



Executive Summary
Meeting of the Council of Governors
to be held 15 June 2024

Subject	Extending the term of office of the Chair
Sponsor	Steve Barks, Vice Chair of the Council of Governors' Nomination and Remuneration Committee
Author	Sandi Carman, Assistant Chief Executive / Judith Green, Head of Corporate Governance
Status	To Agree for onward recommendation

PURPOSE OF THE REPORT

To present a recommendation from the Council of Governors' Nomination and Remuneration Committee for an extension to the term of office of the Chair for a maximum period of seven months to 31 July 2025.

KEY POINTS

- The tenure of the Chair, Annette Laban expires at the end of December 2024. On appointment as Chair in January 2021 Annette had already served as Non-Executive Director (NED) on the Board of Directors since July 2013.
- Provisions relating to the length of terms of office and maximum tenure of NEDs are outlined in the Board of Directors' Standing Orders. These state that in the case where the Chair was an existing NED on appointment and continues to satisfy tests of independence, one term of office of four years in the position of Chair can be served.
- A change in Board stewardship during the final quarter of any financial year has the potential to deflect some Board focus towards team forming / development. Financial planning assumptions for 2024/25 project a challenging year which will require stability in Board leadership.
- Consideration has been given by the Council of Governors' Nomination and Remuneration Committee to a maximum seven-month extension in the Chair's term of office to 31 July 2025. The start of an incoming Chair's term of office would therefore enable their timely engagement with the strategic business cycle and Board workplan.
- There has been no precedent at the Trust for extending the office of a Chair who has served more than the recommended maximum tenure (nine years) from the date of their first appointment to the Board. There is, however, agreed procedural guidance on approving an exceptional re-appointment of a NED. This has been used on occasions where circumstances have supported one-year reappointments for individual NEDs already having served two four-year terms of office.
- This procedural guidance is appended to this paper and has been updated for potential application to these current circumstances.

IMPLICATIONS

AIM OF CORPORATE STRATEGY		TICK AS APPROPRIATE
1	Deliver the Best Clinical Outcomes	✓
2	Provide Patient Centred Services	✓
3	Employ Caring and Cared for Staff	✓
4	Spend Public Money Wisely	✓
5	Create a Sustainable Organisation	✓
6	Deliver Excellent Research, Education and Innovation	✓

RECOMMENDATION

The Council of Governors is asked to **APPROVE** a recommendation from the Council of Governors' Nomination and Remuneration Committee to extend the term of office of Annette Laban as Trust Chair to 31 July 2025 (Maximum extension term) with specific reference to the criteria outlined by procedural guidance for exceptional re-appointments of NEDs.

APPROVAL PROCESS

Meeting	Date	Approved Y/N
Board of Directors' Nomination and Remuneration Committee	08 April 2024	Y
Council of Governors' Nomination and Remuneration Committee	22 April 2024	Y
Council of Governors	15 June 2024	

Extending the term of office of the Chair

1. Introduction

The term of office of the current Chair, Annette Laban expires at the end of December 2024.

In line with its terms of reference which confirm responsibility for keeping the leadership needs of the Trust under review at Non-Executive Director (NED) level, the Council of Governors’ Nomination and Remuneration Committee has given recent consideration to succession planning for the key role of Chair.

2. Relevant governance / compliance matters

The Standing Orders for the Practice and Procedure of the Board of Directors set out the terms of office of the Chair and NEDs. These state that in the case where the Chair was an existing NED on appointment and continues to satisfy tests of independence, a one term of office of four years in the position of Chair can be served (paragraph 6.6.3).

This condition reflects best practice in maintaining Chair independence. The NHS Code of Governance for provider trusts (NHSE, October 2022) indicates that while a Chair should not remain in post beyond nine years from the date of their first appointment to the Board of Directors, tenure may, in some instances, be extended for a limited time, particularly where on appointment the Chair was an existing Non-Executive Director. Code provision C, 4.3 noted in [Appendix II](#).

3. Chair’s term of office

On appointment to the role of Chair from 1 January 2021, Annette had served 7.5 years as a NED and therefore in accordance with the above cited Standing Orders, was appointed as Chair for a single four-year term of office.

Terms of Office of Annette Laban, Chair (previously Non-Executive Director)		
	Appointed from	Appointed to
NED	1 July 2013	30 June 2017
	1 July 2017	30 June 2021 (early termination due to appointment to Chair position)
Chair	1 January 2021	31 December 2024

4. Chair succession planning

The Council of Governors’ Nomination and Remuneration Committee has given consideration to the timing of appointing a new Chair.

Advice received from the Board Nomination and Remuneration Committee noted that a change in Board stewardship during the final quarter of any financial year has the potential to deflect some focus from Board oversight while natural ‘team forming’ takes place. Financial planning assumptions for 2024/25 also project that this will be a significantly challenging year for the Trust requiring stability in Board leadership and oversight.

The Committee was asked to consider the challenges associated with this timing for both the Trust and a new Chair and agreed there was significant merit in re-aligning the start of the term of office

of an incoming Chair by extending Annette Laban’s current term of office for a period of up to seven months (to 31 July 2025 at the latest). This would ensure that Chair succession planning better aligns with the Trust’s strategic and business planning cycle.

While there has been no past precedent for extensions to the term of office of a Chair who has served more than nine years from the date of their first appointment to the Board, there is agreed procedural guidance on approving an exceptional re-appointment for a NED. This has been used on occasions where circumstances have supported one-year reappointments for individual NEDs already having served two four-year terms of office.

5. Procedure for exceptional re-appointments

The terms of reference for the Council of Governors Nomination and Remuneration Committee reference procedural guidance on approving an exceptional re-appointment for a Non-Executive Director (*Criteria and Process for Seeking Approval for an Exceptional Re-appointment*).

Although this proposed extension in Chair tenure is not a re-appointment for an additional full term of office, following agreed guidance for such demonstrates good governance and aligns with relevant principles within the NHS Code of Governance for provider trusts (code provision C,4.3 referred to above in section 2).

This procedural guidance appended to this paper ([Appendix 1](#)) has been revised as highlighted and applied to these current circumstances by the Council of Governors’ Nomination and Remuneration Committee at its meeting on 22 April 2024 to form the basis of the recommendation to the Council of Governors.

Matter for due regard	Information taken into account
Eligibility under the exception criteria	The content of Section 4 above describing Chair succession planning provides exception criteria
Assessment against current job description and person specification	Annette Laban continues to meet the person specification to fulfil requirements of the Chair job description
Chair’s past annual performance appraisal(s)	Appraisals undertaken and reported to CoG have provided positive assurance around performance in the role of Chair
Any changes in Chair’s commitments	There have been no changes to commitments. Note, confirmation can be given that there has been no recent need to update the Board’s Register of Interests. Annette has confirmed that she is willing to serve an additional short tenure and has the time required to undertake the role.
Any change in Chair’s independence	Annette is independent in character and judgement despite previous tenure as NED / Chair (11.5 years). Nothing has been raised through the appraisal process to dispute this. Note this should also be assessed through Governors’ own observations and triangulation with feedback sought from members of the Board of Directors.
Agreement of NHS England	Support for extension in term of office is required by the Council of Governors in advance of seeking formal approval from NHS England. However, it is informally understood that this short extension will be supported.

5. Recommendation

The Council of Governors is asked to **APPROVE** the recommendation from the Council of Governors' Nomination and Remuneration Committee to extend the term of office of Annette Laban as Trust Chair to 31 July 2025 (Maximum extension term) with specific reference to the criteria outlined by procedural guidance for exceptional re-appointments of NEDs.



PROCEDURAL GUIDANCE ON APPROVING AN EXCEPTIONAL RE-APPOINTMENT / TERM OF OFFICE EXTENSION FOR A NON-EXECUTIVE DIRECTOR

1. Background

Section 6.6 of the Standing Orders of the Board of Directors stipulates the standard Term of Office for a Non-Executive Director is no more than four years and sets the maximum tenure at two consecutive Terms of Office. This also applies to the role of the Chair.

Provision is made in Section 6.6 for the maximum tenure to be extended, once only, through a reappointment for a one-year term of office in exceptional circumstances. Reference is also made to circumstances whereby an existing Non-Executive Director, who continues to satisfy tests of independence, can serve a one term of office of four years in the position of Chair.

2. Criteria for approving a re-appointment / term of office extension

Circumstances may be deemed *exceptional* if a re-appointment / extension of tenure would maintain stability when the:

- a) Board of Directors and/or the Trust is experiencing a period of stress, or
- b) Board of Directors faces an unplanned sudden and simultaneous loss of a majority of its Non-Executive Directors, or
- c) Board of Directors requires specialist Non-Executive Director input to manage and resolve a time-limited issue, or
- d) Significant structural organisational change

3. Process for seeking approval for a re-appointment / term of office extension

Approval for a re-appointment / extension to the maximum tenure for an individual Non-Executive Director must be given by the Council of Governors' Nomination and Remuneration Committee which will in turn make a recommendation to the Council of Governors for final approval.

The case for an extension in exceptional circumstances may be initiated by either the Board of Directors or its Nomination and Remuneration Committee, or by the Council of Governors or its Nomination and Remuneration Committee. Any extension should be in alignment with national policy direction. Further advice should be sought from the South Yorkshire Integrated Care Board or NHS England as and when required. For the position of the Chair, NHS England Regional Office approval must be sought.

The case must be based on the exception criteria outlined in Section 2 above and should be submitted by a paper to the Council of Governors' Nomination and Remuneration Committee.

In its deliberations, the Council of Governors' Nomination and Remuneration Committee should pay due regard to:

- the issue of eligibility under the exception criteria outlined in Section 2
- matters normally considered in the re-appointment of the Non-Executive Director i.e. assessing the existing candidate against the current updated job description and person specification
- additional relevant issues, such as
 - the Non-Executive Director's past annual performance appraisal(s)
 - any changes in the Non-Executive Director's commitments that may have a bearing on the time required to undertake the role
 - any change in the Non-Executive Director's independence, particularly their length of service which is relevant to the determination of their independence (as set out in Section C,4.3 of the Code of Governance for provider trusts (NHSE, Oct 2022)).

4. Appointment

Subject to final approval by the Council of Governors, the Non-Executive Director will be appointed for a term of up to one year only. Further extensions are not permissible.

The terms and conditions of the appointment will be clearly set out in the Letter of Appointment.

Any such extensions will be reported in the Trust's Annual Report and Accounts, as directed NHS England.

Relevant provisions within the Code of Governance for NHS provider trusts (NHSE, October 2022)

Section C: Composition, succession and evaluation

4.3 The chair should not remain in post beyond nine years from the date of their first appointment to the board of directors and any decision to extend a term beyond six years should be subject to rigorous review. To facilitate effective succession planning and the development of a diverse board, this period of nine years can be extended for a limited time, particularly where on appointment the chair was an existing non-executive director. The need for extension should be clearly explained and should have been agreed with NHS England.

Section B: Division of responsibilities

2.6 The board of directors should identify in the annual report each non-executive director it considers to be independent. Circumstances that are likely to impair, or could appear to impair, a non-executive director's independence include, but are not limited to, whether a director:

- has been an employee of the trust within the last two years
- has, or has had within the last two years, a material business relationship with the trust either directly or as a partner, material shareholder, director or senior employee of a body that has such a relationship with the trust
- has received or receives remuneration from the trust apart from a director's fee, participates in the trust's performance-related pay scheme or is a member of the trust's pension scheme
- has close family ties with any of the trust's advisers, directors or senior employees
- holds cross-directorships or has significant links with other directors through involvement with other companies or bodies
- has served on the trust board for more than six years from the date of their first appointment (but note 4.3 in Section C, where chairs and NEDs can serve beyond six years subject to rigorous review and NHS England approval).
- is an appointed representative of the trust's university medical or dental school.

Where any of these or other relevant circumstances apply, and the board of directors nonetheless considers that the non-executive director is independent, it needs to be clearly explained why.