

Document level: Trustwide (TW)
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Fit and Proper Person Requirement Policy

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Type of document	Policy
Target audience	Board Members
Document purpose	This policy sets out how the Trust will meet the CQC Fit and Proper Persons Requirements

Approving meeting	Remuneration and Nominations Committee of the Council of Governors	Date 13/08/2018
Implementation date	October 2018	

CWP documents to be read in conjunction with	
HR2.2	Pre-appointment checks including DBS checks
HR21	Medical Appraisal Policy
HR2.7	Appraisal (including personal development planning) policy and procedure)
HR3.3	Trust disciplinary policy and procedure
HR3.5	Managing Attendance Policy and procedure
HR9	Handling Concerns about the Conduct, Capability and Health of Medical Staff
HR3.18	Capability Policy and procedure
GR12	Media Relations Policy

Document change history	
What is different?	New policy - supersedes guidance contained in HR2.2 Pre-employment checks policy inc DBS checks
Appendices / electronic forms	Nil
What is the impact of change?	Standalone policy which sets out how the trust will meet CQC Fit and Proper Persons Regulations.

Training requirements	No - Training requirements for this policy are in accordance with the CWP Training Needs Analysis (TNA) with Education CWP.
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Document consultation	
Clinical Services	N/A
Corporate services	PODSC, Council of Governors Nominations & Remuneration Committee, Board of Directors' Nominations and Remuneration Committee, Council of Governors Nomination and Remuneration Committee.
External agencies	N/A

Financial resource implications	No
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External references	
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- Care Quality Commission Regulation 5: Fit and proper persons: directors, Guidance for providers and CQC inspectors January 2018
- <http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors>
- http://www.cqc.org.uk/sites/default/files/20180119_FPPR_guidance.pdf

Equality Impact Assessment (EIA) - Initial assessment	Yes/No	Comments
Does this document affect one group less or more favourably than another on the basis of:		
- Race	No	
- Ethnic origins (including gypsies and travellers)	No	
- Nationality	No	
- Gender	No	
- Culture	No	
- Religion or belief	No	
- Sexual orientation including lesbian, gay and bisexual people	No	
- Age	No	
- Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
Is there any evidence that some groups are affected differently?	No	
If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable? N/A		
Is the impact of the document likely to be negative?	Select	N/A
- If so can the impact be avoided?	Select	N/A
- What alternatives are there to achieving the document without the impact?	Select	N/A
- Can we reduce the impact by taking different action?	Select	N/A
Where an adverse or negative impact on equality group(s) has been identified during the initial screening process a full EIA assessment should be conducted.		
If you have identified a potential discriminatory impact of this procedural document, please refer it to the human resource department together with any suggestions as to the action required to avoid / reduce this impact. For advice in respect of answering the above questions, please contact the human resource department.		
Was a full impact assessment required?	No	
What is the level of impact?	Select	

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1. Introduction

- 1.1 This policy has been developed in response to the requirements placed on NHS providers, to meet the regulatory standards for the Fit and Proper Person Requirements (FPPR) of directors, part of the Health and Social Care Act 2008 (Regulated Activities) Regulation 14: Regulation 5. This came into force on the 27 November 2014.
- 1.2 The Trust is required to ensure that directors are 'fit and proper' for the role and make every reasonable effort to assure itself by all available means. This policy sets out the Trust's systems and processes to ensure that all new directors and existing directors are, and continue to be, fit, and that no appointments meet any of the unfitness criteria set out in the 2014 Regulations.
- 1.3 This policy provides details of the specific requirements placed upon the Trust to ensure director level appointments and equivalent meet the FPP test.
- 1.4 The legislation articulates the expectation that where an individual no longer meets these requirements, the Trust must take appropriate and proportionate action to ensure that the office or position in question is held by an individual who meets such requirements and, if appropriate, inform the appropriate regulator. The Trust must be able to demonstrate due diligence in carrying out checks and that it has made every reasonable effort to assure itself about an individual by all means available.

1. Scope

- 1.1 From the effective implementation date of this policy going forwards, this policy applies to all new and existing permanent and interim appointments to director (within the definition in 3.1 below) within the Trust. These roles are those that, within the Trust, meet CQC's definition of "Director" in regulation 5(2) of the 2014 Regulations. It therefore applies to board directors (executive and non-executive) board members and equivalents, who are responsible and accountable for delivering care, including associate directors and any other individuals who are members of the board, irrespective of their voting rights.

2. Duties and responsibilities

- 2.1 The introduction of the fit and proper person's requirements (FPPR) places the ultimate responsibility on the Chair to discharge the requirement placed on the Trust. The Trust needs to ensure that all relevant post holders (by reference to paragraph 2 above) meet the fitness test and do not meet any of the 'unfit' criteria.
- 2.2 The Director of People and OD is the named responsible officer responsible for ensuring the content of this policy is applied fairly and consistently across the Trust.
- 2.3 Individuals who fall into the categories above must satisfy the Chair that they:
 - Are of good character, including by reference to the matters set out in paragraph 3.5 below;
 - Have the required qualifications, the competence, skills and experience required for the relevant office or position or the work for which they are employed;
 - Are able, by reason of their health, after any required reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed;
 - Have not been responsible for or privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which if provided in England would be a regulated activity; and
 - Are not 'unfit' by reason of matters set out in paragraph 3.4 below.
- 2.4 In accordance with schedule 4 part 1 of the 2014 Regulations, a person is deemed "unfit" if:
 - The person is an undischarged bankrupt or a person whose estate has had

- sequestration awarded in respect of it and who has not been discharged;
- The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;
- The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
- The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment;
- The person is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.

2.5 In accordance with Schedule 4 Part 2 of the 2014 Regulations, the Trust (via the Chair) will take into consideration, in determining whether an individual is of good character, whether he or she:

- Has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom should constitute an offence;
- Has been erased, removed, or struck off a register of professionals maintained by a regulator of health care or social work professionals.
- The Trust will have regard to information on when convictions, bankruptcies or similar matters are considered 'spent'. However, there is no time limit for considering serious misconduct or responsibility for failure in a previous role. In consideration of any instances of serious misconduct or mismanagement, consideration will be given to relevant guidance issued by the CQC.

3. FPPR Checks at Recruitment

3.1 The Trust shall carry out the following pre-employment checks and complete a checklist for new appointments as follows:

- Proof of identity;
- An enhanced DBS check to check if they are on the children's and / or safeguarding barred list where they meet the eligibility criteria;
- Occupational Health clearance as relevant to the role;
- Evidence of the right to work in the UK;
- A check of employment history and two references one of which must be the most recent employer. A minimum of three years continuous employment including details of any gaps in service need to be validated. (Discretion on the period of validation for non-executive directors can be applied by the Chair and documented on the personal file.);
- Qualifications/registration applicable to role as set out in the job description and person specification.

3.2 In addition, the following checks will be carried out in order to meet the Fit and Proper Persons Test;

- Search of disqualified directors register
- Search of bankruptcy and insolvency register
- A web and social media search.

3.3 The appointment process will include an evaluation against the Trust's values and in

accordance with the Trust's recruitment policies and procedures.

- 3.4 All new appointments as part of the application process need to complete a FPPR Declaration form (Appendix 1). Information about the FPPR requirements will be provided in pre-appointment information and all offers will be subject to satisfactory completion of the FPPR test. Continued compliance with the requirement will be a clause in individual contracts.
- 3.5 All pre-employment checks for directors will be undertaken, recorded and evidenced by the Resourcing Team. Any matters which require review will be discussed with the Director of People and OD Services and Chair and the Head of Corporate Affairs will be informed.
- 3.6 All pre-employment checks for non-executive directors will be undertaken recorded and evidenced by the Head of Corporate Affairs in liaison with the Resourcing Team. Any matters which require review will be discussed with the Director of People and OD Services and Chair.
- 3.7 Following review, if any evidence is unsatisfactory, a risk assessment will be undertaken and a decision taken on whether the matter can be addressed through further investigation. The matter will be discussed with the applicant before a final decision is made. Possible outcomes maybe:
- Acceptable mitigation provided and a contract issued (following approval via the appropriate Committee)
 - No acceptable mitigation provided and the offer is withdrawn.
- 3.8 Where specific qualifications are deemed by the Trust as necessary for a role, the Trust will make this clear and will only appoint those individuals that meet the required specification; including any requirements to be registered with a professional Regulator.
- 3.9 Where the Trust considers that an individual can be appointed to a role based on their qualification, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timescale any such discussions or recommendations will be recorded in the minutes of the relevant Committee, as applicable.
- 3.10 If the director has a physical or mental disability, wherever possible, reasonable adjustments will be made to enable the individual to carry out the role that they have been appointed to. Where a physical or mental health concern is identified the appointment will be subject to clearance by Occupational Health as part of the pre-appointment process. Any discussion or decision as to whether a candidate is appointable on grounds of health will be made by the Chair in relation to non-exec appointments and the Chair and Chief Executive for executive appointments and recorded on the personal file. The outcome will be noted in the minutes of the relevant Committee and held by the Head of Corporate Affairs. The Committee will be supplied with the minimum level of information necessary and that protects medical confidentiality.
- 3.11 No-one will be appointed to a post requiring a FPPR test without the Chair signing off the record that checks have been completed satisfactorily. Where an individual is assessed as suitable despite the existence of evidence relating to any of the FPPR requirements, due to mitigation provided, the reasons for this decision will be recorded by the Chair of the Trust or by the Senior Independent Director in the case of a Chair being appointed.
- 3.12 A record of all checks including evidence to support these will be maintained on the individual's personal file and a copy held in a central electronic file, with restricted access for the purposes of audit by CQC.
- 3.13 The Council of Governors is responsible for the appointment of the Chair and the Non-Executive Directors, drawing on the recommendations of the Council of Governor's,

Nominations and Remuneration Committee. In respect of Executive Directors, this responsibility will be discharged by the Board of Directors' Nomination and Remuneration Committee which is responsible for the appointment of the Executive Directors. Appointments to Chief Executive will be endorsed by the Board of Directors' Nominations and Remuneration Committee following a recommendation to the Council of Governors. Any appointment to a relevant post will take into account the Trust's obligations under the Regulations. Where the Trust makes a decision on the suitability of an individual, the reasons will be recorded by the Head of Corporate Affairs in the appropriate Committee minutes including the reasons why the Trust deems the individual to be appointed to be of good character.

5 Process for considering on-going fitness

5.1 The Trust shall regularly review the fitness of directors to ensure that they remain fit for the roles they are in. The following processes will take place annually:

- A self-declaration form to be completed and reviewed as part of annual appraisal;
- An annual search of the insolvency and bankruptcy register;
- An annual search of the disqualified directors register;
- An annual internet and social media search;
- 3 yearly DBS checks.

5.2 The process for assurance includes a check of personal files to ensure there is a complete employment history and where there are any gaps or omissions the post holder will be asked to provide a written explanation for this. Where the Trust has no record of mandatory qualifications or mandatory professional registration the individual will be asked to produce the original for inspection and verification.

5.3 The annual appraisal process will provide an opportunity to discuss continued "fitness", competence and how the post holder role displays the Trust's values and behaviour standard including the leadership behaviours expected. All evidence will be shared and reviewed with the individual. A record of the discussion will be signed by both the appraiser, the individual and endorsed by the Chair.

5.4 The Chief Executive will be responsible for appraising executive directors. The Chair will be responsible for appraising non-executive directors. The Chief Executive will be appraised by the Chair and the Chair will be appraised by the Senior Independent Director.

5.5 Copies of the declaration and appraisal will be kept on the individual's personal file and evidence of the annual review process will be kept on a central electronic file with restricted access.

5.6 Confirmation of trust compliance will be reported to the Nominations and Remuneration Committees and published in the Trust's Annual Report and Accounts.

6 Action to consider for concerns about an individual's continued FPPR compliance

6.1 Individuals are required to make the Trust aware as soon as practicable of any incident or change in their circumstances which may mean they are no longer to be regarded as a fit and proper person, and provide details of the issue, so that this can be considered by the Trust. Any such issues should be raised with the Chair immediately and the Chief Executive will be informed.

6.2 Where matters are raised (whether in the course of new appointments, or annual declarations made under paragraphs 4 or 5, or other matters that come to the Trust's attention in other ways) that cause concerns relating to an individual being fit and proper to carry out their role the Chair will address this in the most appropriate, relevant and proportionate way on a case by case basis.

6.3 In consideration of any potential misconduct or mismanagement, consideration will be given to relevant guidance issued by the CQC. Where it is necessary to investigate or take action the Trust's current processes will apply using the Trust's capability processes (managing performance

or sickness absence), disciplinary procedure or similar process to this if the potential discontinuation of an individual's employment could be due to 'some other substantial reason'. Examples of issues which might arise and the basis for action are listed below (this list is not exhaustive).

Nature of issue	Relevant requirement of Regulations	Action
Not achieving performance objectives	The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed	Issue addressed under the Trust's Capability Policy or in the Case of doctors Handling Concerns about the Conduct, Capability and Health of Medical staff
Illness or medical condition affecting ability to carry out the role	The individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed	Issue addressed under the Managing Attendance Policy
Being charged or convicted of a criminal offence		Issue addressed under Disciplinary Policy for potentially bringing the Trust into disrepute and failure to meet FPPR requirements
Being the subject of adverse media attention	The individual is of good character	Issue addressed under Disciplinary Policy for bringing the Trust into disrepute and failure to meet FPPR requirements

6.4 Any issues of non-compliance will be in the first instance risk assessed. The advice of the Director of People and OD Services should be taken in all cases. Where there is a governance risk the advice of the Medical Director (Compliance, Quality and Assurance) must be taken and the Chief Executive informed.

6.5 There may be occasions where the Trust will contact NHSI or an external advisor (e.g. legal advisors) for advice before taking action. The decision whether to alert the individual before conducting such a conversation will depend on the risk assessment undertaken and the circumstances under which the concern has arisen but the guiding principle will be that information will be shared and discussed with the individual at the earliest opportunity.

6.6 The Trust reserves the right to suspend a director or restrict them from duties on full pay/emoluments (as applicable) to allow the Trust to investigate the matters of concern. Should there be sufficient evidence to support the allegation(s), then the Trust may terminate the appointment in line with the Trust's Disciplinary Policy.

6.7 Where an individual who is registered with a professional regulator (GMC, NMC etc.) no longer meets the FPPR the Trust must also inform the relevant Regulator.

7 Monitoring compliance

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements
Process in relation to the checks required for directors pre-engagement	Recruitment Manager	new director file review	on appointment	Nominations and Remuneration Committee for Board of Directors
Pre-engagement – non-executive directors.	Head of Corporate Affairs	non-executive file review	on appointment	Nominations and Remuneration Committee for Council of Governors
Process in relation to annual review for directors and non-executive directors	Head of Corporate Affairs	File review	annual	Nominations and Remuneration Committee for Board of Directors and Council of Governors