

Governors Council

Report of:	Chairman
Title:	Principles for Appointment of Non Executive Directors
Date:	9 th March 2007
Action:	For approval

1. Summary

- 1.1 The attached paper outlines the current process, considers the Monitor Code of Governance published on 29th September 2006 and proposes how appointments should be managed within this Trust.
- 1.2 It was considered and approved at the Nomination & Remuneration Committee meeting on 11th October 2006. The Governors Council approved the timetable for the recruitment process that has taken place for the Non Executive Director vacancy.
- 1.3 Formal approval is required for all parts of this process.
- 1.4 The performance and appraisal arrangements to be used from this year for the Chairman and Non Executive Directors are currently being finalised.

2. Recommendation

- 2.1 The Governors Council is asked to approve the recommendations.

Non Executive Directors – Principles for Appointment

1. Background

The purpose of this report is to outline the existing arrangements for non executive directors, compare them with the Monitor Code of Governance and propose new arrangements required as an NHS Foundation Trust.

The James Paget University Hospitals NHS Foundation Trust has a complement of five non executive directors (NEDs) and a non executive chairman, established by its constitution. The current incumbents are:

Name	Title	Appointed	Expiry date	Last Appraisal	Date
John Hemming	Chairman	Nov 2001	July 2009	Outstanding	April 06
Jean Mason	Vice Chairman	Sept 2001	Nov 2008	Outstanding	April 06
Ken Gaylard	Chair of Audit	Mar 2004	Feb 2008	Outstanding	April 06
Annette Stannard	NED	Jan 2003	July 2007	Satisfactory	June 06
Hugh Roberts	NED	Nov 2005	Oct 2009	Satisfactory	April 06
ANO					
Rita Carter	Associate NED	(Nov 1997) Nov 2005	Oct 2007	Satisfactory	April 06

Rita Carter was appointed an Associate NED in November 2005 for a two year period to support the Foundation Trust application, and her post was non voting. The person appointed to the vacant NED post was not able to take up the appointment immediately, and subsequently is not able to take up the role since he has been appointed to a chair role elsewhere in the NHS. On Monitor's suggestion Rita was given voting rights until the Trust is able to appoint a new NED, whereupon she will revert to non voting. This preserves the balance of the Board of Directors: five executive directors, five non executive directors and the chairman.

2. History

Previously, the NEDs were appointed by the Appointments Commission for a four year term and undertook an annual appraisal, the Chairman appraising the NEDs and reporting back the results to the Appointments Commission. The Chair was appraised by the Chairman of the Strategic Health Authority, again reporting back to the Appointments Commission. With satisfactory performance (not a given!!) the NED could expect to be reappointed for a second term without having to reapply in open competition. A third term, of two years was a possibility, but that necessitated reapplying and open competition for the privilege of two more years. Ten years in one role was the maximum permitted.

3. New Regime

As a Foundation Trust, responsible to the local community not to the Strategic Health Authority, the Governors are responsible for recruiting, appointing, remunerating and establishing contractual terms for the Chairman and Non Executive Directors. Extracts from Monitor's Code of Governance state the following:

3.1 Nominations Committee(s)

There should be a nomination process for the identification and nomination of executive and non-executive directors. There may be one nominations committee responsible for the identification and nomination of executive and non-executive directors or two nominations committees. If there are two, one would be responsible for the nomination of executive directors and the other for identification and nomination of non-executive directors. (In its constitution the James Paget has decided that there will be two committees, one responsible for executive recruitment, one for non executive recruitment). The nomination committee(s) should evaluate the balance of skills, knowledge and experience on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment of both executive and non-executive directors, including the chairman. The chairman or an independent non-executive director should chair the committee(s).

The governors are responsible at a general meeting for the appointment, re-appointment and removal of the chair and the other non-executive directors. They should agree with the nominations committee a clear process for the nomination of a new chair and non-executive directors. Once suitable candidates have been identified the nominations committee should make recommendations to the board of governors. When considering the appointment of non-executive directors, the board of governors should take into account the views of the board of directors on the qualifications, skills and experience required for each position.

3.2 Chairman

For the appointment of a chairman, the nomination committee should prepare a job specification defining the role and capabilities required including an assessment of the time commitment expected, recognising the need for availability in the event of emergencies. A chairman's other significant commitments should be disclosed to the board of governors before appointment and included in the annual report. Changes to such commitments should be reported to the board of governors as they arise, and included in the next annual report.

No individual, simultaneously with being a chairman of an NHS foundation trust, should be the chairman of another NHS foundation trust. The terms and conditions of appointment of non-executive directors should be made available for inspection. The letter of appointment should set out the expected time commitment. Non-executive directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board of governors before appointment, with a broad indication of the time involved and the board of governors should be informed of subsequent changes.

3.3 Reporting

The annual report should describe the process followed by the board of governors in relation to appointments of the chairman and non-executive directors. It is a requirement of the 2003 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.

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 board of governors.

A separate section of the annual report should describe the work of the nominations committee(s), including the process it has used in relation to board appointments.

3.4 Appointment terms and conditions

Non-executive directors, including the chairman, should be appointed by the board of governors for specified terms subject to re-appointment thereafter at intervals of no more than three years and to the 2003 Act provisions relating to the removal of a director. The chairman should confirm to governors that, following formal performance evaluation, the performance of the individual proposed for re-election continues to be effective and to demonstrate commitment to the role. Any term beyond six years (e.g. two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board.

Non-executive directors may serve longer than nine years (e.g. three three-year terms), subject to annual re-election. Serving more than nine years could be relevant to the determination of a non-executive director's independence (as set out in provision A.3.1).

3.5 Evaluation

The board of governors which is responsible for the appointment and re-appointment of non-executive directors, should take the lead on agreeing a process for the evaluation of the chair and the non-executives, with the chairman and the non-executives. The outcomes of the evaluation of the chairman and the non-executive directors should be agreed by governors. The governors should bear in mind the desirability of using the senior independent director to lead the non-executive directors in the evaluation of the chairman.

The board of governors should assess its own collective performance and its impact in the NHS foundation trust.

4. Supporting principles from Monitor Code

Individual evaluation of directors should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board, identifying individual and collective development needs and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

Levels of remuneration for the chairman and other non-executive directors should reflect the time commitment and responsibilities of their roles.

The board of governors is responsible for setting the remuneration of non executive directors and the chair. The board of governors should consult external professional advisers to market-test the remuneration levels of the chairman and other non-executives at least once every three years and when they intend to make a large change to the remuneration of a non-executive director.

5. Proposal for James Paget University Hospitals NHS Foundation Trust

5.1 Performance

An annual performance assessment should be carried out for each non executive director by the Chairman and reported back to this committee. It will include Board attendance, Committee responsibilities and commitments, contribution and performance. A similar report will be prepared for the chairman under the leadership of the Senior Independent Director. The Committee might wish to consider the appropriateness of a 360 degree assessment of the chairman being carried out every two years. A summary of one undertaken this year is attached for information.

5.2 Terms of Office

Monitor proposes that the normal term of a NED and the chairman should be for specified terms subject to reappointment thereafter at intervals of no more than three years.

Our proposal should be for the normal term of office to be for three years. The committee may wish to consider that a non executive in their first term of office with a satisfactory or greater performance assessment may expect to be reappointed for a second term without competition. This is of benefit both to the organisation, who benefit from the individual's knowledge and experience of the hospital, and the individual, who will not have to prepare for and go through the interview process. In my experience both as an individual and from appointing new NEDs, it takes 9 to 18 months for an individual to start to make significant contributions to the Trust.

5.3 Nomination of NEDs and Chairman

When a vacancy occurs or is forecast (such as at the end of a NED's term of office) the Board of Directors should specify the qualifications, skills and experience required for the new NED e.g. finance, real estate, marketing etc. and inform the Governors Council Nomination and Remuneration Committee.

The Committee will wish to decide how best to advertise the vacancy and progress applications. The Trust's Human Resources Department may be an appropriate vehicle or an external agency may be used. A long list of applicants would then be presented to the Committee. The Governors will select an interview panel consisting of the chairman (or in the case of the role of chairman, the Senior Independent Director), two governors and an independent assessor, who will shortlist the applicants and select the most suitable through interview. The final decision needs ratification by the full governors council.

A competence based process should be used for running the applications and interview. Governors may wish to establish training in competence based recruiting. The committee may also wish to nominate potential panel members.

5.4 Remuneration

A separate paper deals with remuneration.

6. Recommendations

The Committee is asked to approve:

1. An annual performance assessment for each NED carried out by the chairman and reported back to the Committee.
2. Under the leadership of the senior independent director, a similar process to be undertaken for the chairman.
3. The normal term of office is 3 years.
4. Subject to a successful first term of office with a satisfactory or greater performance assessment, an NED may be reappointed for a second term without competition.
5. The Nomination & Remuneration Committee will manage the process for appointing to a vacant position following specification of the skills required by the Board of Directors.