Ashford and St. Peter's Hospitals NHS
NHS Foundation Trust

COUNCIL OF GOVERNORS
18th May 2011

TITLE	**Non Executive Directors' Terms of Service**
EXECUTIVE SUMMARY	The Remuneration and Appraisal Committee considered draft Terms of Service for the Chairman and Non Executive Directors at their meeting on 4th March and agreed them at their meeting on 3rd May 2011.
The Council is asked to:	1. Note the Terms of Service 2. Note the minutes of the Remuneration and Appraisal Committee held on 4 March 2011. (The minutes of the meeting on 3 May will be available at the next Council meeting)
Submitted by:	David Frank Lead Governor
Date:	3rd May 2011
Decision:	For Noting

Ashford and St. Peter's Hospitals NHS
NHS Foundation Trust

CHAIRMAN and NON-EXECUTIVE DIRECTOR
TERMS of SERVICE

Ashford & St. Peter's Hospitals NHS Foundation Trust is pleased to confirm your appointment as a Non-Executive Director. Your appointment has been made subject to the following terms of service. It is important that you read these carefully and contact the Head of Corporate Affairs or the Director of Workforce & Organisational Development should you have any queries.

1. **Appointment**: Your appointment is effective from {●} and shall continue for an initial period of [three] years subject to extension or earlier termination in accordance with paragraphs 3 and 4 of this letter.

   Chairmen and Non-Executive Directors of NHS Foundation Trusts hold offices for bodies created under the National Health Service Act 2006.

   Your appointment is governed by the terms of the Trust's Constitution, Standing Orders and the Scheme of Reservation and Delegation of Powers for the Board of Directors ("the Regulatory Framework"). A copy of the Regulatory Framework will be made available to you.

   The appointment does not create any contract of employment or contract for services between the appointee and the Secretary of State or between the appointee and Ashford and St. Peter's Hospitals NHS Foundation Trust ("the Trust").

2. **Employment Law**: the appointments are not within the jurisdiction of Employment Tribunals. Neither is there any entitlement for compensation for loss of office through employment law. You must not take any employment position with the Trust whilst you are the Chairman or Non-Executive Director.

3. **Reappointments**: The Chairman and Non-Executive Directors are eligible for re-appointment at the end of their period of office, but they have no right to be reappointed. Reappointments will be in accordance with the Code of Governance for Foundation Trusts and any term beyond two three-year terms will be subject to rigorous review and could be relevant to the determination of a Non-Executive's independence.

   The Nominations and Appointments Committee of the Trust will usually consider afresh the question of who should be appointed to the office. The annual appraisal is an important part of the consideration when an individual is seeking reappointment at the end of their first term of office. In general, a **minimum**

requirement for an uncontested reappointment will be a satisfactory assessment. However, the challenges faced by Boards can change over time and to ensure that the Board is equipped for its future role, the Nominations and Appointments Committee will take into account the performance of the organisation (taking the views of relevant external bodies, for example Monitor as the economic regulator and the Care Quality Commission); the make-up of the Board in terms of its skills, diversity and geographical representation; and the Board dynamics and effectiveness of its team working.

4. **Termination of Appointment**: the Constitution of the Trust sets out the grounds on which an appointment may be terminated.

   Resignations may be enacted by giving notice in writing to the Chairman or the Nominations and Appointments Committee. The appointment may also be terminated if, in accordance with the Constitution, the appointee becomes disqualified for appointment or membership. In addition, the Nominations and Appointments Committee may, based on reasonable evidence, recommend termination of an appointment on the following grounds:

   a. If it is of the opinion that it is not in the interests of the Trust that the appointee should continue to hold office
   b. If the appointee does not attend a meeting of the Board for a period of three months
   c. If the appointee does not properly comply with the requirements of the regulations with regard to personal conflicts of interest in matters under discussion at meetings of the Board.

   The following list provides examples of matters which may indicate to the Nominations and Appointments Committee that it is no longer in the interests of the Trust that an appointee continues in office. The list is not intended to be exhaustive or definitive; the Committee will consider each case on its merits, taking account of all relevant factors:

   a. If an annual appraisal or sequence of appraisals is unsatisfactory
   b. If the appointee no longer enjoys the confidence of the Board
   c. If the appointee loses the confidence of the public or local community in a substantial way
   d. If the Chairman, as the appointee, fails to ensure that the Board monitors the performance of the Trust in an effective way
   e. If there is an irretrievable breakdown in essential relationships, e.g. between the Chairman and the Chief Executive or between an appointee and the rest of the Board
   f. If the Non-Executive Director fails to deliver work against pre-agreed targets incorporated within their annual objectives
   g. When a new Chairman is appointed to the Board (s)he will be expected to review the objectives of all Board members and may at the time of their

next appraisal, make recommendations to the Nominations and Appointments Committee regarding their continued appointment

5. **Roles and Responsibilities**: a Non-Executive Director's role and responsibilities are set out in the Constitution. The Board of Directors is collectively responsible for promoting the success of the Trust and supervising the Trust's affairs. All Directors shall take decisions objectively in the interests of the Trust.

6. **Review Process:** the performance of the Chairman and Non-Executive Directors will be evaluated annually.

7. **Independent Review:** All Trust Directors are entitled to access to independent legal advice on matters relating to Trust business and their roles as a Director. It is the responsibility of the Trust Secretary to ensure such advice is available.

8. **Trust Vision, Strategic Objectives and Values:** The Chairman and Non-Executive Directors are expected to carry out their duties in accordance with the Trust's vision, strategic objectives and values. The current versions of these will be made available to you.

9. **Remuneration**: As a consequence of the appointment, appointees are entitled under the Act to be remunerated for so long as the appointee continues to hold office as Chairman or Non-Executive Director. The entitlement to receive remuneration is only in relation to the period for which the appointee holds office. There is no entitlement to compensation for loss of office and appointees are not entitled to any pension, bonus or other benefits apart from those specifically addressed in this letter. Current rates of remuneration are determined by the Council of Governors, as recommended by the Remuneration and Appointments Committee, and will be stated during the recruitment and selection process.

10. **Tax and National Insurance**: Remuneration and fees are taxable under Schedule E, and subject to Class I National Insurance contributions. Any queries on these arrangements should be taken up with the Inspector of Taxes or the Contributions Agency respectively.

11. **Allowances**: The Chairman and Non-Executive Directors are also eligible to claim reasonable and properly documented expenses and allowances, in accordance with the Trust's expenses policy, for travel and subsistence costs necessarily incurred on Trust business. Expenses claimed by individual Board members are published quarterly.

12. **Time commitment** – The expected time commitment of the Chairman is 3 to 3.5 days per week. Non-Executive Directors normally devote 2.5 days per month to their Board responsibilities. This may be during the working day or in the evening according to the requirements of the Trust. However the time committed will be that necessary to undertake the role and Appointees' attendance may be required at any of the following:

a. meetings of the Board of Directors , its sub committees and of the Council of Governors
b. any relevant training
c. representing the Trust at multi-agency events and meetings.

Appointees are expected to undertake an additional number of days as part of the induction process.

13. **Induction:** On appointment, the Chairman and Non-Executive Directors will be provided with an induction programme. Any particular needs or requirements should be discussed with the Chairman, or in the case of the Chairman, with the Senior Independent Director or Director of Workforce & Organisational Development.

14. **Public Speaking**: Any invitations for Non Executive Directors to speak at external events or otherwise present the Trust's views should be discussed with the Head of Communications.

    On matters affecting the work of the Trust, the Chairman and Non-Executive Directors should not normally make political speeches or engage in other political activities. In cases of doubt, guidance should be sought from the Head of Corporate Affairs or Director of Workforce & Organisational Development.

15. **Conflict of Interest**: The Board has adopted a Code of Conduct which includes a requirement for Board members to apply the public service values of openness, probity and accountability throughout their work. In addition, Standing Orders require the Chairman and Board members to declare on appointment any business interests, position of authority in a charity or voluntary body in the field of health and social care, and any connection with bodies contracting for NHS services. Any subsequent changes in interests should be notified to the Trust. Appointees shall disclose any material interest, whether that interest is direct or indirect, in any contract or proposed contract or other matter, at a meeting of the Board of Directors at which the contract or the matter is the subject of consideration as soon as practicable after the commencement of the meeting and shall not take part in the consideration of the contract or vote on any question in respect of it. A record of Board members' interests will be entered into a register which is available to the public. Details of arrangements for the disclosure of interests are set out in the Standing Orders.

16. **Monitoring and maintaining good Health and Safety**: The safety of patients, staff and visitors is paramount. In common with hospital staff, the Chairman and Non-Executive Directors have a duty to recognise safety as a fundamental element of their role and to comply with relevant Legislation, including the Health and Safety at Work Act etc.1974, and Trust policies, procedures, protocols and guidelines related to safety and well being.

17. **Indemnity**: the Trust has agreed to indemnify Board members as follows:

> 'Members of the Board who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Litigation Authority to cover such costs.'

The indemnity covers acts where the claim arises from an act carried out in the execution or purported execution of the Board's functions, and is not time-limited. The indemnity does not cover dishonest or fraudulent acts.

18. **Insurance:** the Trust has made provision to cover the liabilities of directors and officers. Appointees should be aware that such provision does not provide protection against criminal liability arising from the breach of any applicable laws and for which the appointee is held wholly or partially responsible.

19. **Criminal Matters**: The Chairman and Non-Executive Directors are required to declare immediately to the Trust Secretary if they are ever arrested, have any pending prosecutions or convictions (including driving offences other than those incurring a fixed penalty notice) and any cautions. Failure to disclose the fact of an arrest, a caution, pending prosecution or conviction may result in termination of the appointment.

20. **No Smoking Policy:** the Trust operates a No Smoking Policy.

21. **Confidentiality:** The Chairman and Non-Executive Directors of the Trust must not without prior permission disclose any information regarding patients, staff or Trust business obtained during the course of their duties except to authorised bodies or individuals acting in an official capacity. Such information shall be treated as secret and confidential. The Data Protection Act 1998 may render an individual liable for prosecution in the event of unauthorised disclosure of information. Upon the termination of your appointment, for whatever reason, you must return all reports, minutes, working papers, electronic storage media and any other material (including copies) which belong to the Trust.

22. **Diversity and rights:** The Chairman and Non-Executive Directors have a duty to promote equality, diversity and rights, and treat others with dignity and respect. The Trust is unreservedly opposed to any form of discrimination on the grounds of gender, marital status or pregnancy; sexual orientation; disability; race or ethnic origin; religion or belief; or age.

    A copy of the Trust's Equal Opportunities Policy may be obtained from the Human Resources Department. The Chairman and Non-Executive Directors should be familiar with, and at all times comply, with the terms of this policy.

23. Loss of personal effects: the Trust will not accept liability for loss of, or damage to, personal property on Trust premises by burglary, fire, theft or otherwise. You should make arrangements to provide your own insurance cover.

I would be grateful if you could sign and return the enclosed copy of this document as soon as possible to confirm your acceptance of these terms and conditions of appointment.

Signed: …… **Date**: ……

Chairman

On behalf of the Council of Governors

I have read and accepted the above terms of appointment:

Signed: …… **Date**: …….

Council of Governors' Remuneration and Appraisal Committee Meeting
MINUTES
4 March 2011

PRESENT	Mr David Frank	Public Governor – Surrey Heath
	Ms Judi Linney	Public Governor – Runneymede
	Ms Michèle Low	Public Governor – Hounslow
	Mr Hugh Meares	Appointed Governor – Runnymede
	Mr Paul Wills	Staff Governor
IN ATTENDANCE:	Ms Raj Bhamber	Director of Workforce and Organisational Development
APOLOGIES:	Mr Andrew Liles	Chief Executive
SECRETARY:	Ms Jane Gear	Board Secretary/Head of Corporate Affairs

Minute **Action**

R&A1/11 **Minutes of the previous meeting**

The minutes of the meeting held on 14 December 2010 were agreed as a correct record.

It was confirmed that the intention was to circulate draft minutes to all members within 10 days of the relevant meeting occurring.

Matters arising

R&A2/11 **Chairmanship (minute R&A3/10 refers)**
David Frank had been appointed Lead Governor for a one year period and, in accordance with the Terms of Reference, took over chairmanship of the Committee.

R&A3/11 **Draft Work Plan 2011**

A key element of the Committee's forward work plan would be to agree the process for appraising the Chairman and Non Executive Directors.

A wide ranging, initial discussion took place which noted that:-

- Prior to becoming a FT the Chairman and NEDs' appraisal had been conducted in accordance with guidance from the Appointments Commission. The Chairman actively appraised all the NEDs.
- The Trust had a well-established appraisal process covering all staff groups and a bespoke 360^0 review tool was currently being piloted within the Trust.
- A number of indicators existed which could be used to assess the effectiveness of the Board including the Trust's Balanced Scorecard, the Annual Plan and quarterly reviews of progress against the Plan, and the Annual Report and Accounts. The performance of individual NEDs contributed to the overall effectiveness of the Board.

- The Monitor publication – *A Guide to Your Statutory Duties* gave a helpful overview of the Council's role. This stated that the Council took the lead in agreeing the process for the evaluation of the NEDs. The actual appraisal of the NEDs would be led by the Chairman with the Senior Independent Director leading the actual appraisal of the Chairman.
- Members of the Committee could attend open Board meetings to gain a feel for the contribution of individual Board members.

The Committee also considered a possible timeline. The Annual Plan would be agreed in March and would typically be the start of the appraisal cycle. This would result in a first year review in February 2012. As this would be 18 months post authorisation, it might be appropriate to incorporate a mid year review in June /July 2011.

It was agreed that the Director of Workforce and OD would circulate the standard Appointments Commission documentation for Chairman and NED appraisal, with suggestions for updating in the FT context. The Committee would develop a matrix of indicators which could include **RB**

Stakeholder engagement and management
Performance of the Trust, including quality
Values and Style

It was recommended that the Lead Governor and Senior Independent Director meet the Director of Workforce and OD and /or the Chief Executive, in an advisory capacity, to develop proposals for the appraisal process which could then be reviewed by Committee members with email discussion. An additional meeting would be set up to finalise the position in May/ June. **RB** **JG**

R&A4/11 Pay Award w.e.f 1 April 2011

The Council of Governors meeting held on 15th February 2011 had agreed the recommendations from the Committee in respect of the remuneration of the Non Executive Directors.

The Director of Workforce and OD briefed the Committee on the broad approach to pay across the Trust. National Terms and Conditions were currently in operation although as a FT the Trust had the flexibility to develop its own approach and would be considering this in the coming year.

Nationally there was no inflationary pay award for the majority of staff in 2011/12 although most staff would receive an incremental uplift. The next review for the Non Executives would be undertaken in February 2012 resulting in a recommendation to the Council.

The Committee AGREED that there should not be an inflationary increase applied to NEDs with effect from 1/04/11.

R&A5/11 Terms of Service

The Committee reviewed the draft document which had been prepared with the advice of the Trust Solicitors, Beachcrofts.

A range of comments were made including:

- Removal of the final statement in the section on Reappointments as this implied a maximum term.

- Highlighting that the items as possible grounds for termination of the appointment were all subject to the test of reasonableness.
- Amending the reference to 'terminal' breakdown to 'irretrievable'.
- Removing the detailed sections on the Trust's strategic objectives as these could be subject to change. The current documents would be made available separately.
- Allowances: determination of the approach to expenses was within the remit of the Council. The Committee confirmed that the Trust's Expenses Policy would be applied to Non Executive Directors.
- Clarifying that the time commitment was a general expectation, but that the NEDs were required to give the time needed to carry out the role. This point should also highlight the requirement to attend Council meetings as required.
- Public speaking-Clarifying that if the NEDs were asked to speak at external events, this should be cleared with the Head of Communications.
- Simplifying the section on Health and Safety
- Making sure the section on indemnity and insurance were aligned.
- Noting that the declaration of criminal matters should not include fixed penalty driving notices.
- Merging the sections on equality and diversity.
- Correcting a number of minor typographical errors

The draft terms would be redrafted and circulated subject to which they would be formally presented to the next formal Council meeting with a recommendation for adoption. **RB**

R&A6/11 **Terms of Reference**

The Committee discussed the high level of attendance required for a meeting to be quorate.

It was agreed this should be considered as part of the annual review of the Terms of Reference. **JG**

R&A7/11 **Date of next meeting**

May/June meeting – to be agreed
7th September 2011

Signed: ……
Chairman

Date:

Summary Action Points

Meeting Date	Minute Ref	Topic	Action	Lead	Due Date	Comment as at [Date]	Status
14/12/10	**R&A2/10**	**Terms of Reference**	To review and make recommendations to the Council	**RB/JG**	November 2011		
14/12/10	**R&A6/10**	**Next Meeting**	Appraisal process and timetable	**RB**	Sept 2011		
14/12/10	**R&A6/10**	**Next Meeting**	Agree the Committee annual work-plan	**RB**	March 2011		
14/12/10	**R&A6/10**	**Next Meeting**	Dimensions and components of Remuneration and Terms of Service	**RB**	Sept 2011		
04/03/11	**R&A3/11**	**Work Plan-Appraisal**	Circulate the current and alternative documentation to underpin appraisal	**RB**	Mid March 2011		
04/03/11	**R&A3/11**	**Work Plan-Appraisal**	Arrange meeting for Lead Governor , SID, DW&OD +/ CEO to consider proposals for appraisal process and timetable	**RB**	April 2011		
04/03/11	**R&A3/10**	**Work Plan-Appraisal**	Arrange a May/June meeting of the Committee	**JG**			
04/03/11	**R&A4/11**	**Pay Award**	Review in February 2012	**RB**	Feb 2012		
04/03/11	**R&A5/11**	**Terms of Service**	Redraft in the light of amendments made	**RB**	Mid March 2011		
04/03/11	**R&A6/11**	**Terms of Reference**	Review Quorum in the Terms of Reference	**JG**	November 2011		