

The NHS Appointments Commission's Submission to the Review of the role and effectiveness of Non-Executive Directors being undertaken by Derek Higgs

1. Introduction

We were surprised and disappointed to see that there is no reference in the consultation document or in the press release of the non-executives who work in the public sector. Arguably the maintenance of proper corporate governance in the public sector is at least, if not more, important to the national economic health than those in the private sector. There has been a long history of non-executive director involvement in the NHS but it is only during the last 10 or so years that there has been a real focus on the importance of corporate governance and accountability. Furthermore, about 5 years ago NHS Trust Boards were given the direct responsibility for quality and as a result clinical governance was added to the accountabilities of non-executive directors. This makes the job of a non-executive director more complex than that of their private sector colleagues. Recently the focus of the management of healthcare has moved towards the plurality of provision and as a consequence there will be an increasing cross-over between the public and the private sector. In our view this puts a premium on a consistent approach to non-executive directors across both sectors. It is for that reason that we are making this submission as we believe that it is critically important that your review embraces the role of non-executive directors in the both the private and public sector.

2. The NHS Appointments Commission

The NHS Appointments Commission was established on 1st April 2001 by the Secretary of State for Health as an independent organisation to take over the statutory duty of appointing Chairs and non-executives to all NHS Boards from Health Ministers. It effectively started business on the 1st of July 2001 and since that time has made over 2000 non-executive appointments. In total the Commission is responsible for appointing, re-appointing and dis-appointing over 4000 Chairs and non-executive directors on a 4 year cycle which makes it arguably the largest non-executive recruitment and training agency in the United Kingdom, if not in Europe.

The Commission also has the responsibility for a proactive performance management of Chairs and non-executives and is doing so by introducing appraisal and performance review on an annual basis for all non-executives, together with a comprehensive programme of training and career development for their Board work.

We believe that in the consistency of our appointments process and with the appraisal process and training that we have introduced, we are significantly more advanced than others.

3. The Consultation Document Questions

A WHAT ROLE SHOULD NON-EXECUTIVE DIRECTORS PERFORM AND HOW DOES THIS COMPARE TO THE PRESENT POSITION?

Boards of Health Authorities and Trusts have a crucial role in ensuring performance and financial targets and that standards are met on an annual basis. They are accountable to the Secretary of State for the delivery of these targets and standards and Government health policies. Failure to deliver often results in the removal of the Chair and some or all of the non-executive directors. The responsibilities and accountabilities of non-executive directors in the NHS are considerable. (See Attachment 1 for the role and responsibilities of Boards.)

The Commission has revised the role and duties of non-executive directors since it assumed responsibility and these have been introduced across all of the Boards in England. The main effect of which will be to “de-executise” many non-executive directors who have strayed into too great an involvement with the management of their organisation. The role of a non-executive director is set out in the Induction Pack (Attachment 2) which is sent to all non-executive directors and is described as that of Steward, Ambassador, Guardian, Experience. They should carry out that role by being independent, detached, strategic but challenging. This should enable them to make an effective contribution to the work of the Board which is accountable to the stakeholders for the delivery of financial, quality and performance targets. All directors are bound by a Code of Conduct which is attached as Attachment 3.

The Chair has responsibility for the ongoing development and performance of his or her non-executives and the crucial role of not only managing the Board but also the Chief Executive relationship.

The current time commitment for Chairs is 3 days a week which is interpreted flexibly, and seems to work, and for non-executives is 5 days a month which we consider is far too great and is leading to the “executisation” to which we referred to earlier. We are submitting a revised proposal to the Secretary of State to reduce the amount of time to 2 and a half days a month which we consider to be adequate.

We do not have “senior independent non-executive directors” but most Boards have a Deputy Chair. We consider that “senior independent non-executive directors” is something that, if it becomes commonplace within the non-executive world, we should adopt.

Our Chairs and non-executive directors can only serve on one NHS Health Authority or Trust Board. We do not believe that this is necessarily a good thing as benefits could be gained from cross-fertilisation. However, care would need to be taken to ensure that there was no conflict between 2 or more roles. There must also be a limit on the number of different non-executive director roles held by an individual.

B ATTRACTING AND APPOINTING NON-EXECUTIVES

We attract a wide range of people to serve on Boards who bring a multitude of skills and experience from a wide variety of backgrounds. However, the main generic skill which a non-executive director requires is an ability to think strategically and to contribute across the full range of the work of the Board. It is important that they do not confine their involvement to their particular specialty. It is crucial that they resist the temptation to cross the dividing line between non-executive and executive roles. Each Board should have a variety of skills and background from its non-executives as that provides rounded and detached advice which is crucial for the executive directors. Too great a concentration of skills and knowledge relating to the work of the particular organisation is a significant disadvantage.

The Commission has done a great deal of work in refining its recruitment procedures but it still is a challenge to get the level of quality that is required whilst maintaining a proper degree of diversity and skill range. We have a relatively sophisticated recruitment process and we have recently published The Appointment Process (Attachment 4). This sets out the way in which the process is undertaken, together with all other relevant information.

To widen the field of potential applicants, we are in discussion with the CBI and Institute of Directors about recruiting from their membership. The initial results of which have been encouraging.

The fees for Chairs vary according to the size of their organisation; between £15-20,000 per annum – this is barely adequate. The rewards for non-executive directors in the National Health Service are low – just over £5,000 per annum - and this is a significant deterrent to attracting people who are in full time employment because their employers do not consider that to be adequate recompense for the time that is required to carry out the role satisfactorily. The same difficulty applies to the self-employed.

In our view the remuneration structure for non-executives needs to be overhauled to provide a proper reward for the level of responsibility and risk that is now involved.

C DO EXISTING STRUCTURES AND PROCEDURES FACILITATE EFFECTIVE PERFORMANCE BY NON-EXECUTIVE DIRECTORS?

We have set in train a programme to significantly improve the way in which we can enable non-executive directors to contribute more effectively to their Boards. There has been a marked improvement in the way in which Boards work but we are introducing comprehensive training across the country in 2003 for whole Boards in order to further improve their performance. This training will be mandatory and will be the first

time that non-executive directors and executive directors have been trained alongside one another.

In practice we operate the combined code which we consider is working satisfactorily and we have no difficulties with the composition of audit, nomination and remuneration committees – all of which are in line with private sector corporate practice.

From 1st April 2002 we have introduced a comprehensive national appraisal and performance review for all Chairs and non-executives. All Chairs and non-executives now have annually renewable objectives which have been agreed and they will all be the subject of an annual appraisal starting at the beginning of 2003. We enclose for your information the appraisal pack which was sent out some 6 months ago to all Chairs and non-executives (Attachment 5).

D DO EXISTING RELATIONSHIPS WITH SHAREHOLDERS OR OTHERS NEED TO BE STRENGTHENED?

The public sector has a different type of shareholder namely the Government and the local people for whom the healthcare is being provided. Considerable efforts are being made to strengthen the way in which patient representative organisations relate to Boards and Boards similarly to patient organisations. In about 12 months' time there will be an additional non-executive director appointed to each Board who will be drawn from the patient representative organisation for the relevant area.

An important role of non-executive directors is to interact with the public through public meetings and the like to obtain the views of their stakeholders on the performance of their organisation and those areas which they would like to see improved.

There is still some way to go in creating a more constructive and proactive environment between Chairs and non-executive directors and there is still some confusion as to the most effective relationship between Chairs, Chief Executives and non-executives and executives. In the main it works reasonably well but considerable improvement could be obtained and as a result the main concentration of future training and development will be on whole Board training and the Chair/Chief Executive relationship.

E HOW CAN NON-EXECUTIVE DIRECTORS BEST BE SUPPORTED TO PERFORM THEIR ROLE?

The Commission were disappointed at the varied nature and incidence of training for non-executive directors that they inherited. As a consequence we are in the process of introducing a comprehensive range of training and development for Chairs and non-executives and for senior executives. We have introduced a national induction pack entitled "Welcome to the NHS" which we have distributed to all non-executives and every newly appointed non-executive receives a copy immediately on appointment. The document is updated annually and is much sought after by executive directors as well! This has made a significant difference to their understanding of the NHS and their Board responsibilities and has meant that they are up to speed and effective much more quickly.

After appointment all new non-executive directors are given induction training in their locality based on nationally approved modules which deal with the generic issues of being a non-executive director. The feedback that we have received has been very positive even from non-executive directors who have had many years of experience in a similar role in the private sector. Many say that they learned a considerable amount more through "Welcome to the NHS" and the induction training than they did during their time as a non-executive director in the private sector. Proper induction for non-executives is crucial and from our experience of both the public and private sector, it is inadequate. We believe that we have already significantly redressed that deficit.

The setting of objectives for all non-executive directors as part of the appraisal process has now been completed and has been positively received. We are introducing appraisal training in the Autumn of 2002 to facilitate the first appraisal round in 2003.

We will be introducing in 2003 whole Board training which from our research amongst non-executive directors was the area where they felt Boards would gain the most in improving performance. This has been welcomed by Chief Executives and executive directors on Boards. The ongoing programme of training and development is attached (Attachment 6).

QUESTIONS F. AND G.

These are not relevant to our work.

4. The Future

As we indicated in the introduction, the way in which the NHS is managed and healthcare provided is likely to change dramatically over the course of the next few years. Franchising has already been introduced and will this Autumn be opened to private sector managers and the Government have announced the introduction of Foundation Hospitals which are intended to be freed from Government control and allowed to borrow on the open market. Both of these actions signal a greater involvement of the private sector in the management and potentially the ownership of some of the NHS assets and as a consequence present considerable challenges for both non-executives in the private and public sectors. It is important that to facilitate this significant move in the provision of public services that the approach to non-executives in respect of their role, accountabilities, time commitment and remuneration moves rapidly towards a consistent approach. The inevitable consequence of the plurality of provision within the NHS is greater involvement of regulation and the Government's announcement that they were creating an overall regulator for healthcare in the United Kingdom (Commission for Health Audit and Inspection) adds another similar ingredient to the multiplicity of accountability that non-executive directors have increasingly in the private sector. We hope that we have made the case that your review should endorse a move towards a consistent approach across both sectors, and that much which is now becoming common practice in the NHS could easily be adapted for the private sector. Conversely we shall be studying your report with considerable interest and adapting our processes where appropriate.