



Torbay and South Devon
NHS Foundation Trust

AUDIT AND RISK COMMITTEE

TERMS OF REFERENCE

Version:	4.0
Approved by:	Audit and Risk Committee
Date approved:	18 January 2023
Approved by:	Board of Directors
Date approved:	25 January 2023
Date issued:	25 January 2023
Review date:	January 2024



TORBAY AND SOUTH DEVON NHS FOUNDATION TRUST

AUDIT AND RISK COMMITTEE TERMS OF REFERENCE

1. Constitution

- 1.1 The Trust Board hereby resolves to establish a Committee to be known as the Audit and Risk Committee ('the Committee'). The Committee is a non-executive committee of the governing body and has no executive powers, other than those specifically delegated in these Terms of Reference.
- 1.2 The Committee will adhere to, and be cognisant of the Trust values and strategy at all times.
- 1.3 The Committee is constituted as a standing committee of the Trust Board ('Board'). Its constitution and terms of reference are subject to amendment by the Trust Board.
- 1.4 These Terms of Reference, which should be published on the Trust's website, set out the membership, the remit, responsibilities and reporting arrangements of the Committee and may only be changed with the approval of the Board.

2. Purpose

- 2.1 The Committee will 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.

3. Powers

- 3.1 The Committee is authorised by the Board of Directors to investigate any activity within its terms of reference.
- 3.2 The Committee is accountable to the Board of Directors and any changes to these terms of reference must be approved by the Board of Directors.
- 3.3 The Committee is authorised to seek any information it requires from any member of staff and all members of staff are directed to co-operate with any request made by the Committee.
- 3.4 The Committee is authorised by the Board of Directors to request the attendance of individuals and authorities from outside the Foundation Trust with relevant experience and expertise if it considers this necessary or expedient to the carrying out of its functions.
- 3.5 The Committee is authorised by the Board of Directors to obtain outside legal or other independent professional advice at the expense of the organisation, subject to budgets agreed by the Board.
- 3.6 For avoidance of doubt, the Committee will comply with the Trust's Standing Orders, Standing Financial Instructions and the Scheme of Delegation.

4. Duties and Responsibilities

The duties and responsibilities of the Committee are as follows:

4.1 Integrated governance, risk management and internal control

- 4.1.1 The Committee shall review the establishment and maintenance of an effective system of integrated 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.
- 4.1.2 In particular, the Committee will review the adequacy and effectiveness of:
 - 4.1.2.1 All risk and control related disclosures statements (in particular the Annual Governance Statement), 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.
 - 4.1.2.2 Statements within the quality account.

- 4.1.2.3 External audit assurance of the quality account (if applicable).
- 4.1.2.4 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.
- 4.1.2.5 The policies for ensuring compliance with relevant regulatory, legal and code of conduct requirements and related reporting and self-certifications.
- 4.1.2.6 The policies and procedures for all work related to fraud and corruption as required by NHS Counter Fraud Authority.
- 4.1.3 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 integrated governance, risk management and internal control, together with indicators of their effectiveness.
- 4.1.4 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.
- 4.1.5 As part of its integrated 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.

4.2 Internal Audit

- 4.2.1 The Committee shall ensure that there is an effective internal audit function that meets the *Public Sector Internal Audit Standards 2017* and provides appropriate independent assurance to the Audit Committee, Chief Executive (as Accountable Officer) and the Board.
- 4.2.2 This will be achieved by:
 - 4.2.2.1 Considering the provision of the internal audit service, the costs involved and any questions of resignation and dismissal.
 - 4.2.2.2 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.
 - 4.2.2.3 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.
 - 4.2.2.4 Ensuring that the internal audit function is adequately resourced and has appropriate experience and standing within the organisation.
 - 4.2.2.5 Overseeing the continuing independence of the internal auditor.

4.2.2.6 Monitoring the effectiveness of internal audit and carrying out an annual review.

4.3 External Audit

4.3.1. 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:

4.3.1.1. 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).

4.3.1.2 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.

4.3.1.3. Discussing with the external auditors their evaluation of audit risks and assessment of the Trust and associated impact on the audit fee.

4.3.1.4 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.

4.3.1.5 Ensuring that there is in place a clear policy for the engagement of external auditors to supply non-audit services.

4.4 Other Assurance Functions

4.4.1. 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.

4.4.2 These will include, but will not be limited to, any reviews by Department of Health and Social Care arm's 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 College's, accreditation bodies etc).

4.4.3 The Head of Internal Audit and representative of external audit reserves the right to report directly to the Committee if they consider it necessary.

4.4.4 The Committee will review the adequacy of the clinical audit function.

4.4.5 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 Committee's and any other risk management and assurance committees or groups that are established.

4.4.6 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.

4.4.7 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.

4.5 Counter Fraud

4.5.1 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.

4.5.2 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'.

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

4.6 Management

4.6.1 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.

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

4.6.3 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.

4.7 Financial Reporting

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

4.7.2 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.

4.7.3 The Committee shall review the annual report and financial statements before submission to the Trust, focusing particularly on:

4.7.3.1 The wording in the Annual Governance Statement and other disclosures relevant to the Terms of Reference of the Committee.

4.7.3.2 Changes in, and compliance with, accounting policies, practices and estimation technique.

4.7.3.3 Unadjusted misstatements in the financial statements.

4.7.3.4 Significant judgements in preparation of the financial statements.

4.7.3.5 Significant adjustments resulting from the audit.

4.7.3.6 Letter of representation.

4.7.3.7 Explanations for significant variances.

4.8 Information Governance

4.8.1 To receive regular updates on IG compliance (including uptake and completion of data security training), data breaches and any related issues and risks.

4.8.2 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.

4.8.3 To receive reports on audits to assess information and IT security arrangements, including the annual Data Security and Protection Toolkit.

4.8.4 To provide assurance to the Board that there is an effective framework in place for the management of risks associated with information governance.

4.9 Whistleblowing

4.9.1 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.

5. Reporting

5.1 The Committee shall report to the Trust on how it discharges its responsibilities.

5.2 The minutes of the Committee's meetings shall be formally recorded by the secretary and submitted to the governing body.

5.3 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.

5.4 A summary report from the Committee will be presented to the next Trust Board meeting

5.5 The Committee shall receive a summary report from those Groups reporting in to the Committee.

5.6 The Committee will report to the Board at least annually on its work in support of the Annual Governance Statement, specifically commenting on:

5.6.1 The fitness for purpose of the Board Assurance Framework.

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

- 5.6.3 The integration of governance arrangements.
- 5.6.4 The appropriateness of the evidence that shows the Trust is fulfilling regulatory requirements relating to its existence as a functioning business.
- 5.6.5 The robustness of the processes behind the quality accounts.
- 5.7 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.

6. Membership and Attendance

- 6.1 The Committee shall be appointed by the Board from amongst the independent, Non-Executive Directors of the Trust and shall consist of not less than three members. A quorum shall be three independent members. One of the members will be appointed Chair of the Committee by the Trust. The Chair of the Foundation Trust shall not be a member of the Committee.
- 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 If the quorum has not been reached, then the meeting may proceed if those attending agree, but no decisions may be taken.
- 6.4 The membership shall comprise a Non-Executive Chair and the Non-Executive Chairs of the following Board sub-committee's as standing members of the Committee:
- Finance, Performance and Digital Committee
 - Building a Brighter Future Committee
 - People Committee
 - Quality Assurance Committee
- 6.5 The Chief Finance Officer and Chief Nurse and appropriate internal and external audit representatives shall normally attend meetings of the Committee.
- 6.6 The counter fraud specialist will attend a minimum of two committee meetings a year.
- 6.7 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.
- 6.8 The Chair will be appointed on their account of their specific knowledge, skills and experience making them suitable to chair the Committee.
- 6.9 The Chair of the Committee shall be independent and therefore may not chair any other committees.
- 6.10 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.

- 6.11 The Chief Executive (in their capacity as Accounting Officer for the Trust) shall be invited to attend meetings and should discuss at least annually the process for assurance that supports the Annual Governance Statement. They should also attend when the Committee considers the draft annual governance statement and the annual report and accounts.
- 6.12 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.
- 6.13 Representatives from other organisations (for example, NHS Counter Fraud Authority) and other individuals may be invited to attend on occasion.
- 6.14 The Director of Corporate Governance (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.
- 6.15 At least once a year the Committee should meet privately with the external and internal auditors.
- 6.16 The Chair of the Council of Governors will appoint a Governor to attend meetings of the Committee for the purpose of observing the performance of the external auditor in line with the Governor's duty to appoint the Trust's external audit services. The appointment will be reviewed each year.
- 6.17 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.
- 6.18 A register of attendance will be maintained and the Chair of the Committee will follow up any issues related to the unexplained non-attendance of members. Should continuing non-attendance of a member jeopardise the functioning of the Committee, the Chair will discuss the matter with the member and, if necessary, seek a substitute or replacement.

7. Decision-Making and Voting

- 7.1 Decisions will be taken in accordance with the Standing Orders. The Committee will ordinarily reach conclusions by consensus. When this is not possible, the Chair may call a vote.
- 7.2 Only members of the Committee may vote. Each member is allowed one vote and a majority will be conclusive on any matter.
- 7.3 Where there is a split vote, with no clear majority, the Chair of the Committee will hold the casting vote,
- 7.4 If a decision is needed which cannot wait for the next scheduled meeting, the Chair may conduct business on a 'virtual' basis through the use of telephone, email or other electronic communication.

8. Chair

- 8.1 One of the Non-Executive Directors shall act as Committee Chair. In their absence, one of the other Non-Executive Directors present shall be nominated and appointed as acting Chair of the meeting.
- 8.2 The Chair will liaise with the Committee Secretary to ensure the agenda, reports and documents and minutes are circulated to the Committee members in accordance with section 12.

9. Meeting Administration

- 9.1 The Committee shall be supported administratively by the Director of Corporate Governance (or their nominee), whose duties in this respect will include:
 - 9.1.1 Agreement of the agenda with the Chair and attendees.
 - 9.1.2 Preparation, collation and circulation of papers in good time.
 - 9.1.3 Ensuring that those invited to each meeting attend.
 - 9.1.4 Taking the minutes and helping the Chair to prepare reports to the Board.
 - 9.1.5 Keeping a record of matters arising and issues to be carried forward.
 - 9.1.6 Arranging meetings for the Chair eg, with the internal/external auditors or local counter fraud specialists.
 - 9.1.7 Maintaining records of members' appointments and renewal dates etc.
 - 9.1.8 Advising the Committee on pertinent issues/areas of interest/policy developments.
 - 9.1.9 Ensuring that action points are taken forward between meetings.
 - 9.1.10 Ensuring that Committee members receive the development and training they need.

10. Frequency of meetings

- 10.1 The Committee must meet as frequently as possible to enable it to discharge all its responsibilities. The Committee will meet at least 5 times each year at appropriate times in the reporting and audit cycle.
- 10.2 The Trust, Chief Executive, external auditors or Head of Internal Audit may request a meeting if they consider that one is necessary.
- 10.3 The Committee may meet virtually when necessary and members attending using electronic means will be counted towards the quorum.

11. Meetings

- 11.1 Items for the agenda must be sent to the Committee Secretary a minimum of 7 days prior to the meeting; urgent items may be raised under any other business.
- 11.2 The agenda will be sent out to the Committee members at least 5 days prior to the meeting date, together with the updated action schedule and other associated papers.
- 11.3 Meetings, other than those regularly scheduled as above, shall be summoned by the Committee Secretary at the request of the Chair.

12. Conduct of Meetings

- 12.1 Except as outlined above, meetings shall be conducted in accordance with the provisions of the Trust's Constitution, Standing Orders and Standards of Business Conduct Policy
- 12.2 Members will be expected to conduct business in line with the Trust's values and objectives.
- 12.3 Members must demonstrably consider the equality and diversity implications of decisions they make.

13. Review

- 13.1 As part of the Trust's annual committee effectiveness review process, the Committee shall review its collective performance.
- 13.2 The Committee's Terms of Reference shall be reviewed on an annual basis and approved by the Board of Directors.

14. Monitoring Effectiveness

- 14.1 In order that the Committee can be assured that it 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, the Chair will, once a year, lead an effectiveness review of the Committee.

15. Access

- 15.1 The Head of Internal Audit, representative of external audit and counter fraud specialist have a right of direct access to the Chair of the Committee.
- 15.2 The Chair of the Committee shall be entitled to call and hold private meetings with the External Auditor and Internal Auditor.

Appendix 1

Members and required attendees of the Committee

Members (title)	Required at
Non-Executive Director (<i>Chair</i>)	All meetings
Chair of Board Sub-Committee: <ul style="list-style-type: none">• Finance, Performance and Digital Committee• Building a Brighter Future Committee• People Committee and• Quality Assurance Committee	All meetings
Attendees (title)	Required at
Chief Finance Officer	All meetings
Deputy Director of Finance	All meetings
Chief Nurse	All meetings
Director of Corporate Governance	All meetings
Internal Audit management representative(s)	All meetings
External Audit management representative(s)	All meetings
Local Counter Fraud Specialist	Half-yearly
Governor observer	All meetings
(For minutes) Corporate Governance Manager	All meetings