

## Removing or suspending from office – chairs and non-executive directors of NHS trusts and NHS charity trustees

### 1. An integrated process

- 1.1. This policy sets out the principles and processes that the NHS Trust Development Authority (NHS TDA) will use to establish whether and how a chair or non-executive director of an NHS trust 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.
- 1.2. In addition, the removal from office of trustees of NHS charities will be considered under the relevant section of this document.
- 1.3. Unless otherwise stated, the term 'non-executive(s)', 'trustee(s)', office holder(s) and 'appointee(s)' are used interchangeably throughout this document to mean the chair, non-executive directors and trustees as appropriate.

### 2. The role of the TDA

- 2.1. The NHS TDA Appointments Committee and Appointments Team will manage and act as guardian of the process, acting objectively and independently and by doing so, to 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.
- 2.2. Regulations establish the grounds on which chairs and non-executives can be removed from office and these are included in the terms and conditions issued on appointment. They include: becoming disqualified from office, not attending board meetings for 3 months and failing to disclose a pecuniary interest regarding matters under discussion within the organisation.
- 2.3. Chairs and non-executives can also be removed from office if it is not in the interests of the health service that they should continue in office. Examples of matters which may indicate to the TDA that this criteria has been met are listed below. The list is not intended to be exhaustive or definitive and each case will be considered on its merits, taking account of all relevant factors:
  - if an appraisal or sequence of appraisals are unsatisfactory
  - if the appointee no longer enjoys the confidence of the board

- if the appointee loses the confidence of the public or local community in a substantial way. However, there are times when decisions are taken which may initially prove unpopular with some sections of the local community. 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
- if a Chair appointee fails to ensure that the board monitors the performance of the organisation in an effective way
- if the appointee fails to deliver work against pre-agreed targets incorporated within their annual objectives or their performance falls significantly short of expected levels over a sustained period
- if there is a terminal breakdown in essential relationships e.g. between a Chair and chief executive, between a Chair and the TDA or between any appointee and the rest of the board. In such circumstances, the TDA and the referrer would consider the views of other board members to establish an understanding of the position
- if a Chair believes that following a review of the future competency requirements of board members, the continuation in office of a non-executive member is not in the best interests of the organisation

### 3. Establishing a case

- 3.1. The potential need to remove a chair or non-executive director from office will usually be brought to the attention of the Appointments Committee (AC) of the NHS TDA by a 'referrer' usually the chair of the organisation, or in relation to the chair, the relevant Director of Delivery & Development (DDD), who will have evidence that, in their opinion, there may be a need to remove the individual from office.
- 3.2. 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 with the TDA the case to suspend or remove from office, the referrer will advise the individual of this, before it is considered by the AC.
- 3.3. There may be occasions when the NHS TDA 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 Appointments Team will determine how best to proceed with such requests, generally referring the case to the relevant referrer.
- 3.4. If there is clear evidence to indicate that an appointee 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 from **paragraph 4**. Alternatively, the TDA may initiate a termination of appointment process as set out from **paragraph 9**. 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 investigations, as set out from **paragraph 5**.

## 4. Seeking resignation

### When is a resignation sought?

Where there is clear evidence supporting the removal of a non-executive 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.

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 with dignity, in a managed way that normally meets the needs of both the individual and the organisation. However, there are circumstances when this would not be appropriate or in the public interest (see paragraph 4.5).

- 4.1. Where a resignation is to be sought, this will generally be done by the referrer and not by the AC, to avoid compromising their independence and objectivity in any subsequent decision relating to the individual concerned. The NHS TDA 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.
- 4.2. Although the referrer will seek the resignation of the office holder, the resignation must be received by the NHS TDA before it can take effect. If the referrer receives a written resignation, they should forward it to the Appointments Team immediately.
- 4.3. 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.
- 4.4. 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.
- 4.5. **Circumstances under which seeking resignation would be inappropriate**
  - 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 them to be able to take up another non-executive role in the NHS, it might be more appropriate to pursue the suspension and/or termination of appointment procedures.
  - If during the course of a suspension or termination procedure, the office holder submits their resignation, the NHS TDA 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.

## 5. Suspension

### When is suspension used?

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:

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

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.

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. A decision will then be made whether to pursue termination of appointment.
- 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.

### 5.1. Formal consideration of suspension

- When a referrer has made a case for an office holder to be suspended, a recommendation will be made at a convened or timetabled meeting of the AC either in a face to face meeting or by telephone conference.

### 5.2. Period of suspension

- If a decision is made to suspend, the initial period of suspension will be up to six months.
- 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.

### 5.3. Notification of a decision to suspend

- The Appointments Team 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.
- Written notification will be sent from the AC Chair to the office holder's last known home address, if possible, on the same day the decision was taken.
- 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.
- In circumstances where the Local Counter Fraud Service (LCFS) are investigating a case, notification of suspension will follow consultation with the LCFS.
- The office holder may continue to hold, or apply for, other offices while serving a period of suspension.

### 5.4. Review of a suspension

- The office holder is entitled to request in writing that the NHS TDA carry out a review of a suspension after three months. The office holder will receive confirmation in writing that the case is being reviewed at their request and the date it will be considered by the AC. They will also be given an opportunity to submit any relevant new evidence they think may call into question the original decision. The NHS TDA 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 considered by the NHS TDA.
- If the AC concludes that there is no case for the office holder to answer, the AC will revoke the suspension with immediate effect and the non-executive may return to their normal role. The office holder will be notified in writing of the AC's decision.
- In exceptional circumstances, the AC may review and lift a suspension at any time after the suspension takes effect.
- In circumstances where an office holder returns to their duties following a review or final outcome of a suspension, the Appointments Team will discuss with the individual whether and if so how, the decision should be communicated to a wider audience. The Appointments Team will also discuss with the individual any support that may be required in resuming their board duties.

### 5.5. Appointment of a temporary replacement during a period of suspension

- 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 through open competition.

### 5.6. Suspension of a Chair and the position of vice-Chair

- 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 the NHS TDA. 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 AC 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.

### 5.7. Remuneration during a period of suspension

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

## 6. Termination

### When would a termination procedure be used?

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.

6.1. When the NHS TDA has been asked to consider the termination of appointment of a Chair or non-executive of an NHS Trust or an NHS Charity, the matter will first be referred to the AC to consider whether there is a case to answer.

6.2. If it is felt there is a case to answer the AC will establish a Termination of Appointment Panel (TAP). The Appointment Committee Chair 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 recommendation
- the case for termination, including the supporting evidence and
- how they can respond

- 6.3. If a suspension is already in place the Appointments Committee 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.
- 6.4. The membership of a TAP will be drawn from the following:
- The Chair of the AC (generally to chair the panel)
  - Other members of the AC
  - Other members of the NHS TDA's executive team
  - A chair of another similar organisation, without a conflict of interests
  - A senior independent person
- 6.5. The TAP will normally hear the case five to 20 working days after receiving the referral from the AC, depending on the circumstances and availability of those involved. In most cases, the TAP will convene in person to hear the case.
- 6.6. The post holder will be invited to present his or her evidence in person. However, if they do not wish to be present, do not respond, decline more than 3 dates offered, or fail to appear on the day without notice or reasonable explanation, the TAP is able to come to a decision in the post holder's absence.
- 6.7. The post holder will be advised that they can bring a friend or colleague to witness the proceedings (they will not be able to speak to the panel on behalf of the individual, except at the invitation of the panel Chair).
- 6.8. 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.
- 6.9. 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.
- 6.10. At the end of the hearing, the TAP will make a recommendation which will be sent to the post holder.
- 6.11. The individual will be informed that they have the right to make a case in writing only if:
- proper procedures were not followed and / or
  - that they believe the recommendation of the TAP was perverse when considering the relevant evidence.
- 6.12. An individual must give written notice of their intention to submit a case under 6.11 within three working days of the issue to the recommendation, and must submit their full written case within a further three working days.

- 6.13. The NHS TDA board will consider the recommendation of the TAP, together with any case received from the post holder, and will make the final decision.
- 6.14. 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.
- 6.15. When an appointment to an NHS trust is terminated, an automatic disqualification period lasting 2 years applies. The TDA may specify a longer period and in serious cases, potentially indefinitely. The appointee may apply to the TDA to reduce the period of disqualification.