

## NOMINATIONS AND REMUNERATION COMMITTEE

### TERMS OF REFERENCE

#### 1 CONSTITUTION

By resolution of the Trust Board and in accordance with Monitor's Code of Governance for Foundation Trusts (2013) (the "Code")<sup>1</sup>, a Committee of the Trust is established, to be known as the Nominations and Remuneration Committee ("the Committee") (SO 5.7.3).

The Standing Orders of the Board of Directors (SO), including those provisions that apply to potential conflicts of interest, shall, so far as they are applicable and with appropriate alteration, apply to meetings of the Committee.

#### 2 AUTHORITY

2.1 The Committee has no executive powers other than those specified in these Terms of Reference or otherwise by the Trust Board in its Scheme of Delegation.

2.2 The Committee is authorised to investigate any activity within its Terms of Reference. It is authorised to seek any information it requires from any employee and all employees are directed to co-operate with any request made by the Committee.

2.3 The Committee is authorised to obtain independent professional advice as it considers necessary in accordance with these Terms of Reference.

#### 3 MEMBERSHIP

3.1 Membership of the Committee shall consist of the Chairman of the Trust, at least three other non-executive directors of the Trust and the Chief Executive (SO 5.7.3).

3.2 The Chairman or an independent non-executive director should chair the Committee (Code B.2.4).

#### 4 MEETINGS AND QUORUM

4.1 Meetings will be held as required but at least once a year. Meetings of the Committee may be called at the request of the Chairman or any three members of the Committee.

4.2 To be quorate, at least half the total number of the members of the Committee must be present. Attendance at the meeting may be by teleconference or videoconferencing at the discretion of the Committee Chair.

4.3 Members of the Committee shall be disqualified from participating in its discussions on any matter and/or from voting on any resolution of the Committee by reason of the declaration of a conflict of interest.

#### 5 ATTENDANCE

5.1 Only members of the Committee are entitled to be present at its meetings. The Committee may however invite non-members to attend its meeting as it considers necessary.

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<sup>1</sup> The Code can be found at <https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>  
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First approved by the Trust Board on: 25.11.16 and last reviewed on 6 July 2022

5.2 The secretary to the Committee shall be the Trust Board Secretary.

## 6 DUTIES

The duties of the Committee are as follows:

### 6.1 Short-listing & appointment of Executive Directors, including Chief Executive

6.1.1 Approve a description of the role and capabilities required for any particular appointment as executive director having evaluated the balance of skills, knowledge and experience already on the Board and in the Trust (Code B.2.3).

6.1.2 Identify suitable candidates for appointment as executive directors and refer short-lists of candidates to relevant interview panels with respect to vacancies as they arise (Code B.2.11) ensuring that there is appropriate focus on optimising diversity and inclusion in the membership of the Board in line with national guidance and best practice.

6.1.3 For the purpose of clarity, the process for appointment of a Chief Executive is set out in diagrammatic form at Annex A to these Terms of Reference. Taking into account the recommendations of the interview panel, it is for the non-executive directors, including the Chairman of the Trust, to appoint the Chief Executive (Constitution 22.1, SO 5.7.2, Code B.2.12). NB the appointment of the Chief Executive requires the approval of the Council of Governors (Constitution 22.2, Code B.2.12).

6.1.4 For the purpose of clarity, the process for appointment of an executive director is set out in diagrammatic form at Annex B to these Terms of Reference. Taking into the account the recommendations of the relevant interview panel, it is for the non-executive directors, including the Chairman of the Trust, and the Chief Executive, to appoint the executive directors of the Trust (SO 5.7.3(a), Code B.2.11, Constitution 22.4).

### 6.2 Short-listing of non-executive directors

6.2.1 Advise the Council of Governors on the qualification skills and experience required to fill any actual or potential vacancy for non-executive director (Code B.2.7).

6.2.2 Seek and shortlist suitable candidates for appointment as Chairman of the Board and other non-executive directors in circumstances of actual or anticipated vacancy in any of these roles. In doing so the Committee shall have due regard to the balance of skills, knowledge and experience of the Board, the needs of the Trust (SO 5.7.3(b)) and ensure that there is appropriate focus on optimising diversity and inclusion in the membership of the Board in line with national guidance and best practice.

6.2.3 Refer suitable candidates short listed by the Committee (as per para 6.2.2 above) to the Appointments and Remuneration Committee of the Council of Governors for interview (SO 5.7.4).

### 6.3 Succession Planning

6.3.1 Regularly review the structure, size and composition of Board of Directors and make recommendations to the Board where appropriate (Code B.2.1).

6.3.2 Ensure that appropriate processes are in place with regard to succession planning, both for appointments to the Board and senior management posts within the Trust, taking into account the challenges and opportunities facing the Trust and the skills, qualities, diversity and expertise required (Code B.2.1).

#### 6.4 Fit and Proper Persons Test

6.4.1 Directors on the Board of Directors should meet the fit and proper persons test (Code B.2.2; CQC Regulation 5)<sup>2</sup>. When shortlisting candidates for appointment to the Board of Directors, or approving such appointments, the Committee shall request and obtain such assurance as it considers reasonable and necessary, in light of relevant national guidance<sup>3</sup>, in order to satisfy itself that the fit and proper persons test is met and that there is appropriate documentary evidence to this effect.

6.5 Develop mechanisms to ensure that the Committee is adequately informed of comparative levels of remuneration for executive directorships, and those other senior posts which come within the Committee's remit, in other organisations and other Foundation Trusts in particular. This may involve the use of external professional advisers, as required at the discretion of the Committee.

6.6 Exercise delegated responsibility to determine the total individual remuneration package for all Executive Directors (including the Chief Executive) and any other post-holders as may be specified by the Trust Board from time to time. This will include basic salary, pension rights, benefits in kind, any incentive arrangements and compensation commitments on early termination (Constitution 27.2) (Code D.2.2).

6.7 Recommend and monitor the level and structure of remuneration for senior Trust managers. 'Senior Trust managers' for this purpose refers to those managers reporting directly to executive directors and receiving a salary equivalent to or above that of Band 9 of the NHS Agenda for Change pay scale structure.

6.8 Consider what compensation commitments (including pension contributions and all other elements) directors' terms of appointment would entail in the event of early termination, with the aim of avoiding rewarding poor performance and reflecting a departing director's obligation to mitigate loss. Appropriate claw-back provisions should be considered in case of a director returning to the NHS within a period of any putative notice (Code D.1.4).

6.9 Determine, in any circumstance that the Trust releases an executive director to serve as a non-executive director elsewhere, whether or not the director will retain any associated earnings and a statement to this effect should be included in the remuneration disclosures of the annual report (Code D.1.3)<sup>4</sup>.

#### Performance related pay

6.10 Ensure that any performance related elements of the remuneration of post-holders falling within the remit of the Committee are designed to align their interests with those of patients, service users and taxpayers and to give those post-holders keen incentives to perform at the highest levels (Code D.1.1).

<sup>2</sup> <http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors>

<sup>3</sup> [http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Fit\\_proper\\_person\\_test\\_guidance\\_providers.pdf](http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Fit_proper_person_test_guidance_providers.pdf)

<sup>4</sup> The Committee should not agree to full-time executive directors 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 (Code B.3.3)

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- 6.11 In designing any scheme of performance-related remuneration, the Committee should follow the following provisions:
- 6.11.1 the Committee should consider whether relevant post-holders 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;
  - 6.11.2 payouts or grants under all incentive schemes should be subject to challenging performance criteria reflecting the objectives of the Trust. Consideration should be given to criteria which reflect the performance of the Trust relative to a group of comparator trusts in some key indicators and the taking of independent and expert advice where appropriate;
  - 6.11.3 performance criteria and any upper limits for annual bonuses and incentive schemes should be set and disclosed;
  - 6.11.4 the Committee should consider the pension consequences and associated costs to the Trust of basic salary increases and any other changes in pensionable remuneration especially for postholders close to retirement (Code D.1.1).

#### Resignation of Directors

- 6.12 The Committee should not agree to an executive director 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 (Code B.8.1).

## **7 REPORTING**

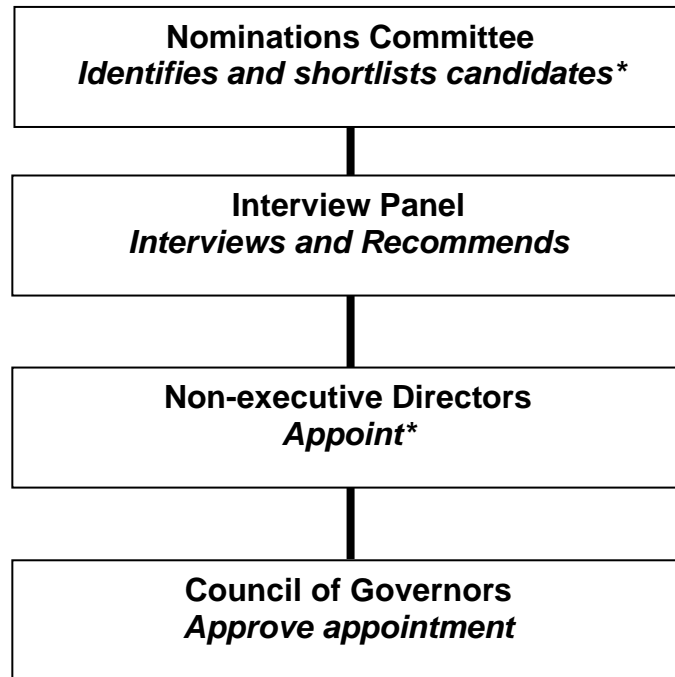
Minutes are to be taken of meetings of the Committee and circulated to its members. The Chair of the Committee shall draw to the attention of the Trust Board any issues that require its particular attention, or require it to take action. A separate section of the Annual Report should describe the work of the Committee, including the process that it has used in relation to Board appointments (Code B.2.10).

Date approved by the Trust Board: 6 July 2022

Date for next review: July 2023

## ANNEX A

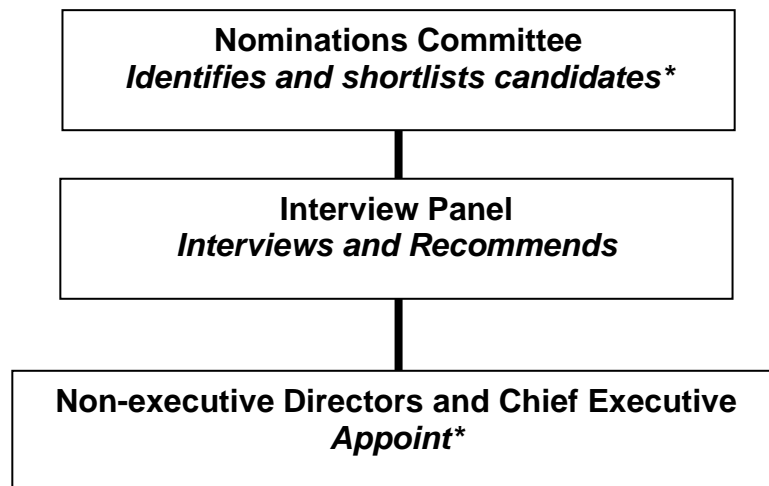
### PROCESS FOR APPOINTMENT OF CHIEF EXECUTIVE



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## ANNEX B

### PROCESS FOR APPOINTMENT OF EXECUTIVE DIRECTOR (OTHER THAN CHIEF EXECUTIVE)

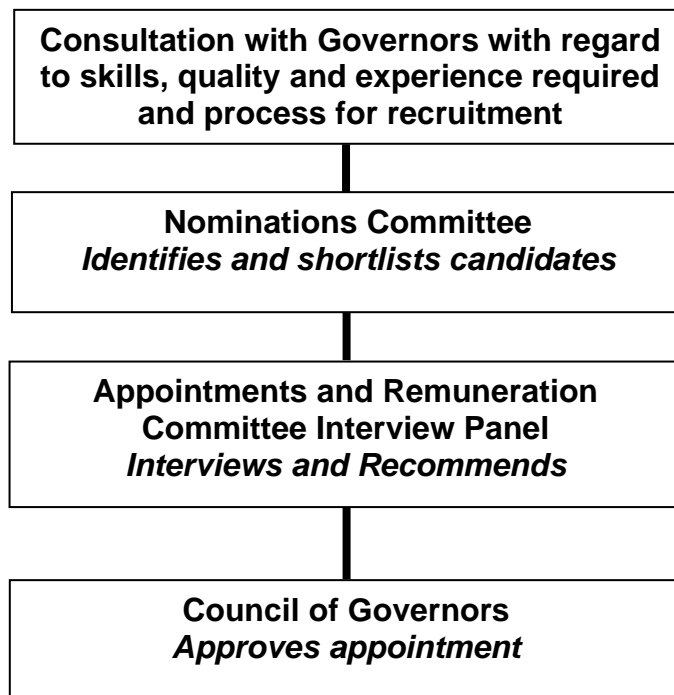


\* When shortlisting candidates or making appointments, appropriate assurance should be obtained, in light of relevant national guidance, in order to ensure that the fit and proper persons test is met and that there is documentary evidence to this effect (as per 6.4.1 above)

## ANNEX C

### PROCESS FOR APPOINTMENT OF NON-EXECUTIVE DIRECTORS (INC CHAIRMAN)

(for further detail see Annex D below)



## ANNEX D PROCESS FOR APPOINTMENT OF NON-EXECUTIVE DIRECTORS (INC CHAIRMAN)

This process is as set out in the FT Constitution, FT Code of Governance, Standing Orders and relevant Terms of reference. It involves two separate bodies with slightly similar names but different composition and functions:

- the Board of Directors - Nominations & Remuneration Committee
- the Council of Governors - Appointments & Remuneration Committee

### **1. Nominations & Remuneration Committee – advises on preferred qualifications, skills & experience**

- Regularly review the structure, size and composition of Board of Directors (Code B.2.1) (ToR 6.3.1)
- Advise the Council of Governors on the qualification, skills and experience required to fill any actual or potential vacancy for non-executive director (Code B.2.7) (ToR 6.2.1)

### **2. Appointments and Remuneration Committee – agrees JD/Person Spec**

- Agree person specifications defining the role and capabilities required for appointment as non-executive director (including Chairman of the Trust), including an assessment of the expected time commitment recognising the need for availability in the event of emergencies (Code C.1.7) (ToR 6.1.2)

### **3. Nominations & Remuneration Committee – identifies & shortlists candidates\***

- Seek and shortlist suitable candidates for appointment as Chairman of the Board and other non-executive directors in circumstances of actual or anticipated vacancy in any of these roles. (ToR 6.2.2)
- In doing so the Committee shall have due regard to the balance of skills, knowledge and experience of the Board, the needs of the Trust and ensure that there is appropriate focus on optimising diversity and inclusion in the membership of the Board in line with national guidance and best practice.
- Refer suitable candidates short listed by the Committee to the Appointments and Remuneration Committee of the Council of Governors for interview (SO 5.7.4) (ToR 6.2.3).

### **4. Appointments and Remuneration Committee - Interviews and recommends**

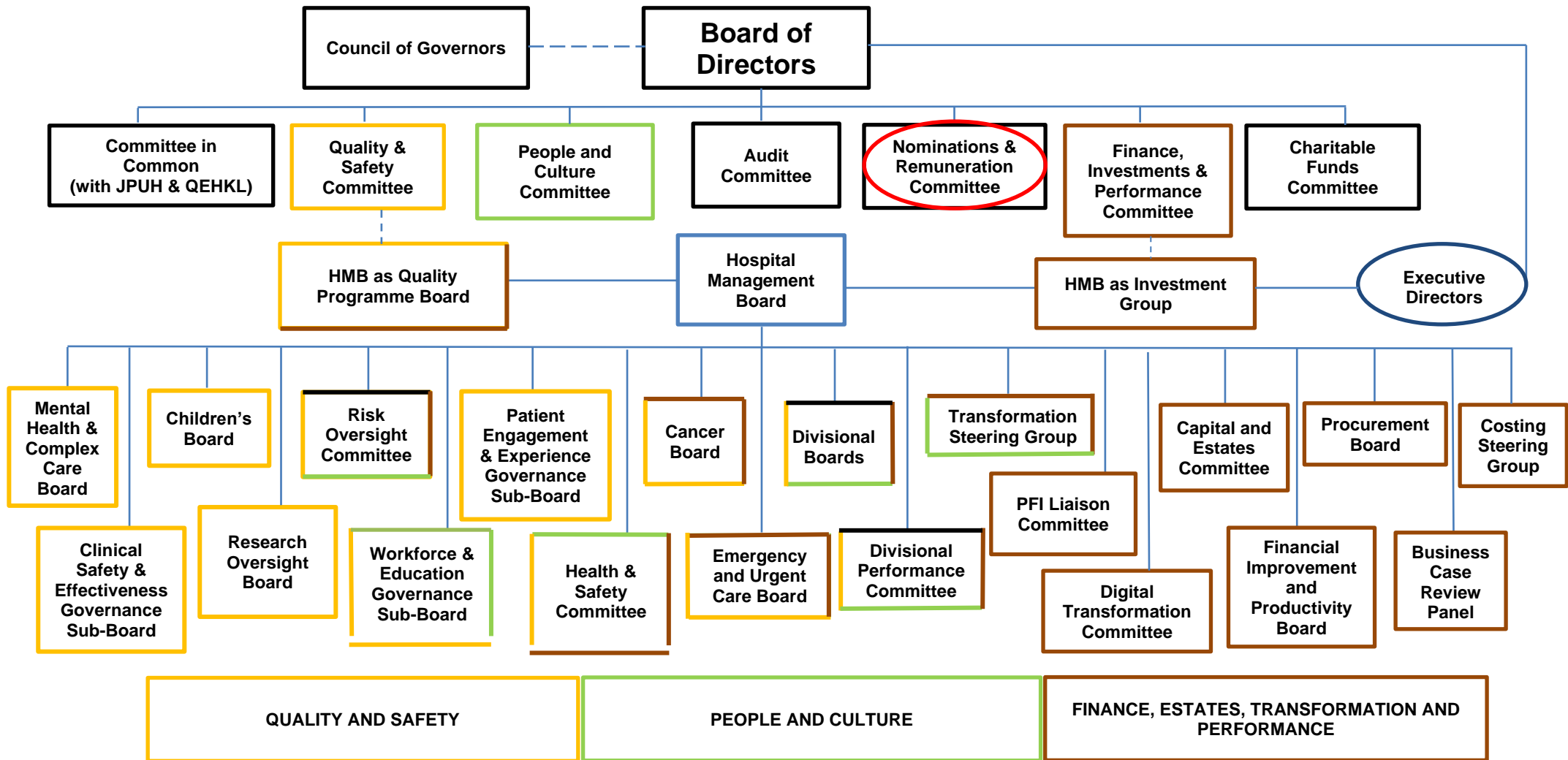
- Interview candidates nominated by the Nominations & Remuneration Committee and make recommendations to the Council for appointment in accordance with the Constitution (Code C.1.4; Constitution 20.1) (ToR 6.1.4)

### **5. Council of Governors - Makes appointment\***

- Appoint or reappoint the Chairman of the Trust and its non-executive directors in accordance with the Constitution and having due regard to the recommendations of the Appointments and Remuneration Committee of the Council of Governors (Constitution Annexe 8, 20.1) and having taken into account the views of the Board of Directors on the qualifications, skills and experience required for each position as non-executive director (ToR 5.3)
- The governors are responsible at a general meeting for the appointment.....of the chairperson and the other non-executive directors (Code B.2.13)

\* When shortlisting candidates or making appointments, appropriate assurance should be obtained, in light of relevant national guidance, to ensure that the fit and proper persons test is met and that there is documentary evidence to this effect

# Board of Directors and Management Board Reporting and Accountability Structure



As at July 2022

Nominations and Remuneration Committee Terms of Reference  
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