

TERMS OF REFERENCE

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NON-EXECUTIVE DIRECTORS NOMINATION, REMUNERATION AND TERMS OF SERVICE 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 consider and review current and future requirements applicable to:
 - 2.1.1. strategic portfolio changes relevant to the posts covered by the Committee’s remit;
 - 2.1.2. the performance of and the setting of salaries, terms of service and allowances for the posts covered by the Committees remit;
 - 2.1.3. the Trust’s senior management succession planning arrangements and talent management process;
 - 2.1.4. senior managerial competence relating to leadership capability; and
 - 2.1.5. the allowances as may be payable to Foundation Trust Governors.
- 2.2. The Committee shall meet each year for the purpose of reviewing the performance development reviews of Executive Directors, Associate Directors and defined Senior Managers.
- 2.3. The Committee will meet at other times for the following purposes as determined by the Chair of the Committee:
 - 2.3.1. To keep up to date with relevant national and local developments;
 - 2.3.2. To inform the Committee of changes, both local and national, which may impact on the Committee;

- 2.3.3. To proactively seek best practice and bring to the attention of the Committee;
- 2.3.4. To review remuneration policies, including having oversight of those applicable to staff employed on very senior manager terms and conditions;
- 2.3.5. To consider proposals for changes in terms and conditions of employment;
- 2.3.6. 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;
- 2.3.7. 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;
- 2.3.8. To oversee the process for the nomination of the Chief Executive for approval by the Board (and ratification by the Council of Governors);
- 2.3.9. To oversee the process for the appointment of other Executive Directors, Associate Directors and Company Secretary; and
- 2.3.10. For the avoidance of doubt the Chair will be responsible for the identification and nomination of chairs of all Board Committees and Board post holders ie Senior Independent Director and Vice Chair; the Board as a collective holds a right of veto for any such appointments.

2.4. The Committee will promote local level responsibility and accountability.

2.5. 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. 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 1 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 1.

3.1.2. In recommending such a policy, take into account all factors which it deems necessary including:

3.1.2.1. Observing all legal and contractual obligations as they affect individual post holders;

3.1.2.2. Acting in accordance with the Trust's Standing Orders, Constitution, Terms of Authorisation and the Code of Governance for NHS Provider Trusts issued by NHS England;

3.1.2.3. Having regard to any directions made by the Secretary of State in so far as they apply to the Trust;

3.1.2.4. 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;

3.1.2.5. Take into account the financial state of the Trust;

3.1.2.6. Have regard for legislation on discrimination when considering levels of pay / terms and conditions; and

3.1.2.7. 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.

3.2. 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.

3.3. Ensure that the criteria presented for the annual review of:

3.3.1. Increases in basic salaries;

3.3.2. Additional bonuses based on performance / achievement of objectives; and

3.3.3. 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.

3.4. Review the ongoing appropriateness and relevance of the remuneration policy.

3.5. Consider all proposed changes to the senior management structure and approve job descriptions for post holders covered by the Committee's remit.

- 3.6. 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.
- 3.7. 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.
- 3.8. 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.
- 3.9. Review and note annually the remuneration trends across the NHS.
- 3.10. Oversee any major changes in employee benefits structures for postholders covered by the Committee's remit.
- 3.11. Oversee any major changes to the process for ensuring compliance with the Fit and Proper Person Regulations.
- 3.12. Monitor the evaluation process for the performance of the Chief Executive.
- 3.13. Agree the policy for authorising claims for expenses from the Chief Executive and Chairman.
- 3.14. Ensure that all provisions regarding disclosure of remuneration are set out in the Annual Report.
- 3.15. 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.
- 3.16. 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.
- 3.17. 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 Trust Secretary.
- 3.18. To consider candidates from relevant backgrounds.
- 3.19. To use open advertising or the services of external advisers to facilitate the search.

- 3.20. Keep under review the leadership needs of the Trust, with a view to ensuring the continued capability of the organisation.
- 3.21. Set the allowances as may be payable to Foundation Trust Governors.
- 3.22. 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.
- 3.23. 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.
- 3.24. Any other relevant matter as may arise from time to time, requiring detailed Non-Executive oversight, under the direction of the Chairman.

4. Powers

- 4.1. 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.
- 4.2. 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.
- 4.3. The Committee derives its power from the Board and has no powers, other than those specifically delegated in these terms of reference.

5. Membership and Attendance

- 5.1. The Membership shall be defined by the Board under direction of the Chair; for avoidance of doubt membership shall always include: Chair, Vice-Chair, Senior Independent Director and Chair of the People Committee
- 5.2. 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 take part in the decision-making process.
- 5.3. 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.

- 5.4. 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 workforce representative and the Trust Secretary will attend all meetings in an advisory capacity.
- 5.5. 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.
- 5.6. 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. Meeting Administration, Record Keeping and Decision-Making

- 6.1. The Committee shall be supported by a Committee Secretary, or their nominee, who shall be appointed by the Chair.
- 6.2. The duties of the Committee Secretary shall include, the:
 - 6.2.1. creation and maintenance of a work plan and reporting schedule;
 - 6.2.2. collation of papers and drafting of the agendas;
 - 6.2.3. 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
 - 6.2.4. where the Committee have met, virtually or otherwise a record of those present and in attendance should be maintained.
- 6.3. 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.
- 6.4. 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.
 - 6.4.1. In the event of equality of votes (however communicated) in relation to a specific matter the Chair may exercise a casting vote.

7. Quorum

- 7.1. The quorum necessary for the transaction of business shall be three (3) members; including the Chair, or their nominated deputy.
- 7.2. 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.

7.3. Deputies shall count towards the quorum.

8. Frequency of Meetings and Notice

8.1. The Committee shall meet as required and at least two (2) times a year 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.

8.2. 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.

9. Conduct of Meetings and Conflict of Interests

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

9.2. 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.

9.3. 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.

10. Review and Monitoring Effectiveness

10.1. 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.

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

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
Chief Strategy and Transformation Officer
Chief Operating Officer
Chief Medical Officer
Director of Corporate Governance and Trust Secretary

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)
Workplace Director
Programme Director (Building a Brighter Future)

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