

TERMS OF REFERENCE

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AUDIT AND RISK COMMITTEE

TERMS OF REFERENCE

1. Constitution and Authority

- 1.1. The Committee is constituted as a Standing Committee of the Board of Directors (the “Board”) of Torbay and South Devon NHS Foundation Trust (the “Trust”). Its constitution and terms of reference are subject to amendment by the Board, to which it remains accountable.
- 1.2. These terms of reference may only be changed with the approval of the Board.
- 1.3. The Committee shall embody the principles of the NHS Constitution and the Trust’s values, at all times.
- 1.4. The Committee shall have the ability to delegate and establish Sub-Committees or other groups as and when required, with ultimate discretion to disband such groups, in accordance with this provision.
- 1.5. These Terms of Reference shall be published on the Trust’s website.

2. Purpose

- 2.1. The purpose of the Committee is to have primary responsibility for reviewing the effectiveness of the framework in place for the identification and management of risks and associated controls, corporate governance and assurance frameworks.
- 2.2. The Committee will have close working relationships with the Quality and Assurance Committee which has responsibility for oversight and monitoring of clinical risks.
- 2.3. The Committee will have a working relationship and due regard with respect to the Integrated Care System’s oversight and assurance mechanisms.
- 2.4. The Committee shall provide the Board of Directors with a means of independent and objective review of financial and corporate governance, assurance processes and risk management across the whole of the Foundation Trust’s activities (including any subsidiary companies of the Trust) both generally and in support of the statement of internal control. In addition the Committee shall:
 - 2.4.1. Ensure independence of external and internal audit;
 - 2.4.2. Ensure that appropriate standards are set and compliance with them is monitored, in all areas that fall within the remit of the Committee; and
 - 2.4.3. Monitor corporate governance (e.g. compliance with terms of licence, constitution, codes of conduct, standing orders, standing financial instructions, maintenance of registers of interests).

- 2.5. The duties of the Committee will be driven by the Trust's objectives and the associated risks. An annual programme of business will be agreed before the start of the financial year; however this will be flexible to new and emerging priorities and risks.
- 2.6. The Committee has no executive powers, other than those delegated in the Scheme of Delegation and specified in these terms of reference.
- 2.7. The Committee will promote local level responsibility and accountability.
- 2.8. This is a Tier 1 Committee, in accordance with the Trust's governance framework.

3. Duties

- 3.1. In pursuance of its purpose, the duties delegated to the Committee are:

3.1.1. Governance, risk management and internal control

- 3.1.1.1. The Committee shall review the establishment and maintenance of an effective system of governance, risk management and internal control, across the whole of the organisation's activities (both clinical and non-clinical), that supports the achievement of the organisations objectives.
- 3.1.1.2. In particular, the Committee will review the adequacy and effectiveness of:
- 3.1.1.2.1. All risk and control related disclosures statements, together with any accompanying Head of Internal Audit opinion, external audit opinion or other appropriate independent assurances, prior to submission to the Board and/or the Council of Governors.
 - 3.1.1.2.2. Statements within the quality account.
 - 3.1.1.2.3. External audit assurance of the quality account (if applicable).
 - 3.1.1.2.4. The underlying assurance processes that indicate the degree of achievement of the Trust's objectives, the effectiveness of the management of principal risks, the appropriateness of the above disclosure statements; and the adequacy and effectiveness of risk appetite/risk appetite governance.
 - 3.1.1.2.5. The policies for ensuring compliance with relevant regulatory, legal and code of conduct requirements and related reporting.
 - 3.1.1.2.6. The policies and procedures for all work related to fraud and corruption as required by NHS Counter Fraud Authority.
 - 3.1.1.2.7. The policies and procedures for all work related to emergency preparedness.

- 3.1.1.3. In carrying out this work the Committee will primarily utilise the work of internal audit, external audit and other assurance functions, but will not be limited to these sources. It will also seek reports and assurances from directors and managers as appropriate, concentrating on the over-arching systems of governance, risk management and internal control, together with indicators of their effectiveness.
- 3.1.1.4. This will be evidenced through the Committee's use of an effective Board Assurance Framework to guide its work and that of the audit and assurance functions that report to it.
- 3.1.1.5. As part of its approach, the Committee will have effective relationships with other key committees (for example, the Quality and Assurance Committee) so that it understands processes and linkages. However, these other committees must not usurp the Committee's role.

3.1.2. Internal Audit

- 3.1.2.1. The Committee shall ensure that there is an effective internal audit function that meets the Public Sector Internal Audit Standards as issued from time to time and provides appropriate independent assurance to the Audit Committee, Chief Executive (as Accountable Officer) and the Board.
- 3.1.2.2. This will be achieved by:
 - 3.1.2.2.1. Considering the provision of the internal audit service, the costs involved and any questions of resignation and dismissal.
 - 3.1.2.2.2. Reviewing and approving the annual internal audit workplan and more detailed programme of work, ensuring that this is consistent with the audit needs of the organisation as identified in the Board Assurance Framework.
 - 3.1.2.2.3. Considering the major findings of internal audit work (and management's response) and ensuring co-ordination between the internal and external auditors to optimise the use of audit resources.
 - 3.1.2.2.4. Ensuring that the internal audit function is adequately resourced and has appropriate experience and standing within the organisation.
 - 3.1.2.2.5. Overseeing the continuing independence of the internal auditor.
 - 3.1.2.2.6. Monitoring the effectiveness of internal audit and carrying out an annual review.

3.1.3. External Audit (Statutory Audit)

- 3.1.3.1. The Committee shall review and monitor the external auditors' independence and objectivity and the effectiveness of the audit process. In particular, the Committee will review the work and

findings of the external auditors and consider the implications and management's responses to their work. This will be achieved by:

- 3.1.3.1.1. Considering the appointment and performance of the external auditors, as far as the rules governing the appointment permit (and make recommendations to the Board and/or Council of Governors when appropriate).
- 3.1.3.1.2. Discussing and agreeing with the external auditors, before the audit commences, the nature and scope of the audit as set out in the annual plan.
- 3.1.3.1.3. Discussing with the external auditors their evaluation of audit risks and assessment of the Trust and associated impact on the audit fee.
- 3.1.3.1.4. Reviewing all external audit reports, including the report to those charged with governance, (before submission to the Board and/or the Council of Governors) and any work undertaken outside the annual audit plan, together with the appropriateness of management responses.
- 3.1.3.1.5. Ensuring that there is in place a clear policy for the engagement of external auditors.

3.1.4. Other Assurance Functions

- 3.1.4.1. The Committee shall review the findings of other significant assurance functions, both internal and external, and consider the risk implications for the governance of the Trust, including its subsidiaries.
- 3.1.4.2. These will include, but will not be limited to, any reviews by Department of Health and Social Care arms-length bodies or Regulators / Inspectors (eg Care Quality Commission, NHS Resolution Scheme etc), and professional bodies with responsibility for the performance of staff or functions (eg Royal Colleges, accreditation bodies etc).
- 3.1.4.3. The Head of Internal Audit and representative of external audit reserves the right to report directly to the Committee if they consider it necessary.
- 3.1.4.4. The Committee will review the adequacy of the clinical audit function.
- 3.1.4.5. In addition, the Committee will review the work of other committees within the organisation, whose work can provide relevant assurance to the Committee's own areas of responsibility. This will particularly include the Trust's Quality Assurance Committee, Board Committees and any other risk management and assurance committees or groups that are established.
- 3.1.4.6. In reviewing the work of the Quality Assurance Committee, and issues around clinical risk management, the Committee should

satisfy itself on the assurance that can be gained from the clinical audit function.

3.1.4.7. Where the Committee considers there is evidence of ultra-vires transactions, evidence of improper acts, or if there are other important matters that the Committee wishes to raise, the Chair of the Committee should raise the matter with the Chairman of the Trust and report its findings to the Board of Directors.

3.1.5. Counter Fraud

3.1.5.1. The Committee shall satisfy itself that the organisation has adequate arrangements in place for counter fraud, bribery and corruption that meet NHS Counter Fraud Authority standards and shall review the outcomes of work in these areas.

3.1.5.2. In accordance with 3.2 of the NHS Counter Fraud Authority's *Fraud Commissioners Standards*, the Committee has: *'stated its commitment to ensuring commissioners achieve these standards and therefore requires assurance that they are being met via NHS Counter Fraud Authority's quality assurance programme'*

3.1.5.3. The Committee will refer any suspicions of fraud, bribery and corruption to the NHS Counter Fraud Authority.

3.1.6. Management

3.1.6.1. The Committee shall request and review reports, evidence and assurances from directors and managers on the overall managements for governance, risk management and internal control.

3.1.6.2. The Committee may also request specific reports from individual functions within the organisation (eg clinical audit).

3.1.6.3. To receive reports of breaches of policy and normal procedure or proceedings, including such as suspensions of the Trust's Standing Orders, in order to provide assurance in relation to the appropriateness of decisions and to derive future learning.

3.1.7. Financial Reporting

3.1.7.1. The Committee shall monitor the integrity of the financial statements of the Trust and any formal announcements relating to the Trust's financial performance.

3.1.7.2. The Committee should ensure that the systems for financial reporting to the Trust, including those of budgetary control, are subject to review as to completeness and accuracy of the information provided.

- 3.1.7.3. The Committee shall review the annual report and financial statements before submission to the Trust, focusing particularly on:
 - 3.1.7.3.1. The wording in governance disclosures and other disclosures relevant to the Terms of Reference of the Committee.
 - 3.1.7.3.2. Changes in, and compliance with, accounting policies, practices and estimation technique.
 - 3.1.7.3.3. Unadjusted misstatements in the financial statements.
 - 3.1.7.3.4. Significant judgements in preparation of the financial statements.
 - 3.1.7.3.5. Significant adjustments resulting from the audit.
 - 3.1.7.3.6. Letter of representation.
 - 3.1.7.3.7. Explanations for significant variances.

3.1.8. Information Governance (IG)

- 3.1.8.1. To receive regular updates on IG compliance (including uptake and completion of data security training), data breaches and any related issues and risks.
- 3.1.8.2. To review the annual Senior Information Risk Owner (SIRO) report, the submission for the Data Security and Protection Toolkit and relevant reports and action plans.
- 3.1.8.3. To receive reports on audits to assess information and IT security arrangements, including the annual Data Security and Protection Toolkit.
- 3.1.8.4. To provide assurance to the Board that there is an effective framework in place for the management of risks associated with information governance.

3.1.9. Whistleblowing

- 3.1.10. The Committee shall review the effectiveness of the arrangements in place for allowing staff to raise (in confidence) concerns about possible improprieties in financial, clinical or safety matters and ensure that any such concerns are investigated proportionately and independently through the Trust's procedures eg Freedom to Speak Up Guardian or Local Counter Fraud Specialist.

4. Reporting

- 4.1. The Committee shall report to the Trust on how it discharges its responsibilities.
- 4.2. The minutes of the Committee's meetings shall be formally recorded by the secretary and submitted to the governing body.
- 4.3. The Chair of the Committee shall draw to the attention of the governing body any issues that require full disclosure to the full governing body or require

executive action. A summary report from the Committee will be presented to the next Trust Board meeting.

4.4. The Committee will report to the Board at least annually on its work in support of annual disclosures, specifically commenting on:

4.4.1. The fitness for purpose of the Board Assurance Framework.

4.4.2. The completeness and 'embeddedness' of risk management in the organisation.

4.4.3. The integration of governance arrangements.

4.4.4. The appropriateness of the evidence that shows the Trust is fulfilling regulatory requirements relating to its existence as a functioning business.

4.4.5. The robustness of the processes behind the quality accounts.

4.5. This annual report should also describe how the Committee has fulfilled its terms of reference and give details of any significant issues that the Committee considered in relation to the financial statements and how they were addressed.

4.6. Any other relevant matter as may arise from time to time, requiring detailed Non-Executive oversight, under the direction of the Chair.

5. Powers

5.1. In accordance with the delegated authority outlined above, the Committee is authorised to seek any information it requires from any member of staff, who shall be under a positive obligation to co-operate with any request made by the Committee.

5.2. The Committee may request the attendance of individuals and authorities from outside the Trust with relevant experience and expertise if it considers this necessary in the best interests of the Trust.

5.3. The Committee derives its power from the Board and has no powers, other than those specifically delegated in these terms of reference.

6. Membership and Attendance

6.1. The Membership shall be defined by the Board under direction of the Chair; for avoidance of doubt membership shall always include five independent non-executive directors as follows:

- Non-Executive Chair of this Committee
- Finance and Performance Committee Chair or representative
- Building a Brighter Future Committee Chair or representative
- People Committee Chair or representative

- Quality Assurance Committee Chair or representative
- 6.2. If any member of the Committee has been disqualified from participating on an item on the agenda, by reason of a declaration of a conflict of interest, then that individual shall no longer count towards the quorum.
 - 6.3. The Chief Finance Officer and Chief Nurse and appropriate internal and external audit representatives shall normally attend meetings of the Committee.
 - 6.4. The counter fraud specialist will attend a minimum of two committee meetings a year.
 - 6.5. Members will possess between them knowledge, skills and experience in: accounting, risk, management, internal, external audit; and technical or specialist issues pertinent to the Trust's business. When determining the membership of the Committee, active consideration will be made to diversity and equality.
 - 6.6. The Chair will be appointed on their account of their specific knowledge, skills and experience making them suitable to chair the Committee.
 - 6.7. The Chair of the Committee shall be independent and therefore may not chair any other committees.
 - 6.8. Regardless of attendance, External Audit, Internal Audit, Local Counter Fraud and Security Management provides will have full and unrestricted rights of access to the Committee and its Chair.
 - 6.9. The Chief Executive (in their capacity as Accounting Officer for the Trust) shall be invited to attend meetings. They should also attend when the Committee considers the annual report and accounts.
 - 6.10. Other executive directors/managers should be invited to attend, particularly when the Committee is discussing areas of risk or operation that are the responsibility of that director/manager.
 - 6.11. Representatives from other organisations (for example, NHS Counter Fraud Authority) and other individuals may be invited to attend on occasion.
 - 6.12. The Trust Secretary (or their nominee) shall be Secretary to the Committee and shall attend to take minutes of the meeting and provide appropriate support to the Chair and committee members.
 - 6.13. At least once a year the Committee should meet privately with the external and internal auditors.
 - 6.14. Members unable to attend a Committee meeting should inform the Secretary to the Committee as soon as possible in advance of the meeting, except in extenuating circumstances.

- 6.15. Unless otherwise determined by the Chairman, the duration of appointments to this Committee shall be for a continuous term, with annual review; for the avoidance of doubt, no member may continue to attend following the completion of their Non-Executive or Executive role at the Trust.
- 6.16. Governor and Devon ICS representatives may be invited to attend as observers.

7. Meeting Administration, Record Keeping and Decision-Making

- 7.1. The Committee shall be supported by a Committee Secretary, or their nominee, who shall be appointed by the Chair.
- 7.2. The duties of the Committee Secretary shall include, the:
- 7.2.1. creation and maintenance of a work plan and reporting schedule;
 - 7.2.2. collation of papers and drafting of the agendas;
 - 7.2.3. record of proceedings and decisions taken by the Committee; including decisions taken in writing outside of the meeting; with such record presented at the following meeting for approval; and
 - 7.2.4. where the Committee have met, virtually or otherwise a record of those present and in attendance should be maintained;
- 7.3. Items for the agenda must be sent to the Committee Secretary a minimum of seven (7) working days prior to the meeting. Urgent items may be raised under any other business.
- 7.4. A decision is taken in accordance with these Terms of Reference when a quorate majority of the members indicate to each other, by any means, that they share a common view on a matter; with each Member holding one vote.
- 7.5. In the event of equality of votes (however communicated) in relation to a specific matter the Chair may exercise a casting vote.

8. Quorum

- 8.1. The quorum necessary for the transaction of business shall be four (4) members; including the Chair, or their nominated deputy.
- 8.2. A duly convened meeting at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the committee.
- 8.3. Deputies shall count towards the quorum.

9. Frequency of Meetings and Notice

9.1. The Committee shall meet as frequently as possible to enable it to discharge all its responsibilities, and otherwise as required, at the discretion of the Chair. Meetings of the Committee shall be called by the Secretary of the Committee at the request of the Chair or any of its members.

9.2. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend no later than five (5) working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees, as appropriate, at the same time.

10. Conduct of Meetings and Conflicts of Interest

10.1. Except as outlined above, meetings shall be conducted in accordance with the provisions of the Trust's Standing Orders.

10.2. As per the Trust's Standards of Business Conduct Policy and Conflicts of Interest Policy, any potential, actual or perceived conflict of interest shall be declared and managed through the Trust's declaration procedure; noting the enhanced obligations of Executive Officers in accordance with the Trust's Fit and Proper Persons Regulations SOP.

10.3. At the commencement of any meeting, or should any potential, actual or perceived conflict arise during a meeting, the relevant Committee member must declare this and recuse themselves from any relevant decision; this shall be formally noted in the minutes of the meeting.

11. Review and Monitoring Effectiveness

11.1. As part of the Trust's committee effectiveness review process, the Committee shall review its collective performance annually. The purpose of this review is to be assured that the Committee is operating at maximum effectiveness in discharging its responsibilities as set out in these terms of reference and, if necessary, to recommend any changes to the Board.

11.2. The Committee shall review its Terms of Reference and membership annually.