006 Act sets out how appointments to the board of directors are made. There should be a formal, rigorous and transparent procedure for the appointment of directors.~~

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.

~~Appointments to the board of directors should be made on merit and based on objective criteria.~~

- ~~Care should be taken to ensure that new appointees have relevant skills and experience to complement other members of the board and enough time to devote to the job. This is particularly important in the case of chairmanships.~~

- ~~The board of directors should also satisfy itself that plans are in place for orderly~~

~~succession of 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 chairman.

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

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.

B~~C~~8~~3~~ Resignation of Directors

Main principle

B.8.a The board of directors is responsible for ensuring ongoing compliance by the NHS foundation trust with its ~~terms of authorisation~~licence, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and contractual obligations. In so doing, it should ensure it retains the necessary skills within its board and directors, and works with the council of governors to ensure there is appropriate succession planning.

Code provision

B~~C~~.8~~3~~.1 The ~~board of directors~~remuneration committee should not agree to an executive member of the board leaving the employment of an NHS foundation trust, except in

accordance with the terms of their contract of employment, including but not limited to service of their full notice period and/or material reductions in their time commitment to the role, without the board first having completed and approved a full risk assessment.

Relevant statutory requirements

B.2.11 It is a requirement of the 2006 Act that the chairperson, the other non- executive directors and – except in the case of the appointment of a chief executive – the chief executive, are responsible for deciding the appointment of executive directors. The nominations committee with responsibility for executive director nominations should identify suitable candidates to fill executive director vacancies as they arise and make recommendations to the chairperson, the other non-executives directors and, except in the case of the appointment of a chief executive, the chief executive.

B.2.12 It is for the non-executive directors to appoint and remove the chief executive. The appointment of a chief executive requires the approval of the council of governors.

D1 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.

Supporting principles

D.1.b Any performance-related elements of executive directors' remuneration should be stretching and designed to promote the long-term sustainability of the NHS foundation trust. They should also take as a baseline for performance any competencies required and specified within the job description for the post.

D.1.c The remuneration committee should decide if a proportion of executive directors' remuneration should be structured so as to link reward to corporate and individual performance. The remuneration committee should judge where to position its NHS foundation trust relative to other NHS foundation trusts and comparable organisations. Such comparisons should be used with caution to avoid any risk of an increase in remuneration levels with no corresponding improvement in performance.

D.1.d The remuneration committee should also be sensitive to pay and employment conditions elsewhere in the NHS foundation trust, especially when determining annual salary increases.

Code provisions

Remuneration policy

D.1.1 Any performance-related elements of the remuneration of executive directors should be designed to align their interests with those of patients, service users and taxpayers and to give these directors keen incentives to perform at the highest levels.

In designing schemes of performance-related remuneration, the remuneration committee should follow the following provisions:

(i) The remuneration committee should consider whether the directors should be eligible for annual bonuses. If so, performance conditions should be relevant, stretching and designed to match the long term interests of the public and patients.

(ii) Payouts or grants under all incentive schemes should be subject to challenging performance criteria reflecting the objectives of the NHS foundation trust. Consideration should be given to criteria which reflect the performance of the NHS foundation trust relative to a group of comparator trusts in some key indicators, and the taking of independent and expert advice where appropriate.

(iii) Performance criteria and any upper limits for annual bonuses and incentive schemes should be set and disclosed.

(iv) The remuneration committee should consider the pension consequences and associated costs to the NHS foundation trust of basic salary increases and any other changes in pensionable remuneration, especially for directors close to retirement.

D.1.3 Where an NHS foundation trust releases an executive director, for example to serve as a non-executive director elsewhere, the remuneration disclosures of the annual report should include a statement on whether or not the director will retain such earnings.

D.1.4 The remuneration committee should carefully consider what compensation commitments (including pension contributions and all other elements) their directors' terms of appointment would give rise to in the event of early termination. The aim should be to avoid rewarding poor performance. Contracts should allow for compensation to be reduced to reflect a departing director's obligations to mitigate loss. Appropriate claw-back provisions should be considered in case of a director returning to the NHS within the period of any punitive notice.

D.2 Procedure

Main principle

D.2.a There should be a formal and transparent procedure for developing policy on executive remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration.

Supporting principles

D.2.b The remuneration committee should consult the chairman and/or chief executive about its proposals relating to the remuneration of other executive directors.

D.2.c The remuneration committee should also be responsible for appointing any independent consultants in respect of executive director remuneration.

D.2.d Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest.

Code provisions

D.2.1 The board of directors should establish a remuneration committee composed of non-executive directors which should include at least three independent non-executive directors. The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board of directors. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the NHS foundation trust.

D.2.2 The remuneration committee should have delegated responsibility for setting remuneration for all executive directors, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of senior management for this purpose should be determined by the board but should normally include the first layer of management below board level.