



Example terms of reference for an auditor panel

Briefing paper, December 2015

Background

The *Local Audit and Accountability Act 2014* (the Act) requires every 'relevant authority' to appoint an auditor panel to exercise functions set out in the Act (part 3, section 9). In the NHS, relevant authorities are NHS trusts and clinical commissioning groups (CCGs).

Schedule 4 paragraph 1 of the Act states that:

- The auditor panel MUST be appointed either by the organisation OR by the organisation and one or more other relevant authority¹
- The auditor panel MUST be either a specially established panel OR an existing committee, sub-committee or panel.

It is for the organisation's board/ governing body to decide how it appoints its auditor panel.

The auditor panel must be in place in time to advise on the appointment of external auditors for 2017/18. In practice this means that the panel needs to be established early in 2016.

These terms of reference assume that an NHS trust board or CCG governing body has decided to nominate its existing audit committee to act as its auditor panel. No other relevant authorities are involved.

It is important to remember that even when this approach is followed (i.e. the existing audit committee is nominated as the auditor panel), the statutory requirements set for auditor panels must be followed. This means that the panel must have its own terms of reference and discharge its duties separately from the audit committee.

This briefing has been produced by the HFMA's Governance and Audit Committee and is designed to help NHS trusts and CCGs as they set up their auditor panels. The terms of reference set out in the briefing are provided as an example only and reflect the requirements of the Act. They do not go into detail about how the auditor panel should function or fulfil its role. The HFMA, working alongside the Department of Health, has issued a separate briefing that provides practical guidance – [Auditor Panels: guidance to help health bodies meet their statutory duties](#) – is available via the HFMA and gov.uk websites.

¹ For example, two CCGs may decide to appoint a single joint auditor panel to achieve economies of scale.

Terms of Reference

Constitution

The board/ governing body hereby resolves to nominate its audit committee to act as its auditor panel in line with schedule 4, paragraph 1 of the 2014 Act². The auditor panel is a non-executive committee of the board/ governing body and has no executive powers, other than those specifically delegated in these terms of reference.

Membership

The auditor panel shall comprise the entire membership of the audit committee with no additional appointees³. This means that all members of the auditor panel are independent, non-executives⁴.

This satisfies the requirement that an auditor panel must have at least three members with a majority who are independent and non-executive members of the board/ governing body.

In line with the requirements of the *Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015* (regulation 6) each member's independence must be reviewed against the criteria laid down in the regulations⁵.

Chairperson

Either the audit committee chairperson will be appointed by the board/ governing body to chair the auditor panel OR one of the auditor panel's members shall be appointed chairperson of the auditor panel by the board/ governing body⁶.

Removal/ resignation

The auditor panel chairperson and/ or members of the panel can be removed in line with rules agreed by the board/ governing body.

Quorum

To be quorate, independent members of the auditor panel must be in the majority AND there must be at least two independent members present or 50% of the auditor panel's total membership, whichever is the highest⁷.

² Boards/ governing bodies can – if they choose – nominate a 'sub-set' of the audit committee to act as the auditor panel. If a sub-set is used, there must be at least 3 members with a majority who are independent and non-executive members of the board/ governing body.

³ If a 'sub-set' of the audit committee is nominated to be the auditor panel the membership should be specified.

⁴ Regulation 2 of the *Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015* allows for instances where a member of the board/ governing body may not satisfy the independence criteria and still be a member of the auditor panel. Such instances are likely to be rare. If there are non-independent members they must be in the minority.

⁵ If a specially established panel is nominated with new members (i.e. not from the existing audit committee) a full recruitment process must be followed in line with regulation 3. This means that any prospective members who are not on the board/ governing body must be appointed in response to an advertised vacancy and after submitting an application.

⁶ Key issues to bear in mind are that the chairperson must be independent and a non-executive member of the board/ governing body AND the chairperson of the organisation itself must not be a member of the auditor panel.

⁷ This rule should also be adhered to if the auditor panel is a sub-set of the audit committee.

Attendance at meetings

The auditor panel's chairperson may invite executive directors and others to attend depending on the requirements of each meeting's agenda. These invitees are not members of the auditor panel.

Frequency of meetings

The auditor panel shall consider the frequency and timing of meetings needed to allow it to discharge its responsibilities but as a general rule will meet on the same day as the audit committee.

Auditor panel business shall be identified clearly and separately on the agenda and audit committee members shall deal with these matters as auditor panel members NOT as audit committee members.

The auditor panel's chairperson shall formally state at the start of each meeting that the auditor panel is meeting in that capacity and NOT as the audit committee.

Conflicts of interest

Conflicts of interests must be declared and recorded at the start of each meeting of the auditor panel.

A register of auditor panel members' interests must be maintained by the panel's chairperson and submitted to the board/ governing body in accordance with the organisation's existing conflicts of interest policy.

If a conflict of interest arises, the chairperson may require the affected auditor panel member to withdraw at the relevant discussion or voting point.

Authority

The auditor panel is authorised by the board/governing body to carry out the functions specified below and can seek any information it requires from any employees/ relevant third parties. All employees are directed to cooperate with any request made by the auditor panel.

The auditor panel is authorised by the board/ governing body to obtain outside legal or other independent professional advice (for example, from procurement specialists) and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary. Any such 'outside advice' must be obtained in line with the organisation's existing rules.

Functions

The auditor panel's functions⁸ are to:

- Advise the organisation's board/ governing body on the selection and appointment of the external auditor. This includes:
 - agreeing and overseeing a robust process for selecting the external auditors in line with the organisation's normal procurement rules
 - making a recommendation to the board/ governing body as to who should be

⁸ Practical guidance on how to fulfil these functions is set out in the HFMA's September 2015 briefing, [Auditor Panels: guidance to help health bodies meet their statutory duties](#)

appointed

- ensuring that any conflicts of interest are dealt with effectively

- Advise the organisation's board/ governing body on the maintenance of an independent relationship with the appointed external auditor
- Advise (if asked) the organisation's board/ governing body on whether or not any proposal from the external auditor to enter into a liability limitation agreement as part of the procurement process is fair and reasonable
- Advise on (and approve) the contents of the organisation's policy on the purchase of non-audit services from the appointed external auditor
- Advise the organisation's board/ governing body on any decision about the removal or resignation of the external auditor.

Reporting

The chairperson of the auditor panel must report to the board/ governing body on how the auditor panel discharges its responsibilities⁹.

The minutes of the panel's meetings must be formally recorded and submitted to the board/ governing body by the panel's chairperson. The chairperson of the auditor panel must draw to the attention of the board/ governing body any issues that require disclosure to the full board/ governing body, or require executive action.

Remuneration

Payments to auditor panel members shall be in line with the organisation's existing approach to remuneration and allowances.

Administrative support

The organisation's secretary (or governance lead) shall be responsible for organising effective administrative support to the auditor panel. The duties of the person appointed to fulfil this role shall include:

- Agreement of agendas with the chairperson
- Preparation, collation and circulation of papers in good time
- Ensuring that those invited to each meeting attend
- Taking the minutes and helping the chairperson to prepare reports to the board/ governing body
- Keeping a record of matters arising and issues to be carried forward
- Arranging meetings for the chairperson
- Maintaining records of members' appointments and renewal dates etc
- Advising the auditor panel on pertinent issues/areas of interest/ policy developments
- Ensuring that panel members receive the development and training they need
- Providing appropriate support to the chairperson and panel members.

Contact

If you have any comments on this briefing, the HFMA's governance and audit committee would be pleased to hear from you – please contact anna.green@hfma.org.uk

⁹ If the auditor panel is a sub-set of the audit committee, this report should be separate from the report/ minutes of the audit committee so that it is clear that the auditor panel is fulfilling a distinctive role.