

**NON-EXECUTIVE DIRECTORS NOMINATION, REMUNERATION
AND TERMS OF SERVICE COMMITTEE**

TERMS OF REFERENCE

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NON-EXECUTIVE DIRECTOR NOMINATIONS, REMUNERATION AND TERMS OF SERVICE COMMITTEE

TERMS OF REFERENCE

1. Constitution

- 1.1 The Non-Executive Director Nominations, Remuneration and Terms of Service Committee ('the Committee') is a sub-committee of the Board of Directors of Torbay and South Devon NHS Foundation Trust.
- 1.2 The Committee in its workings will be required to adhere to the Constitution of Torbay and South Devon NHS Foundation Trust, the Terms of Authorisation and NHS Code of Governance issued by the Independent Regulator for NHS Foundation Trusts. As a sub-committee of the Board of Directors, the Standing Orders of the Trust shall apply to the conduct of the working of the Committee.

2. Membership

- 2.1 Members of the Committee shall be appointed by the Board and shall be made up of the Chairman, Vice-Chair, Senior Independent Director and Chair of the People Committee
- 2.2 The Chief Executive will be expected to attend all meetings of the Committee but shall not be present when discussing the appointment or remuneration of the Chief Executive, nor in the decision making process.
- 2.3 Only members of the Committee have the right to attend Committee meetings, however if a Committee member is unable to attend at short notice, the Chairman may nominate another Non-Executive Director to attend and deputise in their place. In such circumstances the Non-Executive Director attending in place of the Committee member will assume the same powers as the Committee member and their attendance will count towards the quorum.
- 2.4 Other individuals may be invited to attend for all or part of any meeting at the request of the committee. It is expected that a senior HR representative and the Director of Corporate Governance will attend all meetings in an advisory capacity.
- 2.5 The Board shall appoint the Committee Chair who shall be an independent Non-Executive Director. In the absence of the Committee Chair and / or an appointed deputy, the remaining members present shall elect a chair for the meeting.

3. Secretary

- 3.1 The Director of Corporate Governance or their nominee shall act as the Secretary to the Committee.

4. Quorum

- 4.1 The quorum necessary for the transaction of business shall be three independent Non-Executive Directors. A duly convened meeting of the Committee 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.

5. Purpose

- 5.1 The Committee shall meet to consider and review current and future requirements applicable to:
- i) strategic portfolio changes relevant to the posts covered by the Committee's remit;
 - ii) the performance of and the setting of salaries, terms of service and allowances for the posts covered by the Committees remit;
 - iii) the Trust's senior management succession planning arrangements and talent management process;
 - iv) senior managerial competence relating to leadership capability; and
 - v) the allowances as may be payable to Foundation Trust Governors.
- 5.2 The Committee shall meet each year for the purpose of reviewing the performance development reviews of Executive Directors, Associate Directors and defined Senior Managers.
- 5.3 The Committee will meet at other times for the following purposes as determined by the Chair of the Committee:
- i) To keep up to date with relevant national and local developments;
 - ii) To inform the Committee of changes, both local and national, which may impact on the Committee;
 - iii) To proactively seek best practice and bring to the attention of the Committee;
 - iv) To review remuneration policies, including having oversight of those applicable to staff employed on very senior manager terms and conditions;
 - v) To consider proposals for changes in terms and conditions of employment;
 - vi) To consider any matter relating to the continuation in office of any Executive Director including the suspension or termination of service of an individual as an employee of the Trust, subject to the provisions of the law and their employment contract;
 - vii) To consider any in-year variations of salaries and terms and conditions of employment of Executive Directors and Senior Managers who are subject to the annual review process carried out by the Committee;
 - viii) To oversee the process for the nomination of the Chief Executive for approval by the Board (and ratification by the Council of Governors);
 - ix) To oversee the process for the appointment of other Executive Directors, Associate Directors and Company Secretary; and
 - x) To lead the process for the identification and nomination of the chair of all Board Committees and Board post holders ie Senior Independent Director and Deputy Chair.

Guidelines extracted from the NHS Code of Governance are attached in Appendix 2.

6. Notice of Meetings

- 6.1 Meetings of the Committee shall be summoned by the Secretary of the Committee at the request of any of its members.
- 6.2 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 in advance of the meeting. Supporting papers shall be sent to Committee members at the same time.

7. Minutes of Meetings

- 7.1 The Secretary shall minute the proceedings and resolutions of all Committee meetings, including the names of those present and in attendance.
- 7.2 Minutes of Committee meetings shall be circulated promptly to all members of the Committee.
- 7.3 The minutes of the Committee shall record the decisions and report in writing to the Board the basis for its decisions.

8. Duties

The Committee has delegated responsibility for:

- 8.1 Setting remuneration for all Executive Directors and Associate Directors, including from time to time setting remuneration levels of interim posts, and including pension rights and any compensation payments. The Committee shall also recommend and monitor the level and structure of remuneration for senior management. The definition of senior management for this purpose will be determined by the Board, and includes the first layer of management below Board level. (See Appendix I for schedule of employees covered by the Committee's remit.) No director or manager shall be involved in any decisions as to their own remuneration. The Chief Executive shall attend to present their recommendations for Executive Director and Associate Director remuneration (but not their own) and other employees as listed in Appendix I.
- 8.2 In recommending such a policy, take into account all factors which it deems necessary including:
 - i) Observing all legal and contractual obligations as they affect individual post holders;
 - ii) Acting in accordance with the Trust's Standing Orders, Constitution, Terms of Authorisation and NHS Code of Governance issued by the Independent Regulator for NHS Foundation Trusts;
 - iii) Having regard to any directions made by the Secretary of State in so far as they apply to the Trust;
 - iv) Have regard to the guidance in any directives on pay and conditions of employment as issued by the Department of Health in so far as they apply to the Trust;
 - v) Take into account the financial state of the Trust;

- vi) Have regard for legislation on discrimination when considering levels of pay / terms and conditions; and
- vii) Consider the relationship between the remuneration of these posts and that of other grades of staff employed by the Trust. This may include reference to the level of pay awards granted under national pay systems eg. Agenda for Change.

The objective of such a policy shall be to ensure that rewards are fair and appropriate to individual's contributions – having proper regard to the Trust's circumstances and performance and to the provisions of any national arrangements for such members and staff.

- 8.3 Recommend the scope and detail to be included in the annual report concerning basic salary and elements relating to performance including an explanation of the criteria on which performance is based.
- 8.4 Ensure that the criteria presented for the annual review of:
 - i) Increases in basic salaries;
 - ii) Additional bonuses based on performance / achievement of objectives; and
 - iii) Changes in terms and conditions of employment
 are applied objectively to the determination of the award for each Executive Director, Associate Director and defined Senior Manager.
- 8.5 Review the ongoing appropriateness and relevance of the remuneration policy.
- 8.6 Consider all proposed changes to the senior management structure and approve job descriptions for post holders covered by the Committee's remit.
- 8.7 Consider changes within the Executive Directors and / or senior managers pension schemes which may be required on an ad-hoc basis, and which may arise at times of appointment or promotion.
- 8.8 Ensure that contractual terms on termination, and any payments made, are fair ensuring value for money, and that the duty to mitigate loss is fully recognised; taking account of such national guidance and legal obligations including seeking approval from the Treasury for termination of payments as may be appropriate.
- 8.9 Within the terms of the agreed policy and in consultation with the Chair and / or Chief Executive as appropriate, determine the total individual remuneration package, including benefits, of each Executive Director, Associate Director and other Very Senior Managers.
- 8.10 Review and note annually the remuneration trends across the NHS.
- 8.11 Oversee any major changes in employee benefits structures for postholders covered by the Committee's remit.

- 8.12 Oversee any major changes to the process for ensuring compliance with the Fit and Proper Person Regulations;
- 8.13 Monitor the evaluation process for the performance of the Chief Executive.
- 8.14 Agree the policy for authorising claims for expenses from the Chief Executive and Chairman.
- 8.15 Ensure that all provisions regarding disclosure of remuneration are set out in the Annual Report.
- 8.16 Be exclusively responsible for establishing the selection criteria, selecting, appointing and setting the terms of reference for any remuneration consultants who advise the Committee and to obtain reliable, up to date information about remuneration in other NHS Trusts. The Committee shall have full authority to commission any reports or surveys which it deems necessary to help it fulfil its obligations.
- 8.17 Regularly review the structure, size and composition (including the skills, knowledge and experience) of the Board of Directors and make recommendations to the Board with regard to any changes and appropriate process.
- 8.18 Ensure that there is a formal, rigorous and transparent procedure for the appointment of new Executive Directors to the Board which fit the criteria set out by the Committee in particular. The same procedure shall apply to the appointment of Associate Directors and the Company Secretary;
 - (i) to consider candidates from relevant backgrounds; and
 - (ii) to use open advertising or the services of external advisers to facilitate the search.
- 8.19 Keep under review the leadership needs of the Trust, with a view to ensuring the continued capability of the organisation.
- 8.20 Set the allowances as may be payable to Foundation Trust Governors.
- 8.21 Be exclusively responsible for establishing the selection criteria, selecting, appointing and setting the terms of reference for any remuneration consultants who advise the committee on appointments to the Board of Torbay Pharmaceuticals and to obtain reliable, up to date information about remuneration in similar organisations. The committee shall have full authority to commission any reports or surveys which it deems necessary to help it fulfil its obligations.
- 8.22 Consider and approve the establishment of all new posts requiring VSM status and to verify justification if such posts fall outside the VSM pay framework applicable.
- 8.23 Consider and approve all proposals for existing or new posts to be re-classified as VSM posts. In considering such proposals, the Committee shall receive supporting information, which will include relevant national benchmarking data and confirmation that the Trust's standard HR assessment against national provisions and remuneration assessment

processes, Agenda for Change and Doctors and Dentists pay frameworks, have been undertaken and exhausted.

9. Reporting Responsibilities

- 9.1 The minutes of the Committee shall be formally recorded by the Secretary of the Committee and submitted to the Board of Directors. The Chair of the Committee shall draw the attention of the Board to the basis for its decisions.
- 9.2 The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.

10. Decisions of the Committee

- 10.1 Any decisions of the Committee shall be taken on a majority basis. The Chair shall have a casting vote in the event of equality of voting.

11. Other

- 11.1 The Committee shall, at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at a maximum effectiveness and recommend any changes it considers necessary to the Board for approval.
- 11.2 Responsibility for communicating decisions of the Committee in writing to the Chief Executive is vested in the Chair, and for Executive Directors and other Senior Managers this power is vested in the Chief Executive.

12. Authority

- 12.1 The Committee is authorised by the Board to seek any information it requires from any employee of the Trust in order to perform its duties.
- 12.2 In connection with its duties the Committee is authorised by the Board to obtain, at the Trust's expense, any outside legal or other professional advice.

13. NHS Constitution

The Committee will embody the principles of the NHS Constitution in all it does.

APPENDIX 1

SCHEDULE OF POSTS COVERED BY THE COMMITTEE'S REMIT*

Executive Directors

Chief Executive
Deputy Chief Executive
Chief Finance Officer
Chief Nurse
Chief People Officer
Director of Transformation and Partnerships
Chief Operating Officer
Executive Medical Director

Associate Directors

Health and Care Strategy Director

Committee's other duties:

Director of Corporate Governance and Trust Secretary for:

- appraisal
- board recommendation – appointment/dismissal

Very Senior Managers for remuneration comprising:

Executive Directors
Associate Directors (non-voting Board members)
Associate Director of Adult Social Services (seconded to Torbay Council)
Director of Corporate Governance and Trust Secretary
Director of Estates and Facilities
Programme Director (Building a Brighter Future)

TP staff (comprising as at September 2021)

Managing Director
Finance Director
Technical Director
Commercial and Strategy Director
People Director
Head of Manufacturing (VSM contract holder not part of TP Executive Team)
Interim Project Manager (VSM contract holder not part of TP Executive Team)

Executive Directors and Associate Directors direct reports for:

- succession planning
- talent management

Senior Managers (Band 8d and above) for:

- monitoring the level and structure of remuneration for senior management (for this purpose deemed to be band 8d and above)

Posts subject to payment of allowances:

Deputy Chief Executive
Governors (expenses)

*This list is not exhaustive and may vary as posts change within the organisational structure

APPENDIX 2

NON-EXECUTIVE DIRECTOR NOMINATIONS, REMUNERATION AND TERMS OF SERVICE COMMITTEE

GUIDELINES RELATING TO THE NHS CODE OF GOVERNANCE (WORKING DOCUMENT)

These guidelines support the Non-Executive Director Nominations, Remuneration and Terms of Service Committee ('the Committee') Terms of Reference. They reference to the NHS Foundation Trust Code of Governance, especially the following Code Provisions:

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 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.

Process

The review process will be determined and undertaken as identified in the Committee's Terms of Reference.

B.2.2 Directors of the board of directors and governors on the council of governors should meet the 'fit and proper' persons test described in the provider licence. Trusts should also abide by the updated guidance from the CQC regarding appointments to senior positions in organisations subject to CQC regulations.

Process

The appointment letter for newly appointed directors includes a declaration statement to this effect which is signed on appointment. The code of conduct for directors places an obligation on directors to inform the Trust of a change of circumstances to this effect.

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 Nomination Committee(s) should evaluate the balance of skills, knowledge and experience on the Board and, in 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.

Process

The nominations process will be for the appointments of Chief Executive and other Executive Directors (See C.1.10). The process will not be for the appointment of the Chair and Non-Executive Directors (See Code provision B.2.5, B.2.6 and B.2.7).

- B.2.4** The Chairman or an independent Non-Executive Director should Chair the Nomination Committee(s).

Process

The Chairman shall chair the Committee as stated in the Terms of Reference.

- B.2.11** It is a requirement of the 2012 Act that the Chairman, 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 Chairman, the other Non Executive Directors and, except in the case of the appointment of a Chief Executive, the Chief Executive.

Process

The Board of Directors have established the Committee for the appointment of the Chief Executive and other Executive Directors and Associate Directors and Company Secretary. There is no further nominations process.

- 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.

Process

The Committee is to note that this provision is set out in the Constitution.

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

Process

The Committee is to note that this is set out in the Terms of Reference

- 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 Chairmanship of such an organisation.

Process

The Committee is to note that Executive Directors are required to declare such interests under the Foundation Trust's Code of Conduct.

- B.4.2** The chairperson should regularly review and agree with each director their training and development needs as they relate to their role on the board.

Process

In respect of Executive Directors, the Chair provides the Chief Executive with appraisal information in relation to their role as Board director.

- C.1.14** A separate section of the Annual Report should describe the work of the Committee(s), including the process it has used in relation to Board appointments.

Process

A report will be produced to reflect the work of the Committee and the Committee responsible for Non-Executive Director nominations, remuneration and terms of service.

Remuneration policy

- B.8.1** The 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.

Process

The Committee will act in accordance with the NHS Code of Governance.

- 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 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. In general, only basic salary should be pensionable.

Process

The review process will be determined and undertaken as identified in the Terms of Reference.

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.

Process

The Committee is established and Terms of Reference are available. The process when / if appointing remuneration consultants will be in accordance with the Code of Governance.

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.

Process

The procedure for setting remuneration will be determined and undertaken as identified in the Terms of Reference.