

Appendix 22 Fit and Proper Person Requirements for Directors and Director Equivalents

1.0 Introduction

1.1 Purpose

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. The regulatory standards for the Fit and Proper Person Requirements of directors came into force on 1st October 2014.

Under the regulations all provider organisations must ensure that director level appointments meet the 'fit and proper persons test' 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 Non-Executive Director under given circumstances.

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 Fit and Proper Person Requirements in ensuring the accountability of directors of NHS bodies. NHS bodies have a responsibility to ensure the requirements are met with the CQC's role being to monitor and assess how well this responsibility is discharged.

The Fit and Proper Person Requirements lists categories of persons who are prohibited from holding office and for whom there is no discretion.

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 take account of the values of the organisation and the candidate's fit to these values.

Providers must not appoint to Trust board attendees that is, voting and non-voting Directors and non-executive directors plus the Company Secretary 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
- Can provide information as set out in the regulations.

On the basis of the Regulations and guidance, it is necessary for the Trust to assure itself with regard to a number of issues, including:

- Determining who the Requirements apply to;
- Ensuring a robust process for assessing directors' Fit and Proper Person Requirements compliance at recruitment and on an on-going basis;
- Establishing a process for monitoring and record keeping;
- Updating standard documentation (employment contracts, appointment letters, employment policies,

1.2 Scope

This policy presents a summary of the requirements that Trust board attendees that is, voting and non-voting Directors and non-executive directors plus the Company Secretary must abide by and the Trust process for monitoring and record keeping. The scope of the requirements cover all NHS bodies – including NHS Trusts, NHS Foundation Trusts and Special Health Authorities that are required to register with the CQC.

1.3 Definitions

CQC	Care Quality Commission
Good Character	The Care Quality Commission’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.

2.0 Aim of Policy

2.1 The role of the Care Quality Commission (CQC)

The regulations give the Care Quality Commission powers to assess whether both Executive and Non-Executive 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 Commission 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.

2.2 Who do the Requirements apply to?

The requirements apply to Trust board attendees that is, voting and non-voting Directors and non-executive directors plus the Company Secretary

2.3 Compliance and Assurance

Directors will complete an annual fit and proper person declaration (Appendix 1). The outcome will be reported to the Trust Board.

The table at Appendix 2 identifies the specific requirements of the fit and proper person test and sets alongside those requirements how the Trust intends to assure itself about the suitability of individuals.

3.0 Responsibilities

3.1 The regulations require the Chair of the Trust to confirm that the fitness of all new directors has been assessed in line with the regulations.

3.2 The Trust is responsible for ensuring the continued “fitness” of those persons to whom the requirements apply. This requirement will be fulfilled through a number of processes including:

An on-going duty upon those to whom this policy applies to notify the Trust immediately if a director no longer satisfies the criteria to be a “fit and proper person”, or other grounds under which the director would be ineligible to continue in post is included in contracts of employment

- The completion of an annual self-declaration for all Directors.
- Introduction of annual checks for credit, bankruptcy and registration.
- Formal appraisal processes.
- Maintenance of the register of declared interests.

3.3 The Director of People and Culture is responsible for ensuring the policy follows the appropriate Trust format and complies with the recognised development, consultation, approval and ratification process.

4.0 Associated Documents and References

NHS Employers, NHS Confederation & NHS Providers (2014) “Fit and proper Person Test” nhsconfed.org [Online]

<http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Fitproper person test guidance providers.pdf>

5.0 Dissemination and Implementation

This policy will be made available on the intranet. It will also be given to all new executive and non-executive directors on appointment.

6.0 Monitoring compliance with the policy

Standard/process /issue	Monitoring and audit			
	Method	By	Committee	Frequency
Instances of non-compliance with policy	Annual audit (or sooner if necessary)	Report by Company secretary	Trust Board	Annually

Appendix 23 - Annual self-declaration – *available on request*

Appendix 24 – Annual Audit – *available on request*