

CPG70 –Fit & Proper Persons Procedure - APPENDIX 2

REQUIREMENTS FOR FIT AND PROPER PERSONS

A2.1 According to Regulations, Trusts must not appoint or have in place a Director unless they meet the following criteria:

- 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:
 - Proof of identity including a recent photograph
 - Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997 a copy of a criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request)
 - Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children or vulnerable adults
 - Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to:
 - (a) health or social care, or
 - (b) children or vulnerable adults
 - Where a person (P) has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why P's employment in that position ended
 - In so far as it is reasonably practicable to obtain, satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed or appointed to perform
 - A full employment history, together with a satisfactory written explanation of any gaps in employment
 - Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity
 - For the purposes of this Schedule:
 - (a) "the appointed day" means the day on which section 30A of the Safeguarding Vulnerable Groups Act 2006 comes into force

- (b) “satisfactory” means satisfactory in the opinion of the Commission
- (c) “suitability information relating to children or vulnerable adults” means the information specified in sections 113BA and 113BB respectively of the Police Act 1997.

A2.2 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.

A2.3 **Good character** is legally defined as someone who has not been convicted of an offence in the UK or elsewhere and has not been erased, removed or struck off a healthcare professional register. CQC’s national guidance also includes the following factors as indicators of good character:

- Honesty
- Trustworthiness
- Integrity
- Openness
- Ability to comply with the law
- A person in whom the public can have confidence
- Prior employment history, including reasons for leaving
- If the individual has been subject to any investigations or proceedings by a professional or regulatory body
- Any breaches of the Nolan principles of public life
- Any breaches of the duties imposed on Directors under the Companies Act
- The extent to which the Director has been open and honest with the Trust
- Any other information which may be relevant, such as disciplinary action taken by an employer.

A2.4 A person will fail the **good character** test if they:

- Have been convicted in the UK or elsewhere of any offence which if committed in any part of the UK would constitute an offence, and
- Have been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

A2.5 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.

A2.6 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.

A2.7 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. A person is deemed **unfit if** the person is:

- An undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged
- Subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland
- Person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986
- Has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
- Included in the children's barred list or the adult's 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
- 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.