

30th April 2015

Item No 8(c)

Council of Governors: Summary Sheet

Title of Paper:

Non-Executive Director Terms and Conditions

Presented By:

Professor Alan Walker, Chair

Action Required:

For Information

For Ratification

For a decision

For Feedback

Vote required

For Receipt

To which duty does this refer?

Holding non-executive directors individually and collectively to account for the performance of the Board	
Appointment, removal and deciding the terms of office of the Chair and non-executive directors	X
Determining the remuneration of the Chair and non-executive directors	X
Appointing or removing the trust's auditor	
Approving or not the appointment of the trust's chief executive	
Receiving the annual report and accounts and auditor's report	
Representing the interests of members and the public	
Approving or not increases to non-NHS income of more than 5% of total income	
Approving or not acquisitions, mergers, separations and dissolutions	
Jointly approving changes to the trust's constitution with the Board	
Expressing a view on the Trust's forward plans	
Consideration on the use of income from the provision of goods and services from sources other than the NHS in England	
Monitoring the activities of the Trust to ensure that they are being conducted in a manner consistent with its terms of authorisation and the constitution.	
Monitoring the Trust's performance against its targets and strategic aims	

How does this item support the functioning of the Council of Governors?

The Council of Governors is responsible for all non-executive director appointments and as such is required to agree and approve the terms and conditions of appointment.

Author of Report:

Sam Stoddart

Designation of Author:

Deputy Board Secretary

Date:

20th April 2015

SUMMARY REPORT

Report to: Council of Governors
Date: 30th April 2015
Subject: Non-Executive Director Terms and Condition of Appointment
From: Sam Stoddart, Deputy Board Secretary

1. Purpose

<i>For Approval</i>	<i>For a collective decision</i>	<i>To report progress</i>	<i>To seek input from</i>	<i>For information</i>	<i>Other (please state below)</i>
✓					
<ul style="list-style-type: none"> To agree the terms and conditions for future Non-Executive director appointments. 					

2. Summary

The Nomination & Remuneration Committee (NRC) were advised of the need to update the Trust's terms and conditions of Non-Executive Directors in line with the new Fit and Proper Persons Regulation of the Health and Social Care Act 2008 (Regulated Activities). Guidance has been issued to all Trusts to ensure compliance which has been adopted by the Trust for approval by the NRC. This was duly approved by NRC at its meeting of 30th March for final approval by the Council of Governors. As part of the terms and conditions, the NRC agreed to review NED remuneration towards the end of 2015 when national benchmarking data is made publically available. The outcome of this discussion will be fed back to the Council of Governors.

3. Next Steps

The new terms and conditions have been amended to reflect NRC discussions and to ensure compliance with new fundamental standards.

4. Required Actions

Council are asked to approve the terms and conditions for future Non-Executive Director appointments.

5. Monitoring Arrangements

The Human Resources Department have viewed and approved the terms and conditions as being in alignment with Trust policies and procedures. The Board Secretary will inform the NRC should any future standards result in the need to amend terms and conditions.

6. Contact Details

Sam Stoddart, Deputy Board Secretary
 Email: Samantha.stoddart@shsc.nhs.uk
 Telephone: (0114) 2718825

Non-Executive Director Terms and Conditions of Service

This Agreement is made the _____ day of _____ 20__ between:

_____ ; and **Sheffield Health & Social Care NHS Foundation**

Trust, which has its Head Office at Fulwood House, Old Fulwood Road, Sheffield, S10 3TH.

1. INTERPRETATION

1.1 Within this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“The 2006 Act”	means the National Health Service Act 2006;
“The Board”	means the board of directors of the Trust, as referred to in schedule 7, paragraph 15(1) of the 2006 Act, constituted in accordance with the Trust’s constitution;
“The Chair”	means the person appointed by the council of governors under schedule.7 paragraph 17(1) of the 2006 Act to be the Chairman of the Trust;
“The Chief Executive”	means the person appointed by the non-executive directors under schedule 7, paragraph 17(3) of the 2006 Act to be the Chief Executive and Accounting Officer of the Trust and whose appointment is approved by the council of governors at a general meeting under schedule 7, paragraph 17(5) of the 2006 Act;
“The Council of Governors”	means the council of governors of the Trust, as referred to in schedule7, paragraph 7(1) of the 2006 Act, constituted in accordance with the Trust’s constitution;
“The Trust”	means Sheffield Health & Social Care NHS Foundation Trust;
“Agreement”	means this agreement;
“Constitution”	means the Trust’s constitution, as amended from time to time;
“Intellectual Property Rights”	means patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets)

and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

- “Invention” any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium.
- “Party” means either the employee or the Trust and “Parties” means both of them;
- “Provider Licence” means the licence issued to the Trust by Monitor under s.87 Health and Social Care Act 2012;
- “Regulated Activities Regulations” means The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
- “You” or “your” means (NED NAME) of XXXXX (add personal address).

- 1.2 Headings are used for convenience only and shall not affect the construction of this Agreement.
- 1.3 The appendices to this Agreement form part of (and are incorporated into) this Agreement.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to any document such as the Trust’s Constitution and the Trust’s policies are references to those documents as they may be amended from time to time.

2. STATUTORY BASIS FOR APPOINTMENT

- 2.1 Non-Executive Directors hold a statutory office under the 2006 Act. Your appointment is made by the Council of Governors using its powers under schedule 7, paragraph 17(1) of the 2006 Act. This appointment does not create any contract of service or contract for services between you and the Trust.

3. EMPLOYMENT LAW

- 3.1 As an office-holder, you are neither an employee nor a worker. This appointment does not fall within the jurisdiction of Employment Tribunals, nor is there any entitlement for compensation for loss of office.

4. THIS AGREEMENT

- 4.1 This Agreement constitutes the whole agreement between you and the Trust and supersedes any prior written or oral agreements, representations or understandings between the Parties. The Parties confirm that they have not entered into this Agreement

on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

4.2 No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

4.3 Any amendments to this Agreement can only be made by the Council of Governors following, if necessary, appropriate consultation with you.

5. POST TITLE AND REPORTING ARRANGEMENTS

5.1 Your appointment is to the position of Non-Executive Director, with full voting rights as a member of the Board.

5.2 You shall perform such statutory and other duties and exercise such powers in relation to the Trust as set out in the role description previously provided to you and as the Trust or the Board may from time to time require. You shall serve the Trust to the best of your ability and use your best endeavours to promote the interests and welfare of the Trust.

5.3 You shall report to the Chair. Additionally, Schedule 7, paragraph 10A of the 2006 Act places a duty on the Council of Governors to hold the non-executive directors individually and collectively to account for the performance of the Board.

6. TERM AND TERMINATION

6.1 This Agreement shall commence on XX XXXX 20XX and, unless terminated earlier, shall expire three/four* (delete as appropriate) years after that date.

6.2 You may apply for reappointment at the end of your term of office in accordance with the Constitution, but there is no absolute right to reappointment. All appointments are subject to an open recruitment process.

6.3 You may terminate this Agreement at any time by giving notice in writing to the Chair. You are required to give a minimum of three months' notice. Your resignation will be effective on the earlier of the date specified in the notice or the date three months from when the notice is given.

6.4 Your appointment may be terminated by the Council of Governors on any of the following grounds:

6.4.1 That the Council of Governors is of the opinion that it is not in the interest of the health service that you should continue to hold office;

6.4.2 Your non-attendance at three (3) meetings of the Board of Directors within a period of twelve (12) calendar months;

6.4.3 Your failure to comply properly with the requirements of the Constitution with regard to pecuniary interests in matters under discussion at meetings of the Board of Directors or Council of Governors (e.g. failure to disclose such an interest);

6.4.4 Disqualification from membership of the Board of Directors.

- 6.5 Your appointment may be terminated by the passing of a resolution by three-quarters of the members at a general meeting of the Council of Governors in accordance with the process set out at paragraph 10.4 of Annexe 7 of the Constitution.
- 6.6 Upon termination of this Agreement, howsoever caused, you agree to:
- 6.6.1 immediately deliver to the Trust all Trust property which is in your possession or under your control;
 - 6.6.2 irretrievably delete any information relating to the business of the Trust stored on any magnetic or optical disk or memory card and all matter derived from such sources which is in your possession or under your control outside of the Trust's premises; and
 - 6.6.3 if requested, provide a signed statement that you have complied with the obligations under this clause.

7. REMUNERATION AND ALLOWANCES

- 7.1 As a consequence of your appointment, you are entitled to be remunerated by the Trust for so long as you continue to hold office as a Non-Executive Director.
- 7.2 The current rate of remuneration payable to a Non-Executive Director is £12,000 per annum. The rate of remuneration will be reviewed at regular intervals by the Council of Governors, with any increases to salary effective from 1 April. The Council of Governors shall not be obliged to increase your salary in connection with any review. Any changes to remuneration will be notified to you in writing.
- 7.3 Additional remuneration may also be payable if you are appointed to one of the following positions:
- 7.3.1 Senior Independent Director (additional £2,000 p/a)
- 7.4 You will be paid monthly in arrears on the 27th of each month, unless the 27th falls on a weekend, in which case payment will be made on the Friday before, by credit transfer into a bank or building society account of your choice. The Trust reserves the right to pay you earlier if reasonably appropriate, for example at Christmas or as a result of Bank Holidays.
- 7.5 Remuneration is taxable and subject to Class 1 National Insurance contributions, which will be deducted at source. Any queries relating to these arrangements should be taken up with HM Revenue and Customs. This appointment does not fall within the remit of the NHS Pension Scheme.
- 7.6 You shall be refunded all reasonable out of pocket expenses necessarily incurred by you on Trust business. These expenses shall be approved by the Chair or in such other manner as the Trust may reasonably require and shall be subject to the production of such vouchers, receipts or other evidence of actual payment of the expenses as are required by policies or regulations of the Trust from time to time.
- 7.7 On termination of your appointment, you shall only be entitled to such fees as may have accrued to the date of termination, together with reimbursement in accordance with clause 7.6 of expenses properly incurred before that date.

8. TIME COMMITMENT

- 8.1 You agree to devote whatever time is reasonably necessary for the proper performance of your duties and as is appropriate to the role of a Non-Executive Director. It is anticipated that this will be broadly equivalent to a minimum of 3 days per month, to be worked flexibly including some evenings.
- 8.2 You are expected to attend all meetings of the Board, except where illness or occasional holiday commitments genuinely preclude this.
- 8.3 By accepting this appointment, you confirm that you are able to allocate sufficient time to meet the expectations of your role within the Trust. The written agreement of the Chair must be obtained before you accept any additional commitment that might affect the time that you are able to devote to your role as a Non-Executive Director of the Trust.

9. CONFLICT OF INTERESTS

- 9.1 You shall not, without the written consent of the Chair, engage in any outside employment or accept any commitments that may give rise to a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 9.2 It is acknowledged that you have declared any conflicts of interest that are apparent at present. If you become aware of any (further) actual or potential conflicts of interest, these must be disclosed in accordance with the requirements of the Trust's Constitution. Failure to disclose such interest may be considered by the Trust to be gross misconduct and/or may constitute grounds for your removal from office.

10. APPRAISAL

- 10.1 It is a condition of your term of office that you participate in the Trust's schemes for appraising your performance at such intervals and in such manner as may be provided in the Constitution. You agree to participate in any induction, training and mentoring schemes that may be recommended by any appraisal carried out on your performance or as required of you by the Trust from time to time.

11. OTHER CONDITIONS OF APPOINTMENT

- 11.1 It is a condition of your appointment that you abide by:
- 11.1.1 the Trust's Constitution, as amended from time to time;
 - 11.1.2 the Trust's Code of Conduct for Directors, Governors and Employees, as amended from time to time;
 - 11.1.3 the Trust's Standing Orders, Standing Financial Instructions and Scheme of Delegation, as amended from time to time;
 - 11.1.4 the Trust's Provider Licence, as amended from time to time; and
 - 11.1.5 the policies and procedures that are adopted by the Trust, as amended from time to time insofar as they are applicable to your role

It is your responsibility to familiarise yourself with these documents and to keep abreast of any amendments. Copies are available on request from the Trust's Human Resources department.

- 11.2 It is a condition of your appointment that you agree to the public disclosure of information by the Trust in relation to your employment in accordance with the 2006 Act, the NHS Foundation Trust Annual Reporting Manual (Monitor, 2014, and any later version of such guidance) and/or any other legal or regulatory requirements that may be imposed on the Trust from time to time.
- 11.3 You are required to confirm in writing in such form as may be prescribed by the Trust, on appointment and thereafter on demand, that:
- 11.3.1 you are not subject to any restrictions which would prevent you from holding the office of director of the Trust;
 - 11.3.2 you do not fall within the definition of an “unfit person” as specified in the Trust’s Provider Licence;
 - 11.3.3 you satisfy the requirements of Regulation 5(3) of the Regulated Activities Regulations; and
 - 11.3.4 you do not meet any of the criteria for disqualification as a director outlined within the Trust’s constitution.
- 11.4 Failure to provide the confirmation or notification described in clause 10.3 above and/ or clause 10.5 below without good reason within 14 days of such confirmation or notification being demanded or required (as applicable) shall be referred to the Council of Governors and is likely to be considered a disciplinary matter.
- 11.5 If you are disqualified from continuing as a Director on any of the grounds set out in clause 10.3 above, you shall immediately give notice in writing to the Chair. Receipt of such notice shall be taken as your resignation as Non-Executive Director.
- 11.6 You are required to declare immediately to the Chair in writing if you are ever arrested, have any pending prosecutions or convictions (including driving offences) or if you have accepted any police cautions. Failure to disclose this information may result in the termination of your appointment and this Agreement by the Council of Governors.
- 11.7 You warrant that you are entitled to work in the United Kingdom without any additional approvals and you will notify the Trust immediately if you cease to be so entitled during your appointment.

12. CONFIDENTIALITY

- 12.1 You agree that at all times, both during and after termination of your employment for whatever reason:
- 12.1.1 all matters relating to any patient’s diagnosis and treatment which come to your attention will be kept strictly confidential and under no circumstances will such information be divulged or passed on by yourself to any unauthorised person(s).
 - 12.1.2 you will keep secret and not use (except to the extent that disclosure and/or use is expressly authorised by the Trust and/or is required for the proper performance of your responsibilities under this Agreement) any information belonging to the Trust which is of a secret or confidential nature and/or of value to the Trust.

- 12.2 Examples of information that the Trust regards as confidential include, but are not limited to:
- 12.2.1 information about the Trust's future plans, including proposals under consideration, which have not been published
 - 12.2.2 copies of minutes of, and reports presented to, meetings which are not held in public
 - 12.2.3 information about the Trust's financial affairs (including costings, budgets, turnover and other financial information);
 - 12.2.4 information about the Trust's commercial models or market share
 - 12.2.5 any documents relating to capital investments or tender processes involving the Trust.
- 12.3 For the avoidance of doubt, the obligation referred to in clause 11.1 above applies whether or not the information is marked as confidential.
- 12.4 The obligation of confidentiality contained in clause 11.1 does not apply to:
- 12.4.1 any use or disclosure required by law;
 - 12.4.2 any information which is already in, or comes into, the public domain otherwise than through your unauthorised disclosure; or
 - 12.4.3 any information which is provided to you without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure.
- 12.5 The agreement referred to in clause 11.1 above does not remove your right to refer to the Trust's Raising Concerns at Work Policy which enables you to raise concerns about malpractice at an early stage and in the right way where you consider the interests of others or the organisation is at risk ("whistleblowing").

13. INFORMATION GOVERNANCE

- 13.1 In the course of your duties you are required to observe and follow the requirements set out by information governance rules, policies, standards and procedures. You must ensure you are aware of the handling requirements, take personal responsibility for the quality of data recorded, protect information at all times and that you do not attempt to breach information security in any way. Further information can be obtained from the Trust's Information Governance department, Senior Information Risk Owner or Caldicott Guardian.

14. DATA PROCESSING

- 14.1 In discharging your responsibilities under this Agreement you may be required to hold, disclose, use or otherwise process personal data (having the meaning given to it under the Data Protection Act 1998). You shall ensure that all personal data is held, disclosed, used or otherwise processed only under instructions from the Trust for lawful purposes and in accordance with the Data Protection Act 1998.
- 14.2 You consent to the Trust processing data relating to you for legal, personnel and administrative purposes and in particular to the processing of any sensitive personal data (as defined in the Data Protection Act 1998) relating to you including, as appropriate:

- 14.2.1 information about your physical or mental health or condition in order to monitor sick leave and take decisions as to your fitness to work;
- 14.2.2 your racial or ethnic origin or religious or similar information in order to monitor compliance with equal opportunities legislation;
- 14.2.3 in order to comply with legal requirements and obligations to third parties.

15. USE OF IT EQUIPMENT

- 15.1 The Trust may monitor the use of its IT equipment and systems, including internet usage and websites visited. The Trust reserves the right to monitor the content of e-mails to ensure compliance with its policies.
- 15.2 You shall comply with any acceptable use policy that the Trust may publish from time to time. You shall report any unacceptable use of the Trust's IT systems to the Chief Executive immediately.

16. GENERAL

- 16.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- 16.2 The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.
- 16.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
- 16.4 Provided you act honestly and in good faith, you will not have to meet out of your personal resources any personal civil liability which is incurred in the execution or purported execution of your functions, unless you have acted recklessly. Any costs arising in this way will be met by the Trust.
- 16.5 No liability can be accepted for the loss of or damage to personal belongings on the Trust's premises. You are therefore advised to insure any belongings against all such risks.
- 16.6 In some circumstances, you may consider that you need independent professional advice in order to discharge your responsibilities as a Non-Executive Director and it may be appropriate for you to seek advice from independent advisers at the Trust's expense. The Trust Secretary is responsible for arranging access for directors to independent advice.
- 16.7 By signing this contract, you irrevocably waive all moral rights in all works embodying Intellectual Property Rights made wholly or partially by you in the provision of your services to the Trust, to which you are now or may at any future time be entitled under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions), and all similar rights relating to any copyright which forms part of the Intellectual Property Rights

and you agree not to support, maintain or permit any claim for infringement of moral rights such as copyright works.

This Agreement has been entered into on the date stated at the beginning of it.

Kevan Taylor
Chief Executive
For and on behalf of the Trust

Non-Executive Director