

## Council of Governors meeting 16<sup>th</sup> January 2018

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### Updated Non-Executive Director (NED) appointment and re-appointment procedure

#### Situation

The Trust has a procedure in place for the Appointment and Re-appointment for Non-Executive Directors (including the Chair) which had not been updated since 2010 when it was approved at the Council of Governors March 2010 meeting. The purpose of this paper is to ask the Council of Governors to approve the updated version.

#### Background

The updated version (below as Appendix 1) was discussed at the 19<sup>th</sup> September 2017 Governor Nominations and Remuneration Committee and again at its 30<sup>th</sup> November 2017 meeting.

#### Assessment

Following a detailed review of the proposed changes, the Nominations and Remuneration Committee concluded that there were no material changes to the procedure, as it was still fit for purpose. A summary of the main amendments agreed is provided below:

- 'Board of Governors' was updated to read 'Council of Governors'
- The full name of the Nominations and Remuneration was added/amended where necessary, as these Committees merged in September 2013
- Points of clarification that were added under:
  - Paragraph 3.1 – to clarify that the Committee may choose to speak to the NED due up for re-appointment as a matter of course, prior to making any recommendation; this replaced paragraph 3.5.
  - Paragraph 9 – to specify the number of Governors expected to be involved in the interview panel following the merger of the Nominations and Remuneration Committees
  - Paragraph 9.1 - to include the option to use stakeholder groups as part of the appointment process

This paper being presented to the Council has been previously circulated to all Governors to provide the opportunity to raise any concerns or queries. No feedback from Governors has been received.

## **Recommendations**

The Council of Governors is asked to approve the updated NED appointment and re-appointment procedure.

**GOVERNORS NOMINATIONS AND REMUNERATION COMMITTEE**

**PROCEDURE FOR APPOINTMENT OR RE-APPOINTMENT OF A NON-EXECUTIVE  
DIRECTOR  
(INCLUDING THE CHAIR)**

- 1 In the case of an appointment arising by expiration of the term of office, the Chair of the Trust (or in the case of the expiration of the Chair's term of office, the Senior Independent Director and a Governor member of the Nominations and Remuneration Committee) will ask the Non-Executive Director at least 6 months before the expiration of the term of office whether that person wishes to seek re-appointment and inform the Committee of the response.
- 2 Where the existing Chair seeks re-appointment the Nominations and Remuneration Committee should look at the existing candidate against the current job and person specification for the Chair of the Trust. In addition in deciding what recommendation to make to the Council of Governors regarding re-appointment, the Nominations and Remuneration Committee should also consider the following matters:-
  - 2.1 The Chair's past performance with particular regard to delivery of the Chairs' Objectives. The Senior Independent Director should confirm to the Governors whether, following formal performance evaluation in accordance with the agreed appraisal procedure, the performance of the Chair continues to be effective and demonstrates commitment to the role. It is the performance of the Chair as Chair of the Board of Directors that is relevant here. The process should still be used as an opportunity to evaluate all relevant performance issues including those relating to Governors but it should not be the focus of consideration in relation to re-appointment.
  - 2.2 Any changes in the Chair's other significant commitments will be relevant. The new position in respect of commitment should be compared against the time commitment expected.
  - 2.3 Whether the current job and person specification for the Chair remains appropriate. They should consult the Chair and the remainder of the Board of Directors particularly the Chief Executive and (either direct or via the Senior Independent Director) the Non-Executive Directors to ascertain whether in the view of the Board of Directors the job and person specification should be revised. If revisions are believed appropriate by the Nominations and Remuneration Committee they should discuss these with the Chair and their recommendations to the Council of Governors should include those revisions and a

summary of how well the Committee believe the Chair matches the revised job and person specification.

- 2.4 If the Nominations and Remuneration Committee is minded not to recommend the Chair's re-appointment they should, before making their recommendation to the Council of Governors, meet the Chair to obtain any relevant information the Chair can provide.
- 2.5 The re-appointment if it happens should be for a specified term of no longer than three years (with annual reappointment if the Chair has served for six years). Any Chair that has already served six years or more in the post should be rigorously reviewed and the process should take into account the need for progressive refreshing of the Board of Directors.

Once the processes have been undertaken the Nominations and Remuneration Committee should make a recommendation to the Council of Governors as to whether to re-appoint for their final decision.

- 3 Where an existing Non-Executive Director other than the Chair seeks re-appointment the Nominations and Remuneration Committee should look at the existing candidate against the current job description and person specification for their role. In addition in deciding what recommendation to make to the Council of Governors the Committee should take into account the following matters:-

- 3.1 Consideration should be given to the candidates past performance at the Trust in their role. The Chair of the Trust should confirm to the Governors whether following formal performance evaluation in accordance with the agreed appraisal procedure, the performance of the individual Non-Executive Director proposed for re-appointment continues to be effective and demonstrates commitment to the role.

[The Committee may choose to meet with the Non-Executive Director seeking re-appointment to explore any issues they feel to be pertinent to his/her potential re-appointment.](#)

- 3.2 Any changes in the independence (as defined in the Code of Governance) of the Non-Executive Director should be taken into account.
- 3.3 Any changes in the candidates other significant commitments will be relevant. The position in respect of commitment should be compared against the time commitment expected.
- 3.4 Whether the current job and person specification for the Non-Executive Director remains appropriate. They should consult via the Chair, Non Executive Director where reappointment is being considered and the remainder of the Board of Directors (particularly the other Non-Executive Directors and the Chief Executive) to ascertain

whether in their view the job and person specification should be revised. The consideration of this should take into account the qualifications, skills and experience of the other Non-Executive Directors and any identified gaps.

If revisions are believed appropriate by the Nominations and Remuneration Committee they should discuss these via the Chair with the Non Executive Director and their recommendations to the Council of Governors should include these revisions and a summary of how well the Committee believe the Non-Executive Director matches the revised job and person specification.

- 3.5 The re-appointment if decided upon should be for a specified term of no longer than three years (with a one year maximum if the candidate has served for six years). Any candidate who has served six years or more should be rigorously reviewed and the process should take into account the need for progressive refreshing of the Board of Directors.

Once these processes have been undertaken the Nominations and Remuneration Committee should make a recommendation to the Council of Governors as to whether to re-appoint for their final decision.

- 4 The recommendation of the Nominations and Remuneration Committee to the Council of Governors whether to re-appoint the Chair or other Non-Executive Directors should set out the process followed, the matters considered and the reasons for their recommendation. The Council of Governors should then decide whether the re-appointment is in the best interests of the Trust. The process of considering the re-appointment by the Nominations and Remuneration Committee and the final decision of the Council of Governors should take no longer than three months to enable time for a full selection process to take place should re-appointment not be approved.

- 5 Where the Chair or Non-Executive Director does not wish to seek re-appointment or that re-appointment is not approved by the Council of Governors or the Chair or Non-Executive Director vacancy arises for reasons other than the expiration of the term of office the Nominations Committee shall, with appropriate support from the Trust Executive, undertake the process of filling the vacancy and may select and appoint appropriate search and recruitment consultants (“external consultants”). In making such selection the Nomination and Remuneration Committee should consider the external consultant’s:-

- 5.1 Previous experience of board level recruitment.
- 5.2 Independence from the Trust.
- 5.3 Track record of successful appointments.
- 5.4 Previous experience of public sector recruitment.

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3.5 . If the Nominations Committee is minded not to recommend the Non-Executive Directors re-appointment they should before making their recommendations to the Board of Governors meet the Non-Executive Director to obtain any relevant information the Non-Executive Director can provide.¶

- 5.5 Knowledge of the Health Sector and candidates' research ability.
- 5.6 Selected principles and processes such as candidate assessment techniques.
- 5.7 Ability to provide any necessary interview and selection training to the Nominations Committee.
- 5.8 Quoted fees.
- 6 In considering the qualification, skills and experience required for the vacant position:-
  - 6.1 In the case of the Chair, Nominations and Remuneration Committee should seek via the Senior Independent Director the views of the Board of Directors.
  - 6.2 In the case of a Non-Executive Director vacancy the Nominations and Remuneration Committee should seek via the Chair the views of the Board of Directors and particularly take into account in formulating the person and job specification, the qualifications, skills and experience of the other Non-Executive Directors and any identified gaps.

The information gathered above should then inform the Nominations and Remuneration Committee's decision as to the job and person specification.

- 7 Before the recruitment and search process commences the Council of Governors must, following an appropriate recommendation from the Nominations and Remuneration Committee, approve the job and person specification, the appointment of the external consultants and the search and advertising strategy.
- 8 The Nominations and Remuneration Committee with the assistance of the external consultants will then initiate the recruitment and search process. Once the application period is over the Nominations and Remuneration Committee advised by the external consultants will sift through the applications received with the purpose of producing a diverse field of strong candidates for interview seeking where appropriate advice from the external consultants and the views of the Board of Directors. Ideally the short list for interview should contain no fewer than two candidates with four or five being the ideal number.

- 9. The Nominations and Remuneration Committee should select an interview panel from amongst its number. The panel should normally consist of three governor members of the Nominations and Remuneration Committee plus the Chair, save where the Chair is being replaced in which case the existing Chair will not be part of the panel. If the Nominations and Remuneration Committee does not include a Service User or Carer Governor, consideration should be given by the panel to appointing a Governor from one or other of those constituencies to form part of the panel. In any event the majority of the panel must

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be governors. In addition a Chairperson of an external NHS Trust or NHS Foundation Trust will be co-opted to the interview panel.

9.1 The Committee may choose to set up stakeholder groups as part of the selection process which may include other Governors, Executive Directors and Non-Executive Directors. Feedback from stakeholder groups should be considered by the panel in reaching its conclusion.

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9.2 The interview panel should consider any training needs it may have to be able to properly conduct the short listing and interviewing and undertake any appropriate training prior to those processes.

9.3 The chosen external consultants may sit on the interview panel as independent consultants but they will not take part in the decision as to which candidate to recommend for appointment.

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9.4 As included in 'Your Statutory Duties: A reference guide for NHS Foundation trust Governors' (Page 37), the Committee may also invite the Director of HR and OD to observe the interview panel process and to advise as necessary but they will not take part in the decision as to which candidate to recommend for appointment.

10 Following the completion of the selection process and before the Board Council of Governors make a decision the views of the Board of Directors (particularly the Chief Executive) should be sought (in the case of a Chair appointment via the Senior Independent Director, otherwise via the Chair) and reported to the Governors.

11 Having conducted the interviews and reached its conclusion as to which candidate to recommend for appointment, the Nominations and Remuneration Committee should report to a meeting of the Council of Governors with the following:-

11.1 A summary of the process followed by the Nominations Committee including the selection criteria where appropriate (discussed in private session).

11.2 A summary of the number of applications received the number of candidates shortlisted and interviewed, and a copy of the application form and curriculum vitae of the recommended candidate. The report must at all times ensure proper confidentiality is maintained in accordance with the Trust's procedures (discussed in private session).

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12 The Council of Governors should then make the appointment decision considering the issues set out in the report and any other factors it considers relevant (endorsed in public session). It should satisfy itself that all applicable law and advice has been complied with and the process followed was legal and appropriate and that the proposed appointee has the right qualities to meet the job description from the role.

13. Appropriate references from each candidate should be sought and unless the references have already been seen and approved by the Nominations and Remuneration Committee any appointment will be subject to satisfactory references being received. The references when received will be circulated to the Nominations and Remuneration Committee members for their approval. If appropriate references are not received or those received are not considered acceptable by the Nominations and Remuneration Committee they will make the recommendation they consider appropriate to the Council of Governors who will reconsider the appointment in the light of the recommendation of the Nominations and Remuneration Committee.

14 [The appointment or re-appointment of the NED will be subject to the successful candidate meeting the requirements of the Fit and Proper Person regulations.](#)

15 The Director of Corporate Governance will ensure that the appropriate Terms and Conditions for the chosen appointee are sent to them for signature immediately after the decision of the Council of Governors to appoint them. Those Terms and Conditions are to have been previously approved by the Council of Governors at the formal recommendation of the Nominations and Remuneration Committee.

16 Once the appointment decision is made and in accordance with the procedures relating to appraisal and objective setting approved by the Council of Governors, in the case of the Chair, the Senior Independent Director and the Governors should set the appointee objectives for the forthcoming year, and in the case of the Non-Executive Director, the Chair should set the appointee objectives for the coming year.

17 The full process for the appointment/re-appointment of the Chair should be described in the Trust Annual Report for the year in which the appointment is made.

18 Following completion of any re-appointment/appointment process the Nominations and Remuneration Committee shall review what was done and make any appropriate recommendations to the Council of Governors for changes to this procedure.

19 This appointment procedure and any subsequent appointments will be made in accordance with the Trust "Managing Equality and Diversity in Employment Policy" which aims to ensure that no individual is discriminated against, either directly or indirectly, on the grounds of their age, disability (including Mental Health Discrimination), gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

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[Updated December 2017](#)