

Trust Board meeting: Wednesday, 9 January 2013
TB2013.16

Title	Non-Executive Directors' Indemnity
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Status	A paper for approval
History	Not Applicable

Board Lead	Sir Jonathan Michael – Chief Executive			
Key purpose	Strategy	Assurance	Policy	Performance

Summary

1.	This paper sets out details of indemnity arrangements for Non-Executive Directors whilst undertaking their role as a member of the Trust Board.
2.	In accordance with Department of Health Guidance, the Trust Board is asked to adopt the indemnity arrangements recommended for Non-Executive Directors.

Non-Executive Directors' Indemnity

1. HSC 1998/010 and HSC 1999/104 issued by the Department of Health provide guidance on the extent to which Non-Executive Directors of Trust Boards may be personally liable for their decisions and actions.
2. The circulars identified that whilst extremely rare it is possible for Non-Executive Directors to be personally liable for their decisions and actions but that this liability can be limited through an indemnity given by the Trust Board where the Non-Executive has acted in good faith and taken decisions in the normal course of Board business. It does not cover any personal criminal liability nor will it protect reckless actions.
3. The circulars recommended that Trust Boards adopt an indemnity in the form of:

“A Chairman or Non-Executive member or Director who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her board function, save where the person has acted recklessly.”
4. If adopted the indemnity is subsequently covered by insurance under the NHS Litigation Authority's Liabilities to Third Parties Scheme.
5. To minimise the risk, Non-Executive Directors should act only in accordance with the Board's Standing Orders and with the support of the Board.
6. Whilst all members of the Trust Board are personally liable for their decisions and actions, Executive Directors do not require specific indemnity as they are direct employees of the Trust and as such the principle of vicarious liability applies in relation to their roles as Board members, ie the Trust is liable for the actions of its employees in the course of their employment.

Recommendations for the Board to consider:

7. The Board is asked to adopt the above indemnity on behalf of its Non-Executive Directors.

Helen Potton, Interim Head of Corporate Governance

Sir Jonathan Michael, Chief Executive

January 2013

