Structure to align remuneration for chairs and non-executive directors of NHS trusts and NHS foundation trusts

Implementation document: November 2019

NHS England and NHS Improvement

Contents

1. Purpose

Current regulation provides that:

- for NHS trust chairs and non-executive directors, remuneration is determined by the Secretary of State for Health and Social Care (SoS) and approved by the Treasury
- for foundation trust chairs and non-executive directors, local councils of governors decide on the remuneration, allowances and the other terms and conditions of office.

This structure seeks to address some longstanding issues associated with significant disparities between the remuneration of chairs and non-executive directors of NHS trusts and NHS foundation trusts, and in the levels of remuneration in the foundation trust sector.

In implementing this structure, the principal aims are to:

- establish greater transparency, consistency and alignment in remuneration across provider trusts
- maintain proportionality in remuneration and avoid unnecessary future escalation
- effectively respond to current challenges associated with the attraction, recruitment and retention of chairs and non-executive directors, particularly within NHS trusts.

2. Context

With a total UK workforce of 1.5 million, the NHS is the biggest employer in Europe and the world's largest employer of highly skilled professionals. Over 1.3 million people across the health service in England are devoting their working lives to caring for others - that is one in every 25 working age adults.

Services are delivered on a 24/7 basis from 227 NHS provider trusts in England, which are key local anchor institutions in the communities they serve. While the largest of these has an annual turnover of £1.5 billion and employs over 16,000 people, many other trusts have annual turnovers in excess of £500 million and £750 million, combined with responsibility for the effective management and deployment of multi-professional workforces of 10,000 plus.

Operating in highly complex and often challenging regulated environments, all trusts are led by unitary boards, consisting of executive and non-executive directors. The purpose of each board is to govern effectively and, in doing so, build patient, public and stakeholder confidence in: the quality, safety, accessibility and responsiveness of health and social care services; the appropriate and effective use of resources in delivering optimal outcomes for patients and service users; and the appropriate involvement of patients and the public in shaping future health and care services to meet their needs.

Although 150 trusts have foundation status, they are not necessarily the largest or most complex organisations. Essentially, there is no distinction between the services provided by NHS trusts and NHS foundation trusts, nor their respective responsibilities with respect to, for example, access standards and patient care.

Chairs of both NHS trusts and NHS foundation trusts are responsible for the effective leadership of their respective boards (and in foundation trusts the chair also leads the council of governors) and are pivotal in creating and maintaining the conditions necessary for overall board and individual director effectiveness.

While executive directors are accountable for day-to-day operational delivery, all members of the unitary board share responsibility for the overall success of their organisation and for determining strategy and priorities; identifying and mitigating risks; and maintaining a healthy organisational culture, within which employees are valued, respected and have a voice.

To be effective and successful in these demanding roles, which attract a high level of public scrutiny and accountability, chairs and non-executive directors require exceptional skills in leading and influencing, combined with relevant professional experience and expertise.

Within this context, it is appropriate to highlight the significant differences in remuneration between NHS chairs and non-executive directors (details of which are provided below) and those occupying similar positions in the private sector, within which many organisations are smaller and less complex than a sizeable proportion of NHS provider trusts. In 2017, median base remuneration for Financial Times Stock Exchange (FTSE) 250 chairs and non-executive directors was £210,000 and £53,000, respectively, while for small market capitalisation companies (SmallCap) median rates were £135,000 (chairs) and £44,000 (non-executive directors).

3. Differentials in current remuneration – NHS trusts and NHS foundation trusts

The lowest levels of chair remuneration across all providers are paid in NHS trusts: they are set by SoS and approved by the Treasury.

The highest levels of chair remuneration have been determined by individual NHS foundation trusts, via local remuneration committees and the differential between the lowest paid NHS trust chair and the highest paid NHS foundation trust chair is £56,400.

All NHS trust non-executives receive a standard annual remuneration of £6,157 that is determined by SoS: NHS foundation trusts have discretion to apply any rate agreed by local remuneration committees, thereby creating significant variation across the foundation trust sector and disparity with NHS trusts.

The greatest differential between non-executive director remuneration in NHS trusts and NHS foundation trusts (based on like-for-like annual trust turnover) is more than £14,000.

Differentials between non-executive director remuneration in NHS trusts and NHS foundation trusts are further increased by the local application of supplementary payments in NHS foundation trusts in recognition of extra responsibilities, such as chairing principal sub-committees of the board and undertaking the duties of senior independent director. NHS trusts have no such discretion.

The extent of the current differentials in remuneration, with respect to lower quartile, median and upper quartile values (see Section 5, below) both for chairs and non-executive directors, is illustrated in Figures 1 and 2, overleaf:

Figure 1: Differentials in remuneration – NHS trust and foundation trust chairs

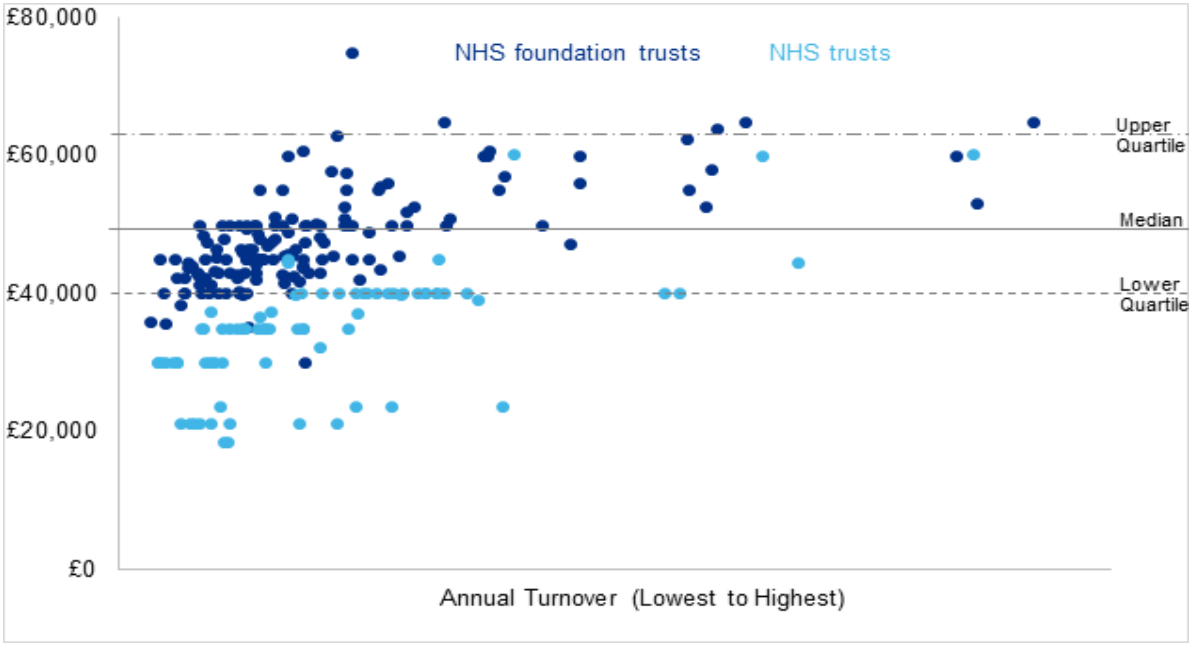
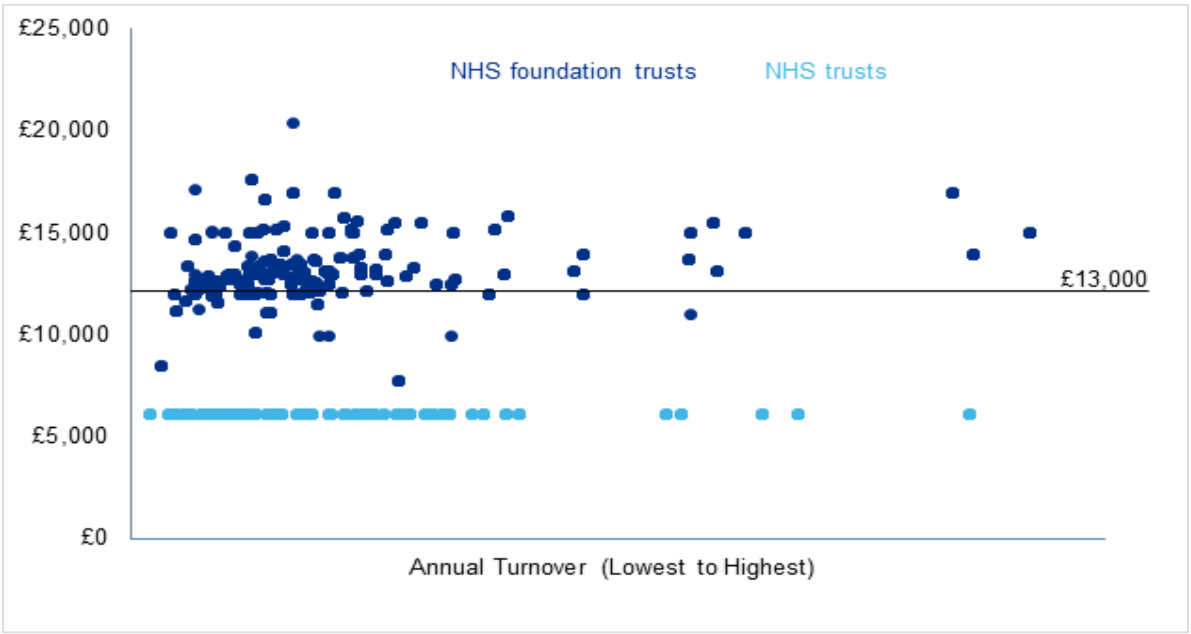


Figure 2: Differentials in remuneration – NHS trust and foundation trust non-executive directors



4. The case for change: key issues

The nominal time commitment associated with these roles is recognised as representing the absolute minimum requirement, and most chairs and non-executive directors spend many more days fulfilling their duties and responsibilities.

Although there is no distinction between the duties and responsibilities fulfilled by chairs and non-executive directors of NHS trusts and NHS foundation trusts, there is significant variation and inequity in the levels of basic remuneration applied

across both types of trust and within the foundation trust sector. Data collated by NHS Improvement in 2018, via a survey of all NHS foundation trusts, highlights the extent of this variation.

In effect, over recent years, foundation trusts have tested and proven a ‘going market rate’ for NHS chair and non-executive director roles. To help ensure that, once addressed, the significant gap between NHS trust and foundation trust rates does is not recreated, it is intended that the new remuneration structure should apply both to NHS trusts and foundation trusts for new appointments and future re-appointments. Notwithstanding, it is fully acknowledged that foundation trusts will retain the prerogative to operate outside of the framework, on a ‘comply or explain’ basis.

The current remuneration gap continues to have a detrimental impact on:

- the ability of NHS trusts, particularly those that are most challenged, to attract, appoint and retain high-calibre applicants for chair and non-executive director appointments
- the diversity and representation of NHS trust and NHS foundation trust boards (where people who rely on a regular and reasonable income cannot afford to take up chair and non-executive director roles in NHS trusts)
- the overall morale and ‘sense of worth’ felt among chairs and non-executive directors of NHS trusts.

5. Remuneration structure for NHS chairs and non-executive directors

In order to achieve greater alignment and parity between chair and non-executive director remuneration in NHS trusts and NHS foundation trusts, the structure is informed by actual market rates identified in the 2018 remuneration survey of NHS foundation trusts.

The statutory duties placed upon NHS foundation trust governors, with respect to their role in determining the remuneration, allowances and other terms and conditions for chairs and non-executive directors, are fully acknowledged. Implementation of the aligned structure in no way seeks to undermine these duties, or to diminish the role of councils of governors or their respective nominations committees. However, in the interests of promoting and maintaining consistency and fairness across the provider sector, it is reasonable to expect that foundation trusts will work within the ranges.

Circumstances may arise, both in NHS trusts and NHS foundation trusts, that require special consideration of particular terms and conditions for chairs or non-executive directors. For NHS trusts, NHS England and NHS Improvement will review any such issues on a case-by-case basis, while foundation trusts will be expected to explain their rationale for divergence from the structure (as they currently do for other remuneration issues).

Changes are as follows:

For non-executive directors, a single uniform annual rate of £13,000 will apply, with local discretion to award supplementary payments of up to £2,000 per annum (to a maximum of two individuals for those NHS trusts in groups 1 to 3 and three individuals for those in groups 4 and 5) in recognition of designated extra responsibilities, such as chairing principal sub-committees of the board and undertaking the duties of senior independent director. When these responsibilities cease, remuneration will revert to £13,000.

For chairs, it is intended that ranges will apply according to respective trust designation (ie groups 1 to 5) based on organisations' size (annual turnover) and complexity. The ranges are consistent with the structure associated with very senior manager (VSM) remuneration and are detailed in Figure 3, below. Variation between lower quartile and upper quartile values should be a function of both the relative complexity of the role (eg leading a 'challenged' organisation) and the skills and experience of the chair.

Figure 3: Remuneration ranges for trust chairs

Trust size	Annual turnover (£ pa)	Designation	Chair remuneration (£ pa)		
			Lower quartile	Median	Upper quartile
Small	<200m	Group 1	40,000	43,000	45,100
Medium	201m–400m	Group 2	44,100	47,100	50,000
Large	401m–500m	Group 3	45,000	49,500	51,400
Extra large	501m–750m	Group 4	50,500	55,000	58,500
Supra large	>750m	Group 5	55,500	60,000	63,300

Where it is the case that a chair assumes responsibility for leading more than one provider trust, all relevant local factors will need to be considered in determining an appropriate level of remuneration. Notwithstanding, it is reasonable to expect that

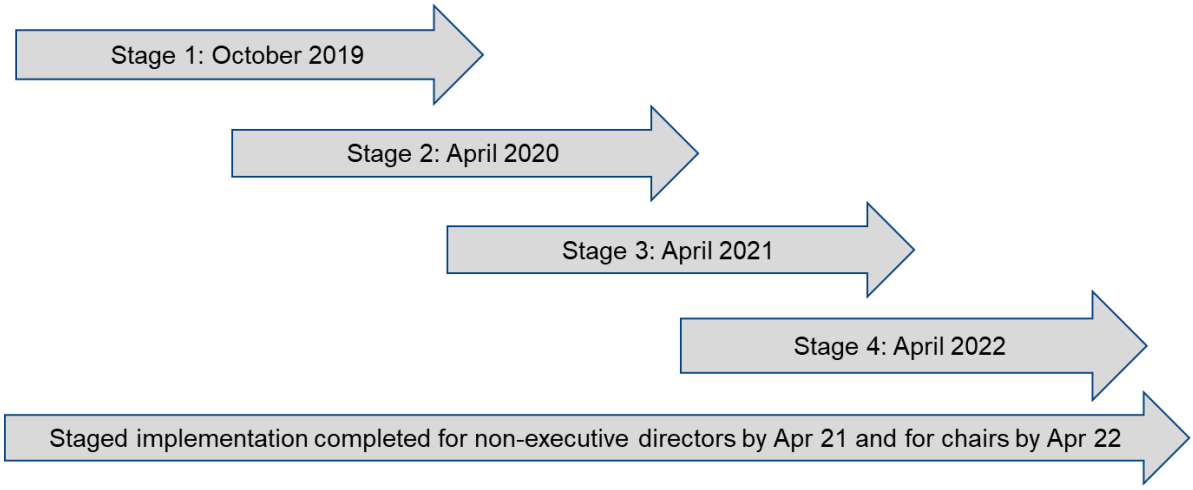
this is likely to be closer to the upper quartile value associated with the largest-size organisation.

6. Implementation arrangements for NHS trusts

Since there is no additional funding for the associated increases, they will be implemented (with direction and oversight provided by NHS England and NHS Improvement) over a period of 2.5 years (30 months), beginning in October 2019 and concluding in April 2022.

The staged approach, detailed overleaf, will facilitate local financial planning to mitigate the associated cost pressures. Although these pressures are relatively minor at a local level, nationally they are acknowledged as being more significant, while also seeking to address the most significant disparities that exist within the non-executive director community in the shorter term.

Figure 4: Staged approach to implementing the structure



Stage 1 (1 October 2019)

Non-executive director remuneration increased from £6,157 to £10,000, with local discretion to apply supplementary payments of up to £2,000 in recognition of designated extra responsibilities. Application of supplementary payments restricted to up to two non-executive directors (for groups 1 to 3) and three non-executive directors (for groups 4 and 5), as required.

NHS England and NHS Improvement to determine individual profiles for NHS trust chairs in receipt of the lowest levels of remuneration to ensure alignment with each respective implementation stage. This will be communicated to individual chairs and trusts.

NB: Foundation trusts' remuneration committees should review their respective positions against the provisions of the structure and develop their own alignment plans, as required (see also Section 7, below).

Stage 2 (1 April 2020)

Non-executive director remuneration increased from £10,000 to £11,500.

Minimum remuneration for any trust chair will be £30,000.

Stage 3 (1 April 2021)

Non-executive director remuneration increased from £11,500 to £13,000 (non-executive director implementation complete).

Minimum remuneration for any chair will be consistent with the lower quartile value associated with the relevant range.

Stage 4 (1 April 2022)

Minimum remuneration for any chair will be consistent with the median value associated with the relevant range (chair implementation complete).

7. Maintaining alignment

Prevailing levels of remuneration must be sufficient to attract, retain and motivate effective, diverse and compassionate chairs and non-executive directors with the skills and experience required to lead trusts successfully. Implementation of this structure will help to avoid paying more than is necessary and is sensitive to pay restraints elsewhere in the NHS.

To maintain proportionality in remuneration and avoid unnecessary future escalation, the application of revised levels of remuneration will be subject to NHS England and NHS Improvement oversight and, where required, approval. This structure will be referenced in the combined *Code of governance for NHS trusts and foundation trusts* and its application monitored by both HM Treasury and the Department of Health and Social Care.

For NHS trusts, during the period of implementation remuneration applied to newly appointed and re-appointed chairs and non-executive directors will be approved by NHS England and NHS Improvement, according to the respective revised rate associated with the relevant stage of the implementation plan. Any proposed

variation will be considered by NHS England and NHS Improvement on an exceptional basis and on the merits of local circumstances.

Notwithstanding the discretion afforded to them, it is anticipated that NHS foundation trusts will also demonstrate consistency with the provisions of the aligned structure. To this end, remuneration applied to newly appointed and re-appointed chairs and non-executive directors may need to be adjusted accordingly. Where, when compared with the respective median and upper quartile values, there are significant outliers, NHS foundation trusts should apply 'mark-time' arrangements for the duration of current tenures. New appointment and re-appointment processes will provide an opportunity to review and revise remuneration, with reference to the provisions of the structure.

It is further anticipated that, during the period of implementation, foundation trusts will not seek to apply discretionary annual uplifts that will increase remuneration above the relevant median value until April 2021 (for non-executive directors) and April 2022 (for chairs).

8. Frequently asked questions

As a consequence of implementing the structure, will any current chair or non-executive director receive a reduced level of remuneration?

No. The purpose of introducing the structure is to address disparity and introduce consistency in the application of chair and non-executive director remuneration across NHS providers. In doing so, it is not intended to reduce the value of existing remuneration during anyone's current tenure.

I am the chair of a foundation trust. My current remuneration exceeds the upper quartile value and my initial tenure will expire in a year's time. If I am re-appointed as chair, will I be expected to accept a lower level of remuneration?

While levels of remuneration for existing tenures will not be affected by the alignment process, it is expected that your remuneration committee will review remuneration and any such anomalies will be corrected on re-appointment.

I am a non-executive director in a foundation trust. My current remuneration exceeds £13,000 and my initial term will expire in a year's time. If I accept a second term, will I be expected to accept a lower level of remuneration?

Levels of remuneration for existing tenures will not be affected by the alignment process, but it is expected that your remuneration committee will review remuneration and any such anomalies will be corrected on re-appointment.

I am a chair/non-executive director in a foundation trust and my governors would like to pay me more than the levels of remuneration established by this structure (in keeping with the experience I bring). Do governors have the discretion to over-ride the provisions of the structure?

Your governors have a statutory role in setting your levels of remuneration and it is expected that they will look carefully at the provisions of the remuneration structure and will not deviate from these, unless they have a compelling reason to so do.

I am a chair/non-executive director in a foundation trust and my governors would like to pay me less than the levels of remuneration established by this structure. Do they have the discretion to insist on paying me at a lower rate?

Again, your governors have a statutory role in setting your levels of remuneration. They would be expected to comply with at least the minimum level of remuneration for your role, or otherwise explain why they do not intend to do so.

My foundation trust will be appointing a new chair and two new non-executive directors in the next six months. What level of remuneration will we be expected to apply?

Where foundation trusts are seeking to make new appointments of chairs and/or non-executive directors, it is expected that the provisions of the remuneration structure will be applied. Ideally, newly appointed non-executive directors should receive a level of remuneration that is consistent with the values associated with the staged implementation arrangements described in this document but which, in any event, does not exceed £13,000 (notwithstanding the ability to apply defined supplementary payments in recognition of extra responsibilities).

While this structure is very welcome, as the chair of an NHS trust, I am concerned that unless I can substantially increase our non-executive director remuneration in the near future, there is a risk we will lose talent that is vital to the board and, thereafter, struggle to re-recruit. Therefore, am I obliged to abide by the staged implementation timeframe?

Yes. The agreed implementation timeframe has been subject to negotiation and its adherence is a condition of HM Treasury's support and approval. However, where

NHS trusts believe there is significant risk, locally, a referral should be made to NHS Improvement, such that the merits of the case can be fully examined and considered.

Is there a risk that, in a minority of cases, increasing chair and non-executive director remuneration will be viewed as the NHS rewarding poor performance?

All issues relating to local under-performance will continue to be managed via established mechanisms and interventions, rather than through the adjustment of terms and conditions. However, where it is recognised that there are significant shortcomings in individuals' performance, prevailing local circumstances will be assessed on a case by case basis, which may determine that an alternative approach is justified.

Increasing the remuneration of NHS trust chairs and non-executive directors will introduce an in-year and recurrent cost pressure. Will NHS trusts receive additional funding in support?

There is no additional funding to support the implementation of this structure. Therefore, all associated costs will need to be absorbed locally.

When we seek to appoint new non-executive roles to our NHS foundation trust board, we need to be able to effectively compete for talent in a highly competitive local market. Complying with the remuneration structure will potentially restrict this ability, so we cannot guarantee to do so. How will this be viewed?

For the reasons articulated, it is anticipated that foundation trusts will choose to comply. However, it is appreciated that, for any trust, situations may arise that require the consideration of exceptions and the potential application of discretionary measures in response. This structure does not seek to remove such discretion, but it is an expectation that any such cases are discussed with NHS England and NHS Improvement prior to any action being taken by trusts.

As an NHS trust we have no formal local mechanism through which to determine any discretionary payment to our NEDs. Would it be appropriate for this to be decided by our chair and chief executive?

Yes, this would be a sensible approach. Recommendations made by the chair and chief executive could be endorsed by the board or its remuneration committee, as you think appropriate.

We are keen to make an additional discretionary payment to our NED committee chairs, in recognition of the additional time and commitment these roles entail. The guidance limits the number of NEDs to whom we can make additional payments. We currently have five committee chairs – are we able to pay all five a discretionary payment, provided we remain within the overall financial value stipulated?

Yes, you may use local discretion to pay a lower amount to a larger number of NEDs in recognition of extra responsibilities, provided you remain within the maximum financial value associated with your trust's designation (ie £4,000 for trusts in groups 1 to 3 and £6,000 for those in groups 4 and 5).

9. Further information

For the provision of further information and advice, in the first instance please contact:

Mark Power, Head of Senior Appointments and Resourcing (mark.power1@nhs.net)

or

Carolyn May, Senior Development Advisor, Leadership and Quality Improvement (carolyn.may3@NHS.net)

Contact us:

NHS England
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NHS Improvement
enquiries@improvement.nhs.uk
improvement.nhs.uk

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