

FIT AND PROPER PERSONS POLICY

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AUTHOR:	██████████, Trust Secretary
CONSULTATION GROUPS:	EOSC HR
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POLICY SUMMARY
<p>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part3) introduced a “fit and proper person requirement” (Regulation 5) for all Board Directors of NHS bodies. Compliance with the Regulations will be monitored and enforced by the CQC as part of their inspection regime.</p> <p>The Trust must demonstrate that it has appropriate systems and processes in place to ensure that all new appointees and current Directors are, and continue to be, fit and proper persons.</p> <p>This policy outlines how the Trust will meet the requirements placed on NHS providers to ensure that Board Director appointments meet the fit and proper persons requirement.</p> <p>The Trust monitors the implementation of and compliance with this policy in the following ways:</p> <ul style="list-style-type: none"> • The Executive Director Corporate Governance & Strategy has the overarching responsibility for overseeing the implementation of the Fit and Proper Persons Policy and its associated procedural guidelines • The Chair has the ultimate responsibility to discharge the Fit and Proper Persons Requirement on the Trust to ensure all relevant post-holders meet the ‘fitness’ test and do not meet any of the ‘unfit’ criteria • The Trust Secretary will be responsible for managing the Fit and Proper Persons Requirements for new and existing Board Directors, and will provide an annual statement of compliance to the Board of Directors • The Finance & Performance Committee will be responsible for overseeing the operational implementation of this policy and carrying out periodic reviews of its effectiveness • This policy will be reviewed at least every three years; changes to legislation, guidance or the outcomes of any investigations or reviews may result in the policy being reviewed earlier.

Services	Applicable	Comments
Trustwide	✓	

**The Director responsible for monitoring and reviewing this policy is
Chief Executive Officer**

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

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SAMPLE ONLY

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

FIT AND PROPER PERSONS POLICY

Assurance Statement

Adhering to this policy will help to ensure that all Board Director appointments meet the Fit and Proper Persons Requirements (FPPR) and Regulations, and that Directors continue to be fit to hold their position.

The purpose of the FPPR is not only to hold Directors to account in relation to their conduct and performance but also to instil confidence in the public that the individuals leading NHS organisations are suitable to hold their positions. There is an expectation of senior leaders to set the tone and culture of the organisation that leads to staff adopting a caring and compassionate attitude.

1.0 INTRODUCTION

1.1 This policy outlines how the Trust will meet the requirements placed on NHS providers following the introduction of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3). The regulatory standards for the Fit and Proper Person Requirements (FPPR) of Directors came into force on 1 October 2014 for all NHS bodies and for all providers on 1 April 2015.

1.2 Part 3 has two sections relating to FPPR:

- Section 1 describes the requirements relating to persons carrying on or managing a regulated activity: this includes Regulation 5 Fit and Proper Persons – Directors. The intention of this Regulation is to ensure that people who have Director level responsibility for the quality and safety of care, and for meeting the fundamental standards, are fit and proper to carry out this important role.
- Section 2 introduces the fundamental standards below which the provision of regulated activities and the care people receive must never fall: this includes Regulation 19 Fit and Proper Persons Employed. The intention of this Regulation is to make sure that providers only employ 'fit and proper' staff who are able to provide care and treatment appropriate to their role and to enable them to provide the regulated activity.

1.3 Under the regulations all provider organisations must ensure that Director-level appointments meet the FPPR and the regulations place a duty on NHS providers not to appoint a person or allow a person to continue to be an Executive Director (or equivalent) or an Non-Executive Director (NED) under given circumstances.

1.4 The regulations have been integrated into the Care Quality Commission's (CQC's) registration requirements, and falls within the remit of their regulatory inspection approach. Guidance issued by the CQC emphasises the importance of the FPPR in ensuring the accountability of Directors of NHS bodies. NHS bodies have a responsibility to ensure the requirements are met

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with the CQC's role being to monitor and assess how well this responsibility is discharged from the recruitment stage and subsequently throughout Directors' employment.

- 1.5 Directors must meet certain criteria including that they are 'of good character'; have the qualifications, competence, skills and experience necessary for the relevant position; and are capable of undertaking the relevant position after any reasonable adjustments have been made. They must also not have been responsible for any serious misconduct or mismanagement in the course of carrying on a regulated activity.
- 1.6 There is an expectation of senior leaders to set the tone and culture of the organisation that leads to staff adopting a caring and compassionate attitude. As such in making Director appointments, Boards and Councils of Governors should take account of the values of the organisation and the candidate's fit to these values.
- 1.7 The purpose of the FPPR is not only to hold Trust Directors to account in relation to their conduct and performance but also to instil confidence in the public that the individuals leading NHS organisations are suitable to hold their positions.

2.0 SCOPE

- 2.1 This policy presents a summary of the standards Executive and Non-Executive Directors must abide to and the Trust process for monitoring and record keeping.
- 2.2 The scope of the requirements cover all NHS bodies including NHS Trusts, NHS FTs and Special Health Authorities that are required to register with the CQC.
- 2.3 FPPR applies to all Board Directors (Executive and Non-Executive Directors) in permanent, interim and associate positions, irrespective of their voting rights at Board meetings including Director-equivalent posts who are responsible and accountable for delivering care; Directors are the group of people constituted as the decision-making body of the Trust.
- 2.4 FPPR does not apply to Governors of a NHS FT.

3.0 DEFINITIONS

Board	Board of Directors
Council	Council of Governors
CQC	Care Quality Commission
Director	Directors who are in permanent, interim or associate roles, irrespective of their voting rights at Board meetings including Director-equivalent posts
FPPR	Fit and Proper Persons Requirement

Good Character	The CQC's definition of 'good character' is not the objective test of having no criminal convictions but rather a judgement to be made as to whether the person's character is such that they can be relied upon to do the right thing under all circumstances
NED(s)	Non-Executive Director(s)
NHS FT(s)	NHS Foundation Trust(s)
NHSI	NHS Improvement (formerly Monitor)

4.0 PRINCIPLES

4.1 Role of the CQC

The regulations give the CQC powers to assess whether Directors are fit to carry out their role and whether providers have in place adequate and appropriate arrangements to ensure Directors are fit and proper persons both on recruitment and whilst in post.

In undertaking inspections, the CQC will assess compliance as part of the well-led domain. Where compliance cannot be demonstrated this will be addressed as appropriate through the regulatory process.

Where appropriate, CQC will work alongside other regulators such as professional regulators, to ensure that the correct processes are adhered to and information is shared when relevant and appropriate.

CQC cannot prosecute for a breach of the FPPR Regulations but can take regulatory action.

CQC's role in relation to FPPR is outlined in Appendix 1.

4.2 Role of NHSI

Subject to NHS FT authorisation, standard condition G4 of the provider licence requires that a NHS FT must not appoint or allow an 'unfit' person to remain in post without NHSI's permission. At present NHSI's definition of an 'unfit' person is the narrower definition as set out within Schedule 7 of the NHS Act 2006 as amended by the Health & Social Care Act 2012 and as such is not aligned to the view of the CQC.

NHSI can use its enforcement powers to deal with a breach which requires the NHS FT concerned to remove the unfit person from office or by taking such action itself.

4.3 Summary of the requirements for fit and proper persons

According to Regulations, Trusts must not appoint or have in place a Director unless they:

- Are of good character
- Have the necessary qualifications, skills and experience
- Are able to perform the work they are employed for after reasonable adjustments are made
- Have not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful 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
- Can provide information as set out in the Schedule 3 of the Regulations.

When assessing whether a person is of **good character**, para 5(4) of the Regulation states that Trusts should make every effort to ensure that, as a minimum, they seek all information to confirm the matters listed in Schedule 4 part 2. The process followed will take account of a person's honesty, trustworthiness, reliability and respectfulness.

If the Trust discovers information that suggests a person is not of good character after he/she has been appointed to a role, the organisation will take appropriate and timely action to investigate and rectify the matter.

If the Trust considers the individual to be suitable despite existence of information relevant to issues identified in Schedule 4 part 2, the reasons will be recorded for future reference and made available.

Schedule 4 part 1 lists categories of **unfitness** that would prevent people from holding office or necessitate their removal from their position as a Director and for whom there is no discretion.

The CQC recognises that Trusts may not have access to all relevant information about a person or that false or misleading information may be supplied. However, CQC expects Trusts to demonstrate due diligence in carrying out checks and that they have made every reasonable effort to assure themselves about an individual by all means available to them.

4.4 Responsibilities

- 4.4.1 Ultimate responsibility rests with the **Chair** to discharge the FPPR placed on the Trust to ensure that all relevant post-holders (new and existing) meet the 'fitness' test and do not meet any of the 'unfit' criteria.

The regulations require the **Chair** of the Trust to:

- Confirm to the CQC that the fitness of all new Directors has been assessed in line with the regulations; and
- Declare to the CQC in writing that they are satisfied that they are fit and proper individuals for that role.

The Chair will be notified by CQC of any non-compliance with the FPPR and holds responsibility for making any decisions regarding action that needs to be taken.

- 4.4.2 The **Trust** is responsible for the appointment, management and dismissal of its Directors. The Trust will make every reasonable effort to assure itself about existing post-holders and new applicants and to make specified information about Directors available to CQC on request.

Under Regulation 19 providers must operate robust recruitment procedures including undertaking any relevant checks. They must have a procedure for

ongoing monitoring of Directors to ensure they remain able to meet the requirements, and have appropriate arrangements in place to deal with those who are no longer fit to carry out the duties required of them through a breach, serious mismanagement or misconduct.

FPPR will be fulfilled through a number of processes including:

- An ongoing duty to report to be included in contracts of employment
- The completion of an annual self-declaration for all Directors
- Introduction of three-yearly checks for credit, bankruptcy and registration
- Appraisal processes
- Maintenance of the register of declared interests.

5.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

- 5.1 The Executive Director Corporate Governance & Strategy has the overarching responsibility for the Fit and Proper Persons Policy and Procedure.
- 5.2 Trust Secretary is responsible for ensuring the policy follows the appropriate Trust format and complies with the recognised development, consultation, approval and ratification process.
- 5.3 Monitoring will take place annually led by the Trust Secretary reported to the Finance & Performance Committee and Board of Directors as part of the Trust's Governance Development Plan and via the Board of Directors and/or Council of Governors Nominations Committees in relation to new appointments
- 5.4 This policy will be made available on the intranet
- 5.5 Awareness of this policy will be raised during the recruitment process and included in the main terms and conditions of employment as well as being raised at local induction
- 5.6 In addition to the monitoring arrangements described above, the Trust may undertake additional monitoring of this policy and procedure in response to the identification of any gaps or as a result of the identification of risks arising from the policy prompted by incident review, external reviews or other sources of information and advice including but not limited to commissioned audits and reviews, detailed data analysis, etc
- 5.7 This policy will be reviewed at least every three years; changes to legislation, guidance or the outcomes of any investigations or reviews may result in the policy being reviewed earlier.

6.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION

- CQC *Guidance for providers on meeting the regulations* March 2015
http://www.cqc.org.uk/sites/default/files/20150324_guidance_providers_meeting_regulations_01.pdf

- CQC Regulation 5: *Fit and proper persons: directors – Guidance for providers and CQC inspectors* January 2018
http://www.cqc.org.uk/sites/default/files/20180119_FPPR_guidance.pdf
- NHS Employment Standards <http://www.nhsemployers.org/your-workforce/recruit/employment-checks>
- NHS Improvement (2017) *Fit and proper persons requirements* December 2017 <https://improvement.nhs.uk/resources/fit-and-proper-persons-requirements>
- NHS Providers Briefing on *Fit & Proper Persons Regulations in the NHS: What do providers need to know?* Feb 2018 <http://nhsproviders.org/news-blogs/blogs/what-do-providers-need-to-know-about-the-fit-and-proper-persons-regulations>

7.0 REFERENCE TO OTHER TRUST POLICIES/PROCEDURES

This policy should be read in conjunction with other policies in place that may be relevant. These include:

- Constitution
- Code of Conduct for the Members of the Board of Directors CP15
- Conduct and Capability Policy HR27
- Equality, Diversity and Human Rights Policy CP24 and Procedure CPG24
- Recruitment and Retention Policy HR57 and Procedure HRPG57

END