

Arrangements for the removal or suspension of NHS trust chair and non-executive directors and NHS charity trustees

An integrated process

- 1 This policy sets out the principles and processes that NHS Improvement (NHSI) will use to establish whether and how a chair or non-executive director (NED) of an NHS trust, or trustees of NHS charities should be suspended or removed from office. The policy incorporates three separate but inter-connected pathways: seeking resignation, suspending the office holder and terminating the appointment.
- 2 Unless otherwise stated, the term 'NED(s)', 'trustee(s)', office holder(s) and 'appointee(s)' are used interchangeably throughout this document to mean chairs, NEDs and trustees as appropriate.

Roles and responsibilities

- 3 Provider Leadership Committee (PLC) will oversee and act as guardian of any suspension or termination process.
- 4 The Non-executive Appointments Team (NAT) will manage the process, ensuring that it is conducted objectively and in line with this policy, and in doing so protect the public, the NHS and office holders themselves by ensuring that:
 - those who should no longer hold public office are removed as swiftly and effectively as possible following a due process, and
 - the principles of 'natural justice' are applied to the decision making process.
- 5 Regulations establish the grounds on which chairs and NEDs can be removed from office and these are included in the terms and conditions issued on appointment. Many of these are technical grounds such as:
 - becoming disqualified from office;
 - not attending board meetings for three months; and
 - failing to disclose a pecuniary interest regarding matters under discussion within the organisation.
- 6 In these technical cases the final decision to terminate an appointment will be made by the PLC.

7 Chairs and NEDs can also be removed from office if it is not in the interests of the health service that they continue in office. Matters which may indicate that this criteria has been met include if:

- the office holder is found to be an unfit person as set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
- an appraisal or sequence of appraisals are unsatisfactory;
- the office holder no longer enjoys the confidence of the board chair, other board members, the public or local community, or NHSI in a substantial way. It is recognised, however, that there are times when decisions are taken which may initially prove unpopular with some sections of the local community. Other factors such as whether the office holder is pursuing agreed board or national policy, and whether the situation has arisen as a result of the office holder's personal handling of the situation will be taken into consideration when considering this condition;
- a chair fails to ensure that the board monitors the performance of the organisation in an effective way;
- the office holder fails to meet agreed annual objectives or deliver work against pre-agreed targets, or their performance falls significantly short of expected levels over a sustained period;
- there is a breakdown in essential relationships, e.g. between the office holder and the chair, the chief executive, or NHSI, or between the office holder and other members of the board. In such circumstances, the views of other board members will be considered to establish an understanding of the position;
- the office holder fails to demonstrate the personal behaviours, values, technical competence and business practices outlined in "The standards for members of NHS boards and clinical commissioning group governing bodies in England" produced by the Professional Standards Authority;
- the office holder fails to demonstrate the standards of selflessness, integrity, objectivity, accountability, openness, honesty and leadership set out in the Seven Principles of Public Life;
- the office holder fails to comply with the letter and / or principle of the Trust's internal policies and procedures, insofar as they are applicable to the appointee's role;
- an investigation into allegations of wrong doing results in a finding against the office holder;
- a capability or other board effectiveness review indicates that the appointee is not making a full contribution to the board; and
- a chair has reviewed the contribution of the Trust's NEDs and identified performance issues and / or skills gaps and believes the continuation in office of the appointee is not in the best interests of the organisation.

- 8 This list is not intended to be exhaustive or definitive and each case will be considered on its merits, taking account of all relevant factors.
- 9 In these cases the final decision to terminate an appointment will be made by the board of NHSI.

Establishing a case

- 10 The potential need to remove a chair or NED or trustee of an NHS charity from office will usually be brought to the attention of PLC by a 'referrer,' usually the chair of the relevant organisation, or in relation to the chair, the relevant Executive Regional Managing Directors (ERMD), or exceptionally the Portfolio Director (PD), or in relation to trustees the chair or chief executive of the charitable fund, who will have evidence that, in their opinion, there may be a need to remove the individual from office.
- 11 The referrer will ensure that the office holder is advised of the case against them and that they have been given the chance to respond. If the referrer decides to pursue the case with NHSI, the referrer will notify the individual concerned.
- 12 There may be occasions when NHSI will be asked to consider suspending or removing an office holder where it has received information from an individual other than the relevant referrer. In these cases, the NAT will determine how best to proceed with such requests, generally referring the case to the relevant referrer. The NAT will ensure the individual concerned is advised, either by the relevant referrer or the NAT, as appropriate.
- 13 If there is clear evidence to indicate that an office holder should be suspended or removed from office, the office holder may choose to resign or a resignation may be sought following the process set out in paragraphs **14 - 19**. Alternatively, the PLC may initiate a process to terminate the appointment as set out in paragraphs **39 - 60**. Where there is only preliminary evidence, but it suggests that the criteria for removal from office may be met, then it would be appropriate to consider suspension, pending further investigation, as set out in paragraph **20 - 22**.

Seeking resignation

- 14 Where there is clear evidence supporting the removal of a non-executive director from office, the individual may choose to resign, or alternatively a resignation may be actively sought. This is the preferred course of action in most cases.
- 15 As these posts are public appointments, information about those appointed and removed is in the public domain. Resignation enables the person to be removed from office in a managed way that normally meets the needs of both the

individual and the organisation. There are, however, circumstances when this would not be appropriate or in the public interest as outlined in paragraph 19.

- 16 Where a resignation is to be sought, this will generally be done by the referrer, to avoid compromising the independence and objectivity of the PLC in any subsequent decision relating to the individual concerned. The NAT will ensure the referrer is clear on their role and that discussions with the office holder are handled and recorded in line with good HR practice.
- 17 Although the referrer will seek the resignation of the office holder, the resignation must be received by NHSI before it can take effect. If the referrer receives a written resignation, they should forward it to the NAT immediately.
- 18 The time taken to pursue resignation will depend on the circumstances. If the case is clear and all parties (especially the appointee) accept the position, a resignation could be received within 24/48 hours. In other cases, particularly if the situation is less pressing, it may be best to continue to pursue a resignation over a longer period.
- 19 The suspension and/or termination route remains available to the referrer if a resignation is not forthcoming within a reasonable period or if seeking a resignation is not appropriate. Circumstances under which seeking resignation would be inappropriate include:
 - If the circumstances associated with an appointee's removal from office are actually or potentially so damaging that it would not be in the public interest for him / her to be able to take up another chair or NED role in the NHS, it might be more appropriate to pursue the suspension and/or termination of appointment procedures. An example of such matters may include where an individual is found to be potentially "unfit".
 - If during the course of a suspension or termination procedure, the office holder submits his / her resignation, NHSI reserves the right to continue with the procedure, including completing any investigation until a conclusion is reached, which may then form part of the person's formal appointment record.

When can suspension be used?

- 20 Chairs and non-executive directors of NHS trusts can be suspended from their posts. Suspension is a temporary measure that will be used to prevent an office holder from exercising his or her functions pending the completion of an investigation or termination process, when there is:
 - information that gives cause for concern about an office holder continuing to hold office but further investigation of the allegation(s) / preliminary evidence

is needed to establish whether there are grounds for removing the individual from office; or

- sufficient evidence to warrant termination of appointment. The termination process will then be carried out while the office holder is suspended.

21 Suspension should not be viewed as indicating that there are grounds for permanently removing the appointee from office. This would only be determined through a formal termination of appointment process.

22 A non-exhaustive list of examples of when suspension may be used, include when:

- there is an allegation of fraud, corruption or other impropriety or other alleged misconduct that would require the office holder to be suspended in order to protect patients, staff or public funds or which is likely to impair the work of the organisation. In some circumstances, this may also be to protect the office holder against whom the allegation is made. Where there are allegations of fraud or corruption, the referrer should contact the relevant Local Counter Fraud Specialist (LCFS) in the first instance to establish the strength of the allegations and the likelihood of them resulting in criminal proceedings. The Counter Fraud Service may decide to commence an investigation, in which case the office holder will be suspended until the outcome of the investigation. It will then be decided whether or not to pursue termination of appointment;
- there is an allegation that an individual is an unfit person as set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;
- the office holder has lost or is likely to lose the confidence of the public in a substantial way. However, there are times when decisions are taken which may initially prove unpopular with some sections of the public. It will be important to assess other factors, such as whether the office holder is pursuing agreed board or national policy and whether the situation has arisen as a result of the office holder's personal handling of the situation;
- further investigation is required in order to consider whether an office holder is in breach of "pecuniary interest" rules or is disqualified from office.

Formal consideration of suspension

23 When a referrer has made a case for an office holder to be suspended, the evidence in support of the case will first be referred to the NAT to prepare the case for consideration by the PLC.

24 In order to deal with suspension requests promptly after a request is received, the case will generally be considered by the PLC at a telephone conference after the evidence has been circulated by e-mail.

Period of suspension

- 25 If a decision is made to suspend, the initial period of suspension will be up to six months.
- 26 The purpose of the suspension period is to allow a full investigation to be carried out to establish whether there are grounds for an office holder to be removed from office. Further periods of suspension can be considered if more time is needed to complete an investigation or until the outcome of any criminal investigation is known. The initial period of suspension can also be extended in order to take any resulting case for removal from office through a termination process.

Notification of a decision to suspend

- 27 The NAT will make all reasonable attempts to contact the office holder by telephone if possible on the day the decision to suspend was taken in order to inform them of the decision.
- 28 Written notification will be sent from the PLC chair to the office holder's last known home address, if possible, on the same day the decision was taken.
- 29 A suspension will take effect:
- when written notice is delivered in person to the office holder by a process server, or
 - on the third day after the day on which written notification was sent by first class post to the person's last known address, whichever is the earlier.
- 30 In circumstances where the Local Counter Fraud Service (LCFS) are investigating a case, notification of suspension will follow consultation with the LCFS.
- 31 The office holder may continue to hold, or apply for, other offices while serving a period of suspension.

Review of a suspension

- 32 The office holder is entitled to request in writing that a review of a suspension is conducted after three months. The office holder will receive confirmation that the PLC. They will also be given an opportunity to submit any relevant new evidence they think may call into question the original decision. NHSI will then conduct a full review of all the evidence, which may include speaking with any relevant parties. The findings from the review and a recommendation on how to proceed will be prepared by the NAT, and considered by the PLC.

- 33 If the PLC concludes that there is no case for the office holder to answer, it will revoke the suspension with immediate effect and the individual may return to their normal role. The office holder will be notified in writing of the PLC's decision.
- 34 In exceptional circumstances, the PLC may review and lift a suspension at any time after the suspension takes effect.
- 35 Where an office holder returns to their duties following a review or final outcome of a suspension, the NAT will discuss with the individual whether and if so how, the decision should be communicated to a wider audience. The NAT will also discuss with the individual any support that may be required to enable the office holder to resume their board duties.

Appointment of a temporary replacement during a period of suspension

- 36 A temporary appointment can be made to carry out the duties of the suspended office holder, for up to the period of the suspension. If at the end of the suspension the office holder returns to their post, the appointment of the temporary post-holder will cease with immediate effect. If investigations result in the person suspended resigning or their appointment being terminated, the person carrying out temporary duties would normally continue in their temporary role until a permanent replacement is identified.

Suspension of a chair and the position of vice-chair

- 37 When a chair is suspended, the appointment of the vice chair will automatically terminate and the power to appoint a replacement will automatically pass to NHSI. The former vice-chair may be re-appointed or, where appropriate, a new vice-chair from within or outside the organisation may be temporarily appointed. The arrangements for the vice-chair will generally be discussed at the same PLC meeting as the suspension. The vice-chair will be notified of the situation once it has been confirmed that the office holder to be suspended has received notification of the decision to suspend.

Remuneration during a period of suspension

- 38 A person suspended from office will continue to be entitled to receive remuneration during the period of suspension. A chair or NED who is appointed temporarily to carry out a new role will be entitled to receive remuneration commensurate with that role.

When would a termination procedure be used?

- 39 Where there is clear evidence supporting the case for removal from office and resignation is either not appropriate or not forthcoming, a termination procedure

will begin. This could commence following a review of the evidence submitted by the referrer or following the outcome of an investigation while the office holder is suspended.

Terminations

- 40 All requests to consider a termination of appointment will first be considered by the PLC.
- 41 If a suspension is already in place, the PLC may extend the initial period of suspension if necessary to ensure the office holder continues to be suspended until the conclusion of the termination process.
- 42 The NAT will write to the individual concerned to inform them of the referral, including information about:
 - the basis on which the TAP has been asked to consider the termination;
 - the case for termination, including the supporting evidence;
 - any extension to an existing suspension; and
 - how they can respond.

Referrals to the PLC

- 43 Some grounds for termination are technical, for example where the individual has become disqualified or has not attended a meeting of the board for three months. In these cases a recommendation to terminate an appointment will be considered by the APLC.
- 44 The evidence in support of, and against the case for termination will be referred to the NAT. If it is felt there is a case to answer, a recommendation with all the evidence will be prepared for consideration by the PLC. The PLC is able to consider a recommendation if the individual concerned does not respond to the NAT's correspondence regarding the referral.
- 45 In order to deal with requests promptly, the PLC will generally consider cases at a telephone conference after the evidence has been circulated by e-mail.
- 46 The individual will be notified in writing of the decision against which they will have no grounds for requesting that the decision is reviewed. Any decision to terminate an appointment will have immediate effect.

Referrals to the board of NHSI

- 47 The board of NHSI will make the final decision to terminate an appointment where it has been alleged that "it is not in the interests of the health service" for a chair or NED of an NHS trust to remain in post.

- 48 All such requests will first be considered by the PLC. If it is felt there is a case to answer, the PLC will convene a Termination of Appointment Panel (TAP).
- 49 The TAP will be chaired by a member of the PLC, and will include at least one senior independent person. Other members may be drawn from the following:
- Other members of the PLC;
 - Other members of the NHSI's executive team;
 - Members of NHSI's NAT; and
 - A chair of another similar organisation, without a conflict of interest.
- 50 To ensure that all cases are dealt with promptly, the TAP will normally hear the case between five and 20 working days after it is convened. The exact timing, however, will depend on the circumstances and availability of those involved. In most cases, the TAP will convene in person to hear the case.
- 51 The TAP will consider the evidence both in support of and against the termination recommendation.
- 52 The post holder will be invited to present his or her evidence in person. The TAP is able to come to a decision in the post holder's absence if, the individual concerned:
- does not wish to be present;
 - does not respond;
 - declines more than two dates offered; and / or
 - fails to appear on the day without notice or reasonable explanation
- 53 The post holder will be advised that they can bring a friend or colleague to witness the proceedings, although this individual will not be able to speak to the panel on behalf of the appointee, except at the invitation of the chair of the TAP.
- 54 Other people can be asked to provide evidence, with the agreement in advance of the TAP. The panel will be able to ask questions of those presenting evidence.
- 55 On occasion, it may be possible for the TAP to meet by video or teleconference, but this will only be by exception and never when the individual concerned is expected to appear to give evidence.
- 56 At the end of the hearing, the TAP will make a recommendation which will be sent to the post holder.
- 57 The appointee will be informed that they have the right to make a further representation in writing only if:
- proper procedures were not followed and / or

- they believe the recommendation of the TAP was perverse when considering the relevant evidence.

58 An individual must give written notice of their intention to make further representations under paragraph **57** within three working days of the issue to the TAP recommendation, and must submit their full written case within a further three working days.

59 The board of NHSI will consider the recommendation of the TAP, together with any additional representations received from the post holder, no sooner than seven working days after the post holder is notified of the recommendation of the TAP, and will make the final decision.

60 The individual will be notified in writing of the final decision against which they will have no grounds for requesting that the decision is reviewed. Any decision to terminate an appointment will have immediate effect.

Automatic disqualification period

61 When an appointment to an NHS trust is terminated, an automatic disqualification period lasting two years applies. NHSI may specify a longer period and in serious cases, potentially indefinitely. The individual may ask the board of NHSI to consider reducing the period of disqualification at any point during the period of disqualification.