

The NHS Confederation

Charity number 1090329

Company number 04358614

Trustee Remuneration Policy

Owner of policy	Director of People and Governance
Date of policy review	July 2024
Date of next review	May 2027
Approved by CEO	N/A
Agreed with Joint Negotiating Committee	N/A
Approved by the Remuneration Committee	June 2024
Approved by Board of Trustees	July 2024

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Version Control Table

Version	Date	Revisions
1	December 2021	New policy
2	July 2024	Minor formatting and updating to reference Charities Act 2022 rather than Charities Act 2011

1.0 Purpose and scope

Purpose

The NHS Confederation, registered charity number 1090329 (“NHSC”) is governed by its Board of Trustees. The majority of the Trustees act on an unpaid basis. However, there will be occasions where it is in the interests of NHSC to remunerate Trustees as permitted by NHSC’s Articles of Association (“Articles”), either for carrying out their role as Trustee, or for specific services delivered to NHSC.

The purpose of this policy is to:

- give guidance on the legal requirements and set out NHSC’s policy in relation to Trustee remuneration;
- provide information and guidance to Trustees and staff on the procedures required to authorise Trustee remuneration; and
- set out a process for how this policy might be reviewed or amended.

Scope

This policy:

- covers issues relating to the remuneration of current NHSC Trustees. It does not cover historic trustees, employees or others who may be engaged by NHSC on a consultancy basis.
- has been adopted by NHSC’s Trustees and is to be communicated to all current and future Trustees and senior staff.
- does not form part of any agreement between NHSC and a trustee or employee and may be amended at any time by the Trustees.
- is based on the legal requirements set out in charity law, as well as the Charity Commission’s guidance¹, and NHSC’s Articles.

2.0 When is it permissible to pay charity trustees?

The starting position is that all charity trustees serve on a voluntary basis. However, trustees can be paid in one of three categories:

For acting as a trustee, with consent from the Charity Commission, the court or via a specific provision in the charity’s constitution.

¹ Currently found here: <https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11>

As an employee and trustee, again with consent from the Commission, the court or via a specific provision in the charity's constitution.

For specific services to their charity, if authorised as above or if authorised by the trustees themselves under the procedure set out in section 185 of the Charities Act 2022 (often called "s185 payments".)

Payments to persons connected to trustees (e.g. via a close family relationship or to connected companies) are treated as payments to trustees and must also be authorised.

The key difference between being paid for a role as trustee (category (a)) and being paid for specific services to the charity (category c)), is that (a) encompasses what the Charity Commission views as "day to day activities as a trustee". These activities are not defined in law, but in essence it means payments for preparation and attendance at trustee meetings, reviewing and approving the annual accounts and reports, setting strategy, managing senior staff, and any other tasks which the trustees of that particular charity collectively view as "part of the job" of being a trustee (for example, certain fundraising events).

A typical example of the distinction is that a trustee acting as chair of a charity's audit committee would be considered "day to day activities", but a trustee (or that trustee's business) preparing the accounts themselves would not, and could typically be justified as a s185 payment.

3.0 Authorisation and conflicts of interest management

Any decision relating to NHSC paying a Trustee must only be made by the Board. Whilst NHSC staff may hold discussions with Trustees or potential Trustees about the terms of any payment, such discussions must always be framed by the requirements of this policy and staff must be clear that any discussions are subject to approval by the Trustees.

When making any decision relating to Trustee payment, Trustees must ensure that the conflict of interest provisions in NHSC's Articles are followed. Article 15.5 will apply, meaning that the Trustee whose payment or engagement is under discussion should remain in discussions only to such extent as in the view of the other Trustees is necessary to inform the debate, and thereafter should withdraw from the voting process and not be counted in the quorum.

4.0 Payment for acting as trustee

NHSC currently has consent from the Charity Commission to pay the Chair of Trustees for carrying out the role of Chair. No other Trustees may currently be paid for carrying out the role of Trustee.

The power to pay the Chair is documented in NHSC's Articles of Association. NHSC is authorised to "*pay in good faith... the chair of trustees for carrying out the role of chair...at a remuneration level that has been given the prior written consent of the Charity Commission*

and which is in accordance with all regulatory requirements of the Charity Commission and any legal requirements.”²

This power to pay the Chair is still subject to the Trustees agreeing that payment is in the best interests of NHSC. If the Trustees decided that it was no longer necessary to pay the Chair, or a new Chair is appointed, they could decide to end the arrangement (subject to any contractual agreements with the current Chair). The Trustees could also decide to pay less than the maximum prescribed by the Charity Commission.

If NHSC wished to raise the maximum level of payment to the Chair under the existing authorisation, it would need consent from the Charity Commission.

Whenever NHSC uses this power to pay the Chair, it must have a written agreement in place, in the form of an “appointment letter”, setting out the role description, the payment terms and a review procedure for performance in the role. NHSC should take legal advice before making any amendments to the written agreement.

If NHSC wished to pay an additional Trustee for carrying out their role as a Trustee, it would need separate consent from the Charity Commission.

5.0 Employees acting as Trustees

An employee of NHSC cannot be appointed as a Trustee except with valid authorisation (see paragraph 2.1(b) above).

All decisions to appoint Trustees (including Nominated Trustees, as defined in the Byelaws), must be made by the Trustees.

Where it is proposed that an employee is appointed as a Trustee, the Trustees must first consider the benefits of that appointment and the need to obtain valid authorisation. Until valid authorisation is obtained the Trustees must not agree to the appointment.

6.0 How to approach paying Trustees for specific services

Trustees may be paid for providing services to the Charity under section 185 Charities Act 2022. When considering any payment to a Trustee under section 185, the board should consider the headings marked A-G set out in this paragraph 6.

The Trustees should also ensure compliance with the conflicts process – see paragraph 3.

General considerations

It is possible for NHSC to use section 185 to pay Trustees for leading or Chairing an NHSC Network, or for providing advice to NHSC about the development of its Networks or other activities. However, it should not be assumed that certain roles automatically justify payment,

² Article 4.1.10. Details of the remuneration currently approved by the Commission is available on request from the NHSC Governance Manager.

and the Trustees must ensure they follow the procedure and conditions required by this policy, and are able to justify their decisions, including through written records.

Aside from compliance with the requirements of section 185, before approving remuneration for a trustee, particularly in the case of remuneration for chairing a Network, the Board should consider whether payment is truly necessary for the demands of the role. It may be that some Networks require significantly more time from their Chair than others, or that a Network Chair position is impossible to fill without compensation, in which case remuneration under s185 is likely to be the most appropriate route to justifying the payment. If it is important that a particular Network Chair is paid, but there are reasons why this will be problematic if they are also a Trustee, one option to consider is that the Network Chair is not a trustee, and another member of the Network board is nominated by the Network to act as a Trustee.

It is particularly important that Trustees' roles as trustees are kept separate from services which are being paid for under section 185, even where they may share similar characteristics.

7.0 Procedure

The procedure required to authorise payment under section 185 is:

- Before entering into any agreement to pay a Trustee for services:

the trustees (excluding the trustee to be paid) must decide that they are satisfied that it would be in the best interests of NHSC for the relevant Trustee to provide the services in question, and that the amount to be paid “does not exceed what is reasonable in the circumstances”; and

the trustees “must have regard to” the guidance³ given by the Charity Commission on paying trustees in these circumstances;

- The charity and the relevant trustee enter into a written agreement between them which records the terms of the agreement, including the exact or maximum amount that the Trustee can be paid;
- Immediately after the agreement is entered into, no more than a minority of the board are being remunerated by the charity (either under s185 or otherwise, directly or through a connected person). For example, if NHSC has 10 Trustees, one of whom is the paid Chair, only 3 other Trustees may receive payments under section 185 at the same time.

Section 185 cannot be used to pay trustees for the purpose of acting as a trustee or for those trustees who are employed by the charity.

Board decisions to authorise payments under s185 (and any non-board decisions related to the payment) should be carefully minuted or recorded.

8.0 The written agreement

³ <https://www.gov.uk/government/publications/trustee-expenses-and-payments-cc11>

There is no prescribed format for the written agreement, but Trustees should take legal advice before using a particular format. In many cases it will be appropriate to use a template services agreement which has been previously approved by external specialist advisors, but the Trustees should take advice on a specific agreement if they are unsure how it should be approached.

The agreement must contain:

- an accurate description of the service to be provided;
- details of the amount, if a 'one-off' or fixed-term payment, or else the maximum amount for services to be provided over the duration of the agreement. Where the benefit is a 'payment in kind', details of the benefit and its approximate value must be given;
- the duration of the agreement and how it may be terminated;
- if necessary depending on the services provided, provisions as to insurance, intellectual property, confidentiality, indemnity and data protection.

The agreement should be retained for 6 years after it is entered into.

9.0 Setting the terms of the agreement

It is for Trustees to decide, acting according to their Duty of Care (see paragraph 6.21) what a "reasonable" level of payment should be, and what the other terms of the agreement should be. Trustees may take advice from NHSC staff, but cannot delegate approval of the terms.

In setting those terms, the Trustees should consider:

- the affordability of the arrangement for NHSC;
- the value to NHSC of the services provided;
- the quality of the service;
- how much other organisations pay, or would pay, for similar services in similar circumstances;
- the specialisation of the Trustee involved and whether any other provider could provide the services; and
- the implications of the arrangement and payment for the reputation of the charity with its donors, funders, and supporters, and with the general public.

10.0 Scope of role

As above, Section 185 cannot justify payments made to Trustees for carrying out their role as Trustee, or acting as an employee.

Trustees and staff must be careful to ensure that:

- the role specified in the arrangement justified under section 185 does not include matters which would form part of a Trustee’s “day to day activities as a Trustee”; and
- the nature of the role and other terms of the agreement do not mean that the arrangement amounts to an employer/employee relationship.
- an “IR35” check is carried out on the proposed arrangement to ensure that the tax and employment status of the arrangement is not considered to be one of an employer/employee relationship.

Section 185 arrangements are typically suited to specific, self-contained tasks. The more a proposed arrangement departs from this, the more attention the Trustees will need to pay to ensure that:

- the role does not become either an employee position, or partially cover the role of trustee; and
- Proper consideration is given to the total value of the arrangement over its full term. Longer term arrangements, even with break clauses or the ability to terminate on notice, represent a greater financial commitment by NHSC.

Arrangements under section 185 should not be open ended and will often last for less than a year. After the agreed period, the arrangement may be renewed, but this would be subject to a fresh decision and written agreement. Alternatively, agreements can be structured with terms longer than 1 year, but with termination on notice possible for NHSC, and an annual appraisal. A renewal or review at least once a year provides a chance for the Trustees to review the effectiveness of the arrangement for NHSC and amend the terms of the arrangement as necessary.

11.0 Benchmarking payments

The Commission’s guidance encourages states that trustees “should normally test the market and use comparisons for similar work to ensure they are paying no more than the ‘going rate’.

When selecting the individual for the role and assessing the payment for the role, the Trustees should follow NHSC’s usual [procurement and value for money policy](#).

In a small number of cases, it may be appropriate to depart from the usual procurement process set out in procurement policy. One of those reasons might be that it is not reasonably possible or appropriate for any other person to carry out the services in question, and so a competitive selection process, or benchmarking exercise is not possible. This may apply where a Trustee has existing knowledge or relationships relevant the task which another supplier would not have, and for another supplier to acquire those attributes would be disproportionately expensive or impractical. Alternatively, a benchmarking process may be overly difficult and time-consuming to carry out (e.g. requiring lots of research and discussions with third party organisations), and therefore, if carried out, would represent a disproportionate drain on charity resource.

If the trustees believe it is appropriate not to follow the usual procurement, they must record clear reasons as to why they have done so.

12.0 “Having regard to” the Commission’s guidance

This requirement refers to section 4 of the Commission’s document CC11. The trustees must be able to show that:

- they are aware of this guidance;
- in making a decision where the guidance is relevant, they have taken it into account;
- if they have decided to depart from the guidance, they have a good reason for doing so.

The easiest, but not necessarily the only, way to show these things is to record it in the minutes approving the arrangement with the Trustee.

13.0 Duty of Care

Section 185 requires that the Trustees follow the duty of care set out in the Trustee Act 2000. This means that the Trustees must act honestly and in good faith, and must exercise reasonable care and skill in reaching their decision.

In fulfilling this, the Commission expects to the Trustees to:

- exercise the power to pay the Trustee responsibly and in the best interests of NHSC;
- take professional or other appropriate advice when in doubt;
- be clear that the payment can be justified;
- ensure that conflicts of interest are properly and openly managed;
- ensure that compliance with any agreements are complied with and that any poor performance is identified and addressed;
- retain the agreement as part of NHSC’s records; and
- clearly disclose the payments in NHSC’s accounts.

14.0 Amending the terms of an arrangement under section 185

Any change to a section 185 arrangement must be discussed and approved by a meeting of the Trustees, in the absence of the Trustee providing the service (which reflects NHSC’s own conflict requirements in the Articles – see paragraph 3).

15.0 Paying entities connected to Trustees

NHSC makes a payment to an organisation that is connected to a Trustee, that payment must also be authorised. The definition of connected in terms of section 185 is set out in legislation (the details of which can be provided by NHSC on request to any reader of this policy). In

summary, it will include the spouse or close relation of the Trustee, or an organisation in which the Trustee owns more than 20%⁴.

It is possible to pay Trustees under section 185 via an organisation which they are connected to. For example, it is possible (with the relevant Trustee's agreement) to pay a reasonable fee for the Trustee's services to the GP practice where the Trustee works, rather than paying the Trustee directly.

However, the payment must be clearly linked to the performance of the service by the Trustee, rather than being compensation to the organisation itself. The amount paid to the GP practice should be the same amount (or less) compared to the amount the Trustee would receive if paid directly.

16.0 Policy lead and Review

The Director of People and Governance shall take charge of the implementation and maintenance of this policy at Executive level.

This policy may only be amended by a decision of the Trustees.

The Trustees shall review and evaluate this policy at least once every 3 years and evaluate its effectiveness and implementation, taking advice from external specialist advisers where appropriate. Any improvements identified will be implemented as soon as practicable.

⁴ NHSC's Articles also include a separate definition of persons and organisations "Connected" to a Trustee relating to NHSC's conflicts process and decisions made by trustees that may result in benefits to those "Connected" with Trustees.

Equality Impact Assessment - Policies

The following guidance and checklist provides a framework for Equality Impact Assessments (EIA). It should be used when carrying out equality impact assessments (EIA) in relation to any new or revised policy. The checklist will help in considering the impact of the policy in relation to equality and diversity (E&D).

The Checklist is to be used for any new or revised policy, not just those that appear to have high relevance in relation to equality and diversity issues. Completion of the Checklist does not need to be a time-consuming or difficult process but should raise some important questions as you carry out the process.

Name of policy being assessed	Trustee Remuneration Policy
Policy Owner	Marie Pritchard, Director of People & Governance
EIA completed by	Amy Rose, Head of Governance and Compliance
Date Completed	05/06/2024
Summary of purpose of the policy	To set out a framework for when trustees might be remunerated for duties beyond trusteeship
Who are the main stakeholders and what involvement and consultation have they had in the policy development. Include staff groups, trade unions and board committees as applicable.	Trustees. Original policy was created in 2021 with trustee support and there is a clear legal framework to follow, which the policy adopts. Legal support was given in producing the original version
Who is affected by the policy	Trustees
What are the arrangements for monitoring and reviewing the actual impact of the policy	Trustees have to formally approve any payments and minute it.

Please indicate against each of the following protected characteristics, what the impact of the policy would be and actions that will be / have been taken to mitigate any negative or adverse impact identified.

(Where the policy is found to have either a positive or negative impact on a particular group it will need to be reviewed or justified within the permits of the law.)

Protected Characteristics	Impact Y/N	Action(s) you will take to mitigate or remove the negative or adverse impact if identified?	Action Owner
Age <i>Consider impact on young people, older people etc.</i>	N		
Disability <i>Consider people with physical disabilities, hidden disabilities and neurodiversity.</i>	N		
Gender Reassignment <i>Consider people undergoing or have undergone gender reassignment</i>	N		
Pregnancy and Maternity <i>Consider those who are pregnant and those on pregnancy and parenthood leave. Consider those wishing to take parenthood leave</i>	N		
Race / Ethnicity <i>Consider potential impact on people from different ethnic groups and nationalities.</i>	N		
Religion or Belief <i>Consider people with different religious, faith and non-beliefs</i>	N		
Gender <i>Consider all genders.</i>	N		
Sexual Orientation	N		

<i>Consider LGBTQ+ people.</i>			
Marriage and Civil Partnership <i>Consider marriage and civil partnership in respect of the due regard to the need to eliminate unlawful discrimination in employment.</i>	N		
Does the policy promote fairness and equal opportunities? Provide details.	Yes. Trustees will need to be mindful that any opportunities for payment have been through a proper recruitment or tendering process (as per standard NHS Confederation Policies)		
Manager Signature: Amy Rose		HR Review Signature: Marie Pritchard	
Date: 5/6/2024		Date: 05/06/24	