

TERMS OF REFERENCE – Last Reviewed June 2015

For avoidance of doubt, nothing in this document shall over-ride the National Health Service Act 2006 or the Health and Social Care Act 2012.

Scope

The Panel for Advising Governors (The Panel) has been established in accordance with the Health and Social Care Act 2012. Initially set up by Monitor but thereafter independent, the Panel's remit is to answer questions from councils of governors as to whether the trust has failed or is failing:

- to act in accordance with its constitution, or
- to act in accordance with provision made by or under Chapter 5 of the 2006 National Health Service Act including potential failure of relevant healthcare standards.

Core functions of the Panel

The Panel will receive questions from councils of governors on the areas within its scope.

The Panel will provide an answer to any such referred question subject to the question meeting the Panel's Materiality Test.

The Panel will in some cases carry out an investigation into the question(s) and where this occurs will also publish a report on its determination of the question(s) raised.

Composition of the Panel

The Panel received assistance from a Steering Group appointed by Monitor in the appointment of the first Chair and Members. Thereafter the Panel will select its own Chair and Members, subject to approval and appointment of these individuals by Monitor and application of the Panel's Fit and Proper Persons Test.

The Panel will be composed of a Chair and a pool of not less than 15 Members.

Eligibility for the Panel will be determined by skills and experience appropriate to the role. Panel Members must reflect diversity of provider services and geographical spread.

The Chair will invite the necessary/appropriate members to sit and discuss one or more questions. Meetings could be virtual using skype

A quorum will be 3 including the Chair.

The Chair will be appointed for an initial 3 year term. The terms of appointment of Members will initially be 2 and 3 years with ability to reappoint for further term providing skills and experience that continue to be appropriate to the role

TERMS OF REFERENCE – Last Reviewed June 2015

Appointments of the Chair and / or Members will be made via contracting with Monitor.

Terminations of the appointments of the Chair and Members may be made by Monitor.

Ways of working

The Panel will regulate its own procedure.

The Panel will establish such procedures and make such other arrangements as it considers appropriate for the purpose of determining questions referred to it under the relevant section of the Health and Social Care Act 2012.

The Panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.

The Panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice.

Where the Panel has carried out such an investigation, it will publish a report of its determination of the question referred to it.

If a person or organisation refuses to comply with a request made by the Panel as part of this process, the Panel's report on the question may refer to this refusal.

Any report published by the Panel with its determination of a question may be taken into account by a court as part of its proceedings.

Procedure and process for referral and consideration

Please see the Referral form and Notes on completing the Referral form.

Publication of referrals received, accepted and refused

On receipt of the referral and appropriate documentation, the Chair of the Panel or appointed Deputy will carry out an initial assessment to assess its suitability for Panel consideration.

If a referral is accepted, the Panel will publish a report of its determination when completed. These reports will be anonymised and made publically available on Monitor's website. Reports may be made publically available on a named basis where the Panel has undertaken further investigations.

Acceptance criteria

The Panel will only accept questions which meet its Materiality Test.

TERMS OF REFERENCE – Last Reviewed June 2015

A governor may refer a question to the Panel only if more than half of the members of the council of governors voting approve the referral. The Panel will therefore only accept questions where evidence is provided of this voting process.

The Panel will also only accept questions which directly relate to its specific remit to answer questions on whether a trust has failed or is failing to act in accordance with its constitution, or to act in accordance with Chapter 5 of the 2006 National Health Service Act (including failure to comply with relevant healthcare standards).

The Panel will not act as an arbitrator between a foundation trust board of directors and the council of governors.

The Panel will also not accept questions of process or of a minor nature.

The Panel encourages all foundation trust governors to seek to resolve questions internally with their Chair and / or board of directors. Questions should be raised to the Panel only if there remains an unresolved question on the matter of breach or potential breach of the trust's constitution or of Chapter 5 of the NHS Act 2006 and the council of governors has not been able to establish the answer to this question within the foundation trust.

Duty of Cooperation

The Panel will have a duty to cooperate and coordinate with other arms length bodies and regulators, in particular Monitor and CQC.

The Panel will establish agreed ways of working / terms of engagement with Monitor and CQC to ensure that the operations of the Panel run smoothly and to safeguard the confidentiality of the questions raised to the Panel.

Expenses

Monitor must pay expenses properly incurred by the Panel, and must make administrative support available to the Panel.

Confidentiality

The Panel operates independently from Monitor and CQC and undertakes its own enquiries. The Panel will conduct its enquiries respecting confidentiality, in accordance with Caldicott principles and data protection act

Monitor and CQC will respect the confidentiality of correspondence and information flowing to the Panel from FTs. Equally the Panel will respect the confidentiality of information held by Monitor and CQC about particular FTs

Accountability / Reporting

TERMS OF REFERENCE – Last Reviewed June 2015

The Panel is accountable principally to the sector; to NHS foundation trusts and NHS foundation trust governors.

The Panel will also provide an annual report of its activities to the sector no later than two months after the anniversary of its founding, to Monitor and to the Secretary of State for Health.

Where the Chair of the Panel or an appointed Deputy believes as a result of a question and other information brought to the Panel that there is a significant risk of breach of regulatory standards (those of Monitor or the CQC) by a trust the Chair will advise governors to communicate this immediately to Monitor and / or the Care Quality Commission, as appropriate. If the council of governors does not act on this advice within 2 working days, the Chair will make such a communication directly to Monitor and / or the Care Quality Commission, as appropriate. In extreme cases the Panel reserves the right to alert Monitor/CQC concurrent to giving advice.

Conflicts of interest

The Panel will be required to have in place arrangements under which anyone working for the Panel (Chair, Members, experts or contracted advisors etc) ensure they abide by the rules adopted by public bodies in relation to private interest and possible conflict with public duty; the disclosure of official information; and political activities.

They should not misuse their official position or information acquired in their official duties to further their private interests or those of others and should ensure that any possible conflicts of interest are identified at an early stage and that appropriate action is taken to resolve them.

The Chair will consider all such potential conflicts of interest when inviting Members to discuss one or more questions and will not invite Members to participate where such a conflict exists.

Where the Chair identifies that he or she has a conflict, he or she will appoint a Member to act as the Chair for the related question(s).

Review

In the first instance these terms of reference and procedures will be reviewed after six months (October 2013) or sooner as needed. Thereafter the review will be annually from 'live date' of Panel (June) by the Chair and relevant stakeholders.