

**To:** Appointments and Remuneration Committee

**For meeting on:** 26 May 2016

**Agenda item:** 4

**Report by:** Janice Scanlan, Head of Appointments

**Report on:** NHS trust chair and non-executive directors – How NHS Improvement will discharge its appointments role and responsibilities

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## **Introduction**

1. The Appointments and Remuneration Committee (ARC) is asked to approve the proposed arrangements for the exercise of NHS Improvement's functions that relate to the appointment of chairs and non-executive directors (NEDs) of NHS trusts, and NHS Charity Trustees set out in Annex A.
2. The ARC is also asked to approve the arrangements for the removal or suspension of NHS trust chairs and NEDs and NHS Charity Trustees proposed at Annex B.

## **Background**

3. The NHS Trust Development Authority has been directed by the Secretary of State to exercise his powers in relation to the appointment of chairs and NEDs of NHS trusts and NHS Charity Trustees. This includes the powers to appoint, suspend and terminate the appointments of chairs and non-executive directors.
4. Annex A sets out proposals for the exercise of these powers and other responsibilities set out in the Secretary of State's directions.
5. The paper attempts to define the roles and responsibilities of the ARC and its commitment to diversity and equality of opportunity for all. In particular, it sets out proposed arrangements for:
  - i) recruitment and selection processes
  - ii) re-appointments
  - iii) interim appointments
  - iv) making appointment decisions
  - v) terms of office

- vi) appraisals
- vii) suspending appointments
- viii) terminating appointments
- ix) remuneration
- x) development and support
- xi) policies and procedures

6. The proposed arrangements, which are based on the arrangements that were in place for the NHS Trust Development Authority, assume that the Committee will want to establish a sub-committee structure to which it can delegate some of its responsibilities in relation to the appointment of non-executive directors of NHS trusts.

### **Commissioner for Public Appointments**

7. Chair and NED appointments to NHS trusts are regulated by the Commissioner for Public Appointments and as such are required to comply with the requirements of his Code of Practice for Ministerial Appointments to Public Bodies.

8. These policies and procedures are fully compliant with the Commissioner's Code.

9. The appointment of NHS charity trustees is not regulated by the Commissioner but generally these appointments are made following the same principles as good practice.

10. Following the "Better Public Appointments: A review of the public appointments processes", the Government announced that the Commissioner's Code would be replaced by a Code of Governance for Public Appointments. It is expected that a draft will be the subject of consultation in the summer 2016 and the policies and procedures set out in Annex A will need to be updated to reflect the final version.

### **Public Sector Equality Duty**

11. *NHS Improvement has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. The Act protects against discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation.*
12. *How the issues dealt with in this paper might affect protected groups has been considered and it is believed that it will not have any adverse impact upon any or all of these groups and that NHSI has fulfilled its duty under the Act.*

### **Exempt information**

13. *None of this report is exempt from publication under the Freedom of Information Act 2000.*

## **NHS trust chair and non-executive directors – How NHS Improvement will discharge its role and responsibilities**

### **Principles**

1. Chair and NED appointments to NHS trusts are regulated by the Commissioner for Public Appointments and must comply with his “Code of Practice for Ministerial Appointments to Public Bodies”. The Code sets out three basic principles that must be observed when making these appointments:
  - **Merit** – this means identifying a strong and diverse field of candidates with the skills, experience and qualities required from which the appointing authority can be provided with a choice of high quality candidates from which to make an appointment
  - **Fairness** – ensuring that all candidates are assessed against the same published criteria and that the selection processes used are objective, impartial and consistently applied
  - **Openness** – details of all posts and the selection processes used must be made public
2. NHS Improvement’s (NHSI) arrangements for these appointments have been designed to ensure that its policies and procedures comply both with these principles and the other requirements of the Commissioner’s Code.

### **Appointing authority**

3. The board of NHSI has delegated its authority to appoint, suspend and terminate the appointment of the chairs and NEDs of NHS trusts and NHS charity trustees to its Appointments and Remuneration Committee (ARC).
4. In turn, the ARC has delegated some of its responsibilities in relation to the appointment of NHS trust NEDs and NHS charity trustees to the relevant sub-committee.

### **Roles and responsibilities**

5. The ARC and its sub-committees will be responsible for performing the functions defined in this document and in line with the requirements of the relevant terms of reference. The ARC will have oversight of and monitor the performance of this and related activities and agree all supporting policies and procedures. It will also report to the NHSI Board on chair, NED and trustee appointment or governance issues, the diversity of appointments, associated risks, and any issues that require further action.

6. The NED Appointments Team (NAT), reporting to the Director of Corporate Affairs, will be responsible for the delivery of these functions, working in collaboration with the ARC and the Executive Regional Managing Directors (ERMD), Portfolio Directors (PD) and their teams.

### **Diversity**

7. NHSI is committed to diversity and equality of opportunity for all.
8. When making any decision, the ARC and its sub-committees will consider the impact it will have on diversity, in particular in relation to the protected characteristics of gender, ethnicity and disability. In addition to considering these issues in relation to individual appointments and NHS trust boards, the ARC will also regularly review the overall diversity of all NHS trust chairs and NEDs.

### **Making new appointments**

9. **Dealing with vacancies** – When the NAT is advised of a new vacancy, it will contact the relevant ERMD or PD to discuss the future requirements and the arrangements for filling the vacant post(s).
10. Where the vacancy relates to a NED post, the NAT or PD will discuss the requirements for the role with the relevant chair, or in the case of the appointment of an NHS charity trustee, with the chair or chief executive of the charitable fund.
11. Where it is agreed that a vacancy should be filled through open competition, the processes set out in paragraphs **13 - 29** will be followed.
12. Where it is agreed that an interim appointment should be made, the processes set out in paragraph **30 - 32** will apply.
13. **Selection panels** – For each post that goes out to open competition, the NAT will establish a selection panel comprising at least three members.
14. For chair appointments, in order to comply with the requirements of his Code of Practice for Ministerial Appointments to Public Bodies, the panel will be chaired by a Public Appointments Assessor (PAA) allocated by the Commissioner's office. For chair appointments it will also include the relevant ERMD, or exceptionally the relevant PD. It may also include an NHSI NED. Membership of the panel will be agreed with the ERMD.
15. The panel to select a new NED will be chaired by the chair of the relevant NHS trust.
16. All panels are required to include a person who is independent of NHSI and the organisation to which the appointment is made.

17. Other members of selection panels will be determined as required but may include the chair of another NHS trust or NHS foundation trust or a subject expert (for example, when an audit committee chair is being recruited).
18. Panel arrangements related to the appointment of NHS charity trustees will be agreed on a case by case basis but will always include an independent person.
19. **Developing person specifications** – Based on the discussions set out in paragraphs 7 – 8 above the NAT will develop a draft person specification for the post to be filled.
20. In developing the person specification, the NAT will be mindful of best practice and ensure that they do not unnecessarily restrict the ability to identify a strong and diverse field of candidates.
21. Where the person specification relates to the appointment of a chair, it will be agreed by the ERMD or PD and the relevant PAA. Where it relates to the appointment of a NED, it will be agreed by the ERMD or PD and the chair of the organisation concerned. For NHS charity trustee appointments, it will be agreed with the chair or chief executive of the charitable fund.
22. **Recruitment strategies** – As a minimum, all posts will be advertised on the NHSI and Cabinet Office websites. The NAT will search their “talent” database to identify potential suitable candidates and encourage them to apply. It will also ensure chairs in the wider health economy are informed about the vacancies and encouraged to identify suitable candidates.
23. The NAT will work with NHS trusts and NHS charitable trusts to develop a local communications strategy including:
  - advertising vacancies on their own websites;
  - contacting local MPs and other local leaders to help identify suitable candidates; and
  - using press releases, relevant local networks and contacts, and social media to promote the vacancy; and
  - In addition, NHS trusts in particular, will be asked to consider advertising in local, national or online media.
24. For chair posts, NHS trusts will generally be asked to either engage executive search consultants or support a search exercise to be undertaken by the NAT.
25. **Selection process** – The selection panel established under the arrangements set out in paragraphs 13 - 18 will be responsible for overseeing the selection process and making a recommendation to the ARC or the relevant sub-committee.

26. All panel members will be asked to declare any prior knowledge of candidates so that this can be appropriately managed.
27. The selection process will include the long-listing and preliminary interviews of candidates (where appropriate), generally by either the executive search company or by the NAT, shortlisting and interviewing. For chair posts, shortlisted candidates will generally be asked to participate in a stakeholder engagement event, before being interviewed by the selection panel.
28. Other tools may be used as part of the selection process, for example, psychometric testing, in advance of the final panel interview. In general they will only be used when considering candidates for chair posts and will only be conducted at the expense of the NHS trust or NHS charitable body.
29. At the end of the selection process the chair of the selection panel will prepare a panel report which will form part of the recommendation to the ARC or sub-committee.

### **Interim appointments**

30. Where it is considered to be in the best interests of the organisation concerned to make an interim appointment, for example, where NHSI needs to act quickly to respond to concerns about governance or performance issues, or the future of the organisation is not clear, it is possible to make an appointment without the need for an open competition in the usual way.
31. Candidates for appointment in these circumstances will generally be people who already hold or have held a chair or NED role on an NHS trust or have been through a NHS TDA, Appointments Commission or NHSI recruitment process and deemed “appointable” by a selection panel. For appointments to NHS trusts, such individuals are deemed to have been through a selection process that was regulated by the Commissioner for Public Appointments.
32. Other candidates for interim roles can be considered, including those who hold or have held chair or non-executive director roles on NHS Foundation Trusts, but for appointments to NHS trusts, the approval of the Commissioner for Public Appointments is required before an appointment can be made.

### **Re-appointments**

33. Where an appointee has served less than eight years in post, he/she can be considered for an extension or a further term of office without the need to go out to open competition. In exceptional circumstances, an appointee who has served more than eight years can be considered for re-appointment but he / she will not be able to remain in the same post for more than ten years, as set out in paragraph **39 - 40**.

34. In order to be considered for re-appointment, it must be clear that the appointee has:

- the skills and experience the organisation will need in the future; and
- received a satisfactory appraisal in the last twelve months.

35. The relevant ERMD will be asked to recommend a chair for re-appointment before the ARC will be asked to make a final decision.

36. The relevant ERMD or PD is also required to support the re-appointment of a NED recommended for re-appointment by his / her NHS trust chair or the chair or chief executive of the charitable fund before the relevant sub-committee is asked to make a final decision.

### **Appointment terms**

37. Terms of appointment for new appointees will generally be for an initial period of two years but can be shorter or longer depending on local circumstances.

38. Longer individual terms of up to four years will be considered where there is a case for so doing (e.g. to secure “corporate memory” or to ensure that the terms of appointment of NEDs are “staggered”). Terms of less than two years will be appropriate, for example, when the appointment is intended as an interim arrangement or a change to the legal form of the organisation is anticipated.

39. Appointees can remain in the same post for up to ten years.

40. Only in the most exceptional circumstances can an individual remain in post for more than ten years, and in the case of an appointment to an NHS trust, would require the prior approval of the Commissioner for Public Appointments.

### **Appraisals**

41. NHSI is responsible for ensuring that chairs and NEDs of NHS trusts receive regular performance appraisals. The NAT will ensure that this responsibility is met and that they are conducted in line with agreed policies and procedures.

42. **NHS trust chairs** – will be required to submit to a formal appraisal process each year which as far as possible will reflect NHSI’s single oversight model. It will be informed by self-assessment, and may include 360° feedback and an assessment of the Trust’s performance, as appropriate. Chairs may be invited to take part in an appraisal discussion, particularly if there are concerns about performance and / or a difference of opinion between the chair and NHSI about the standard of that performance.

43. The process itself will be reviewed regularly to ensure it continues to meet the needs of both NHSI and the chair community.



44. **NHS trust NEDs** - will be appraised by their chair who will be required to submit an annual return of the appraisals conducted, identifying the overall assessment and the development needs of each NED.

### **Making appointments**

45. **Chairs of NHS trusts** – All chairs of NHS trusts will be formally appointed by the ARC.

46. **NEDs of NHS trusts and NHS charity trustees** –These appointments will generally be made by the relevant sub-committee of the ARC. Where the appointment is potentially controversial, high profile or there is a conflict of interest, the ARC may be asked to consider the recommendation.

47. Appointment recommendations will generally be sent to members of the ARC and sub-committees by e-mail. They will be asked to individually confirm, generally by e-mail, that they agree the recommendation. Where all ARC or sub-committee members agree, the appointment will be made. When there is disagreement, a meeting will be convened, usually by telephone to consider the recommendation.

### **Suspensions**

48. In order for a suspension to be considered, there must be an indication that there may be grounds for the termination of the appointee's term of office, as defined by the appropriate legislation and associated NHSI policies.

49. The evidence in support of suspension will be considered by the ARC. In order to do so promptly, this will generally be done by telephone conference after the recommendation has been circulated to members by e-mail.

### **Terminations**

50. All requests to consider a termination of appointment will first be considered by the ARC.

51. In these cases where a technical case is made to terminate an appointment, for example where the individual has become disqualified or has not attended a meeting of the board for three months, the ARC will make the final decision.

52. When considering whether an appointment should be terminated on the grounds that it is no longer in the interests of the health service for an appointee to remain in post, and when members agree that there is a case to answer, a Termination of Appointment Panel (TAP) will be convened. The TAP will be chaired by a member of the ARC, and will include other people, including other members of the ARC as appropriate, together with at least one independent person. The TAP will consider the evidence both in support of and against the termination recommendation. The TAP will make a recommendation to the board of NHSI, which will make the final decision.

### **Remuneration increases**

53. The rates of remuneration payable to the chairs and NEDs of NHS trusts are determined by the Secretary of State for Health. Recommendations to Ministers to consider an increase in the rate of remuneration payable to an individual NHS trust chair will be made on behalf of the ARC by the NAT, in consultation with the relevant ERMD and reported retrospectively to the next ARC meeting.

### **Development and support**

54. NHSI has been directed to ensure that chairs and NEDs of NHS trusts have access to appropriate induction, development and support opportunities. The NAT will ensure that this responsibility is met, in accordance with agreed policies and procedures.

### **Policies and procedures**

55. The ARC will agree all policies and procedures relating to the performance of these functions.

## **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 NHSI's Appointments and Remuneration Committee (ARC) 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 ARC.
- 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 ARC 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 ARC 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 ARC 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 ARC.
- 24 In order to deal with suspension requests promptly after a request is received, the case will generally be considered by the ARC 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 ARC 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 case is being reviewed at their request, and the date it will be considered by the ARC. 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 ARC.



- 33 If the ARC 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 ARC's decision.
- 34 In exceptional circumstances, the ARC 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 ARC 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 ARC.
- 41 If a suspension is already in place, the ARC 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 ARC**

- 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 ARC.
- 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 ARC. The ARC 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 ARC 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 ARC. If it is felt there is a case to answer, the ARC will convene a Termination of Appointment Panel (TAP).
- 49 The TAP will be chaired by a member of the ARC, and will include at least one senior independent person. Other members may be drawn from the following:
- Other members of the ARC;
  - 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.