

FIT AND PROPER PERSONS PROCEDURE

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PROCEDURE SUMMARY
<p>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3) 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 procedure outlines how the Trust will meet the requirements placed on NHS providers to ensure that Director-level appointments meet the fit and proper persons requirement.</p>
The Trust monitors the implementation of and compliance with this procedure in the following ways:
<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 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 procedure will be reviewed at least every three years; changes to legislation, guidance or the outcomes of any investigations or reviews may result in the procedure being reviewed earlier.

Services	Applicable	Comments
Trustwide	✓	

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

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Assurance Statement

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

This procedure sets out how FPPR is checked through the recruitment process and the approach to the ongoing monitoring of Directors to ensure they remain able to meet the requirements. It also sets out the arrangements to deal with those who are no longer fit to carry out the duties required of them through a breach of the Regulations, serious mismanagement or misconduct.

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 procedure 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 This procedure covers:
- New appointments
 - Ongoing assessment
 - Investigations
- 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 under given circumstances.
- 1.4 The FPPR lists categories of persons who are prohibited from holding office and for whom there is no discretion.
- 1.5 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.

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- 1.6 The requirements of the FPPR are integrated into CQC's regulatory and inspection approach. CQC's role in relation to FPPR is outlined in Appendix 1.

2.0 SCOPE

- 2.1 This procedure outlines how the Trust will meet the requirements placed on the Trust in relation to ensuring that Director-level appointments meet the FPPR.
- 2.2 This procedure applies to all Board Directors (Executive Directors and Non-Executive Directors) who are in permanent, interim or associate roles 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.
- 2.3 FPPR does not apply to Governors of a NHS FT.
- 2.4 This procedure should be read in conjunction with the Fit and Proper Persons Policy.
- 2.5 This procedure should be considered alongside other organisational policies and procedures as listed under section 7 of the Fit and Proper Persons Policy.

3.0 REQUIREMENTS FOR FIT AND PROPER PERSONS

- 3.1 According to Regulations, Trusts must not appoint or have in place a Director unless they meet the FPPR 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.
- 3.2 A summary of the requirements for fit and proper persons is in Appendix 2.
- 3.3 To provide assurance that the Trust is not in breach of the FPPR Regulation, it has in place the following processes to determine whether all new and existing Directors are and continue to be fit, including:
- A process to ensure that all new Director-level appointments are fit and proper as part of the recruitment process
 - An annual process for regularly monitoring and reviewing the ongoing fitness of existing Directors to ensure they remain fit for their role, including consideration of serious mismanagement
 - Principles for conducting investigations into concerns about the fitness of a Director
 - A process for the right of appeal for Directors.

4.0 PROCESS FOR NEW DIRECTOR-LEVEL APPOINTMENTS

- 4.1 Regulation 19 sets out that recruitment procedures must be established and operated effectively to ensure that Directors meet the conditions of good character, qualifications, competence, skills and experience necessary. All Trusts must therefore follow robust recruitment processes and make every effort to satisfy themselves as to the fitness of new applicants to Director-level positions.
- 4.2 All new Director-level appointees will undergo the Trust's comprehensive pre-employment checking processes which are determined by the NHS employment standards, including:
- Proof of identity
 - Professional registration and qualification checks (where relevant to the post)
 - Employment history and two reference checks one of whom must be the most recent employer. Specifically this includes validation of a minimum period of three consecutive years of continuous employment or training and details of any gaps in service, and including any reasons for leaving
 - Evidence of the right to work in the UK
 - Occupational health assessment as relevant to the role
 - Disclosure and Barring Service (DBS) where relevant to the post and where eligibility criteria are met.
- 4.3 The following registers will also be checked:
- Disqualified directors
 - Bankruptcy and insolvency
 - Removed Charity trustees
 - A check of any register held by the CQC or any publicly available information collated by the Regulator (web-based search).
- 4.4 As CQC expects Trusts to take account of some core public information sources when making Director-level appointments, the Trust will also consider whether the Director has ever breached any of the Nolan principles of public life by undertaking, but not limited to, a web and news search of the individual but being mindful that not everything found on an internet search is factually accurate.
- "Core public information sources" includes information from:
- Public inquiry reports about the provider
 - Serious case reviews relevant to the Trust that employed the individual at the time of the allegations
 - Homicide investigations involving mental health Trusts
 - Criminal prosecutions against providers
 - Ombudsmen's reports relating to providers.
- 4.5 Where the Trust engages the services of a recruitment consultancy to assist with an appointment, it will ask the consultants to carry out all or some of the checks and will request documentary evidence that the checks have been completed satisfactorily.

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- 4.6 All potential candidates for Director posts are expected to complete pre-employment checks which include the FPPR Declaration Form for New Post Holders (Appendix 3). This form and summary guidance (Appendix 4) will be included with the recruitment information pack and form part of the application process for the position.
- 4.7 The chair of the appointments panel is responsible for ensuring compliance with the FPPR with relevant recruitment support (HR or Trust Secretary) at the time of recruitment. The chair will declare that appropriate checks have been made in reaching a judgement of a candidate's fitness. A detailed checklist (Appendix 6) will be completed and retained on the post holder's personal file for the purposes of audit and in line with Data Protection laws.
- 4.8 The Council of Governors is responsible for the appointment (and removal) of the Chair and Non-Executive Directors, drawing on recommendations from the Council's Nominations Committee. The Council will need to satisfy themselves that relevant employment checks, including checks which show compliance with the FPPR, have been carried out and that the Board has adequate assurances on the robustness of procedures.
- 4.9 In respect of Executive Directors the Board of Directors Nominations Committee is responsible for the appointment (and removal) of the Executive Directors including the Chief Executive.
- 4.10 The recruitment process will include both qualitative assessment and values-based assessment.
- 4.11 All Board Director appointments 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 minuted.
- 4.12 Where the Trust deems that the appointee is suitable following investigation despite not meeting the characteristics outlined in Schedule 4 part 2 of the Regulations (good character) the reasons will be recorded in the minutes of the relevant meeting and the information about the decision will be made available.
- 4.13 Where specific qualifications are deemed as necessary for a role, this will be made clear and included in the recruitment information pack; only those individuals who meet the required specification will be appointed including any requirements to be registered with a professional regulator.
- 4.14 Employment checks, so far as reasonably practicable, on a candidate's qualifications and employment records will be carried out.

5.0 PROCESS FOR MONITORING AND REVIEWING ONGOING FITNESS

- 5.1 All Directors are required to declare on an annual basis in September confirming that they continue to be a fit and proper person by completing the FPPR Declaration Form for Existing Post Holders (Appendix 6). This declaration will be retained on the individual's personal file and will be published in the Trust's annual report. An assurance report will also be presented at a Board of Directors meeting.
- 5.2 The annual appraisal process will provide an opportunity to discuss continued 'fitness' to ensure that the Director continues to have the appropriate level of skill, experience and competence for the role. Discussions at appraisal will also cover how the Director displays the Trust's values and behaviour standard including the leadership behaviour expected.
- 5.3 In line with recognised best practice, it is recommended that Directors join the online Disclosure and Barring (DBS) update service. DBS checks will be repeated annually at which point an assessment of the appropriate level of check will also be conducted.
- 5.4 Checks on disqualification from acting as a Director, bankruptcy and insolvency will also be carried out every three years.
- 5.5 Directors will be required to make the Trust aware as soon as practicable of any incident or circumstances which may mean they are no longer to be regarded as a fit and proper person. Details of the issue will be provided using the FPPR Declaration Form for Existing Post Holders (Appendix 6) so that this can be considered by the Trust.

6.0 COMPLIANCE AND ASSURANCE

- 6.1 The table at Appendix 7 identifies the standards Trusts are expected to meet throughout the course of an individual's employment in relation to Regulation 5 and identifies how the Trust assures itself about the suitability of individuals.
- 6.2 A number of HR processes have been reviewed to ensure relevant assurance can be provided. Employment contracts for Executive Directors and Service Agreement for Non-Executive Directors reflect the regulations. In addition the regulations are incorporated into pre-employment checks for Board posts.

7.0 IDENTIFIED ISSUES OR CONCERNS REGARDING FPPR COMPLIANCE

- 7.1 The Trust will review and investigate in an appropriate, timely and proportionate manner any concerns raised about a Director's fitness or ability to carry out their duties on a case by case basis.
- 7.2 If these concerns are substantiated through evidence, further investigation and action will be taken using the Trust's Conduct and Capability policy and procedure.

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- 7.3 An investigation may take the format of an internal investigation; internal investigation including an independent element; or an external investigation undertaken by an entirely independent investigator
- 7.4 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 matter(s) of concern. Suspension or restriction from duties will be for no longer than necessary to protect the interests of Trust, patient safety and public confidence and/or where there is a risk that the Director's presence would impede the gathering of evidence in the investigation.
- 7.5 Should there be sufficient evidence to support the allegation(s), the then Trust may terminate the appointment of the Director with immediate effect in line with the Trust's Disciplinary policy.
- 7.6 When an individual who is registered with a professional regulator no longer meets the FPPR, the Trust will inform the regulator and also take action to ensure the position is held by a person meeting the requirements.

What constitutes a breach?

- 7.7 The Regulation is breached if the Trust has in place someone who does not satisfy the FPPR. Evidence of this could be if:
- A Director is unfit on a 'mandatory' ground such as a relevant undischarged conviction or bankruptcy. This will be determined by the Trust
 - The Trust does not have a proper process in place to enable it to make the robust assessments required by the FPPR
 - On receipt of information about a Director's fitness, a decision is reached on the fitness of the Director that is not in the range of decisions that a reasonable person would make
 - A Director has been responsible for, been 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.

Sharing of information by CQC

- 7.8 CQC will send all information it receives that falls under FPPR to the Trust in relation to the Director in question (if continued to be employed by the Trust) following consent by the person providing the information or if CQC decides to proceed without it.
- 7.9 The Trust will be asked by the CQC to respond with the action identified it will take within 10 days. This response will need to satisfy CQC that the Trust has followed a robust process to ensure that the person in question is fit and proper for their role
- 7.10 CQC will also advise the Director in question of the actions to be taken

Historic allegation

- 7.11 In line with CQC's national guidance, the Trust as the current employer has a duty to investigate historic allegations (not the employer where the allegations took place).
- 7.12 The Trust will consider a level of proportionality and consistency in dealing with historic cases.
- 7.13 There is no time limit for considering FPPR concerns

END

SAMPLE ONLY