National Institute for Health and Care Excellence

Non-executive roles

This report outlines proposed changes to the allocation of the additional non-executive board responsibilities following the changes to the Board’s membership between 1 April and 1 August 2021.

The Board is asked to:

1. Approve the amendments to section 3 of the appeals process guide to decouple the appeals lead role from the Vice Chair position
2. Agree that the Audit and Risk Committee Chair will automatically be designated as the Senior Independent Director
3. Approve the amendment to the Remuneration Committee’s terms of reference to state that it will include at least 3 non-executive directors in addition to the Chairman.

Sharmila Nebhrajani

Chairman

July 2021

## Introduction

On 1 April 2021, 6 new non-executive directors (NEDs) joined the NICE Board, bringing a wealth of experience and expertise across a range of disciplines. On 31 July 2021, 2 longstanding NEDs, Tim Irish and Rima Makarem, reach the end of their term of office and are due to stand down from the NICE Board.

Tim Irish is currently Vice Chair. Rima Makarem is Audit and Risk Committee Chair and also the Senior Independent Director. This paper sets out proposals for reallocating these roles and provides an update on the revised membership of the Board committees.

## Vice Chair and appeals lead

NICE's standing orders make provision for the Board to appoint one of the NEDs to be Vice Chair. The role of the Vice Chair is to deputise for the Chairman in their absence at Board meetings and on other occasions when they are otherwise unavailable. Standing order 22 states:

"Where the chairman of NICE has ceased to hold office, or where they are unable to perform their duties as chairman owing to illness, or any other cause, the vice-chair shall act as chair until a new chair is appointed or the existing chair resumes their duties, as the case may be".

The Vice Chair at NICE has also traditionally held additional responsibilities regarding the technology appraisal and highly specialised technologies appeal process. These are set out in the [appeals process guide](https://www.nice.org.uk/process/pmg18/chapter/foreword) and involve the Vice Chair determining the arguability and validity of each of the appeal points lodged and deciding if an appeal (oral or written) will be held. The Vice Chair is responsible for writing to the appellant with the outcomes of their initial and final scrutiny of the appeal.

As part of this responsibility, the Vice Chair has been responsible for working with the Corporate Office to:

* Appoint individuals able to hear appeals and present these appointments to the Secretary of State for approval.
* Ensure that the panel for each individual appeal is appropriately constituted from members whose appointment has been approved by the Secretary of State.
* Ensure that those appointed to hear appeals receive appropriate induction and ongoing training.
* Ensure that the policies associated with the appeal process are kept up to date.

While this arrangement has worked well in the past, there is no fundamental reason why the appeals role should remain linked with the Vice Chair role. To help balance workload, and to provide flexibility for the future, it is therefore proposed to decouple the roles of Vice Chair and appeals lead.

To facilitate this, the Board is asked to approve the following amendment to section 3 of the appeals process guide:

* **Existing wording:** “The Vice Chair of NICE is responsible for determining the arguability and validity of each of the appeal points lodged and will decide if an appeal (oral or written) will be held. In doing so, he or she may take legal advice. In the absence of the Vice Chair, or where the Vice Chair is conflicted, the Chair of the Board will nominate an alternative Non-Executive Director to act as the Vice Chair in respect of appeals.”
* **Proposed new wording:** “NICE’s Chairman will appoint one of the Non-Executive Directors to oversee the appeals process. This Non-Executive Director is responsible for determining the arguability and validity of each of the appeal points lodged and will decide if an appeal (oral or written) will be held. In doing so, he or she may take legal advice. In the temporary absence of this Non-Executive Director, or where they are conflicted, NICE’s Chairman will either undertake this scrutiny role themselves or nominate an alternative Non-Executive Director to do so.”

Given his long-standing experience as a member of the appeals panel, Mark Chakravarty has been asked to take on this role for the appeals process from 1 August 2021.

At the end of his term of office, Tim Irish had agreed to stay on in an advisory capacity for up to 12 months to provide advice and support during the handover of this complex and sensitive area of work. Discussions are currently underway with the Department of Health and Social Care with a view to extending Tim’s appointment as a NED for 3 months to provide continuity of cover for the Chairman’s upcoming short period of absence. If approved, Tim would then move to the previously planned advisory position until 31 July 2022.

## Senior Independent Director

The Board has in the past also appointed one of the NEDs to be the Senior Independent Director (SID). In addition to their role as a NED, the SID will:

* 1. Act as a sounding board for the Chairman and Vice Chair on issues of sensitivity or governance as needed.
  2. Be available to Board members if they have concerns relating to the performance of the Chairman, or the performance of the organisation that they feel have not been dealt with appropriately by the Chairman.
  3. Investigate and respond to complaints about the Chairman in accordance with NICE’s general complaints policy and procedure.

The Board appointed Rima Makarem as the current SID, in addition to her role as Audit and Risk Committee Chair. There is a synergy between these 2 roles, given the Audit and Risk Committee’s role in providing an independent and objective view of governance and internal control at NICE, and the committee chair’s role in the whistleblowing process. Subject to the Board’s agreement, it is proposed that the Audit and Risk Committee Chair is automatically designated as the Senior Independent Director.

## Committee membership

There are 2 committees of the Board:

* 1. Audit and Risk Committee
  2. Remuneration Committee

The Audit and Risk Committee Chair is appointed by the Secretary of State for Health and Social Care and Tom Wright has been appointed to this role from 1 August 2021. The responsibility for appointing NEDs to the remainder of the Board committees rests with the Chairman. Having met with the NEDs individually, the proposed committee composition from 1 August 2021 is set out in appendix 1.

Currently, the Remuneration Committee’s terms of reference state that the committee will comprise the NICE Chairman (who will chair the Committee) and 3 non-executive directors. To enable an expanded membership it is proposed to amend the terms of reference as below:

“The Committee will comprise the NICE Chairman (who will chair the Committee) and ***at least*** 3 non-executive directors.”

## Conclusion

The Board is asked to:

* 1. Approve the amendments to section 3 of the appeals process guide to decouple the appeals lead role from the Vice Chair
  2. Agree that the Audit and Risk Committee Chair will automatically be designated as the Senior Independent Director
  3. Approve the amendment to the Remuneration Committee’s terms of reference to state that it will include at least 3 non-executive directors in addition to the Chairman.

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Appendix 1: Committee membership from 1 August 2021

## Audit and Risk Committee

Tom Wright (committee chair)

Mark Chakravarty

Elaine Inglesby-Burke

Alina Lourie

Justin Whatling

Amanda Gibbon (external member)

Remuneration Committee

Sharmila Nebhrajani (committee chair)

Jackie Fielding

Gary Ford

Elaine Inglesby-Burke

Bruce Keogh