



MEETING TITLE Trust Board		MEETING DATE 26/07/2016	
TITLE of PAPER	For Approval: Updated Terms of Reference for the Role of Senior Independent Director	PAPER REF	5.2
STRATEGIC OBJECTIVE	All		
PURPOSE OF THE PAPER	That the Trust Board approves the updated Terms of Reference for the role of Senior Independent Director.		
For Approval	<input checked="" type="checkbox"/>	For Assurance	<input type="checkbox"/>
For Decision	<input type="checkbox"/>	Discussion/Information	<input type="checkbox"/>
AUTHOR / LEAD	Anne Allen, Trust Secretary	ACCOUNTABLE DIRECTOR	Rod Barnes, Chief Executive
DISCUSSED AT / INFORMED BY – include date(s) as appropriate (free text – i.e. please provide an audit trail of the development(s)/proposal(s) subject of this paper): The current Terms of Reference for the role of Senior Independent Director were approved by the Trust Board in 2012.			
PREVIOUSLY AGREED AT:	Committee/Group: Trust Board	Date: 29 May 2012	
RECOMMENDATION	That the Trust Board approves the updated Terms of Reference for the role of Senior Independent Director.		
RISK ASSESSMENT		Yes	No
Corporate Risk Register and/or Board Assurance Framework amended <i>If 'Yes' – expand in Section 4. / attached paper</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Resource Implications (Financial, Workforce, other - specify) <i>If 'Yes' – expand in Section 2. / attached paper</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Legal implications/Regulatory requirements <i>If 'Yes' – expand in Section 2. / attached paper</i>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Equality and Diversity Implications <i>If 'Yes' – please attach to the back of this paper</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
ASSURANCE/COMPLIANCE			
Care Quality Commission Choose a DOMAIN		5: Well led	
Monitor Quality Governance Framework Choose a DOMAIN		3: Planning and driving continuous improvement	

Updated Terms of Reference for the Role of Senior Independent Director

1. PURPOSE

- 1.1 That the Trust Board approves the updated Terms of Reference for the role of Senior Independent Director.

2. BACKGROUND

- 2.1 The role of Senior Independent Director (SID) draws on best practice in the private sector and the *UK Combined Code on Corporate Governance*, on which the *NHS Foundation Trust Code of Governance (Monitor, 2014)* is founded. The role is not mandated for NHS boards but identifying a SID is 'good practice' and YAS appointed one of its Non-Executive Directors to the role in 2012.

- 2.2 The Trust, in ensuring its corporate governance arrangements are kept under constant review to identify and implement best practice, has benchmarked YAS' current SID Terms of Reference with a number of public and private sector sources including:

- NHS Foundation Trust Code of Governance, Monitor, 2014;
- NHS England (sets the priorities and challenges for the NHS in England);
- NHS Improvement (combined the former roles of the NHS Trust Development Authority and Monitor, the independent regulator of NHS Foundation Trusts);
- other NHS trusts and Foundation Trusts (ambulance and other sectors) including a number of those rated 'Outstanding' by the Care Quality Commission, the independent regulator for health and social care;
- UK Combined Code on Corporate Governance, Financial Reporting Council, April 2016;
- the Institute of Directors.

2.3 YAS' current SID TOR are to:

- a) Lead a meeting of the Non-Executive Directors, without the Chairman present, at least annually, to appraise the Chairman's performance (taking into account the views of the Executive Directors).
- b) Make her/himself available for confidential discussions with other Non-Executive Directors who may have concerns which they believe have not been properly considered by the Board as a whole.
- c) Act as a point of contact for Members of the public and other stakeholders with concerns which contact through the normal channels has failed to resolve or for which such contact is inappropriate.

3. REVIEW OF CONTEXT

- 3.1 The *Higgs Review, 2003* recommended that, “boards of publicly listed companies should appoint a senior independent director (SID) from among their independent Non-Executive Directors (NEDs).” These recommendations were subsequently adopted in the *UK Code on Corporate Governance* and *Monitor’s NHS FT Code of Governance* to which YAS’ adheres.
- 3.2 SIDs serve as a sounding board for the Chairman and act as an intermediary for the other Directors (executive and non-executive). They are responsible for holding annual meetings with NEDs, without the Chairman present, to appraise the Chairman’s performance. They would also be expected to meet with the NEDs on other such occasions when necessary.
- 3.3 The role is key to sound corporate governance especially in challenging times. Higgs (2003) states, “When the Board is undergoing a period of stress, the SID’s role becomes vitally important. He or she is expected to work with the Chairman and the other Directors to resolve major issues. For example, where the relationship between the Chairman and Chief Executive is particularly close, and they do not communicate fully with shareholders, the SID is able to step in and provide a link.” Conversely, a less effective working relationship between these two key roles could also give rise to the SID’s intervention.
- 3.4 The SID will be a Non-Executive Director (NED) who is considered by the Board to fulfil Monitor’s criteria of ‘independence’ (please refer to: **Appendix A: Monitor NHS FT Code of Governance, 2014: - A.3.1 & A.3.2**) - with all the general duties of a NED in common with other NEDs.
- 3.5 The Chairman is not eligible to be the SID, nor is the Deputy Chairman when acting as Chairman of the Trust due to the need for the role to be independent of the Chairman. The SID does not have to be the Audit Committee Chairman.
- 3.6 The SID will be accountable to the Trust Board.

4. PROPOSALS/NEXT STEPS

It is proposed, in addition to the general duties of a NED (4.1), the SID will perform enhanced duties:

4.1 General Duties of the SID role

The SID has a key role in supporting the Chairman in leading the Trust Board particularly in the area of Board Development, and acting as a ‘sounding board’ and a source of advice for the Chairman.

4.2 Additional Specific Duties

In the circumstances outlined below, the SID will work with the Chairman and other Directors to resolve significant issues:

- i. To be available to Board Members if they have concerns which have not, or cannot, be resolved through contact with the Chairman, the Chief Executive or the Trust Secretary. This will involve an obligation on the SID to respond to such contacts and to meet privately with Members if appropriate and necessary.
 - ii. To intervene to resolve issues of concern raised by Directors regarding:
 - a) the Chairman's performance;
 - b) where the relationship between the Chairman and Chief Executive is either too close or not sufficiently harmonious;
 - c) where the Trust's strategy is not supported by the whole Board; or
 - d) where key decisions are being made without reference to the Board or where succession planning is being ignored.
 - iii. To provide mentoring and/or support to new Board directors as required.
 - iv. To attend sufficient meetings of the Board, as applicable to gain a balanced understanding of the issues which are important to them and any concerns they may have.
- 4.3 An outline person specification for the SID role can be found at **Appendix B**.
- 4.4 The SID role will be reviewed annually by the Trust Board or earlier if YAS' legal status changes.

5. RECOMMENDATIONS

- 5.1 That the Trust Board approves the updated Terms of Reference for the role of Senior Independent Director.

6. BACKGROUND/APPENDICES

Appendix A: Monitor's NHS FT Code of Governance, 2014: - A.3.1 & A.3.2

“The board of directors should identify in the annual report each non executive director it considers to be independent. The board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director’s judgment. The board of directors should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- *has been an employee of the NHS foundation trust within the last five years;*
- *has, or has had within the last three years, a material business relationship with the NHS foundation trust either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the NHS foundation trust;*
- *has received or receives additional remuneration from the NHS foundation trust apart from a director’s fee, participates in the NHS foundation trust’s performance related pay scheme, or is a member of the NHS foundation trust’s pension scheme;*
- *has close family ties with any of the NHS foundation trust’s advisers, directors or senior employees;*
- *holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;*
- *has served on the board of the NHS foundation trust for more than nine years from the date of their first appointment; or*
- *is an appointed representative of the NHS foundation trust’s university medical or dental school.”*

APPENDIX B: SID PERSON SPECIFICATION

	Essential	Desirable
Qualifications	A YAS' Non-Executive Director	
Knowledge and Experience	Knowledge and experience of undertaking appraisals and giving feedback	
	Knowledge of governance and compliance	Experience of dispute resolution
Skills	Highly developed communication and negotiation skills	
Personal Qualities	Open and engaging	
	Independent	
	Candid	
Additional Requirements	Willingness to attend other meetings as appropriate. Has sufficient availability and flexibility of time to fulfil the requirements of the role.	