

Policy and Procedure for Fit and Proper Persons Checks for Directors (and Director Equivalents)

Department / Service:	Human Resources and Executive Suite
Originator:	Kimara Sharpe
Accountable Director:	Director of People and Culture
Approved by:	
First approval:	17 TH December 2019
Review date:	17 th December 2022
This is the most current document and should be used until a revised version is in place	
Target Organisation(s)	Worcestershire Acute Hospitals NHS Trust
Target Departments	All
Target staff categories	Those responsible for the recruitment, selection and appointment of Trust Directors, Non-Executive Directors and Director Equivalents.

Policy Overview:

To set out the processes and procedures for ensuring that all Directors and those appointed to senior (Director level) positions within the Trust are appointed on the basis of their suitability to fulfil the role.

This policy and procedure lays down the statutory checks that need to take place on recruitment, and then annually thereafter, in line with the NHS Fit and Proper Persons Test.

Key amendments to this Document:

Date	Amendment	By:
March 2018	Separation of Guidance from Section 13 of the Recruitment and Selection Policy into new policy to clarify process	Kay Darby/ Deb Drew
December 2019	Policy approved at Trust Management Executive and People and Culture committee	TME

References:

Code:

NHS Employers (September 2017) NHS Employment Check Standards http://www.nhsemployers.org/your-workforce/recruit/employment-checks	
Protection of Freedoms Act 2012	
Health and Social Care Act 2008 Regulated Activity Regulations 2014	
Occupational Health Procedures for Screening	
UK Border Agency http://www.ukba.homeoffice.gov.uk/	
Disclosures and Barring Service Guidance http://www.homeoffice.gov.uk/agencies-public-bodies/crb/	

1. Introduction

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 Persons Requirements of directors came into force on 1st October 2014.

The requirements were previously covered in Appendix 13 of the Trust's Recruitment and Selection Policy.

1.1 Purpose

Under the Fit and Proper Persons 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 who doesn't meet this test. The Trust also has to have systems in place to ensure that it does not 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 fall 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 Persons 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 Persons Requirements compliance at recruitment and on an ongoing 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 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 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 persons test and sets alongside those requirements how the Trust intends to assure itself about the suitability of individuals.

3 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.

3.4 The Company Secretary has day to day responsibility for the implementation of the Policy.

4 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/Fitproperperson test guidance providers.pdf](http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Fitproperperson%20test%20guidance%20providers.pdf)

5 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 Consultation and Approval

The Joint Negotiating and Consultative Committee (JNCC) have approved the policy. the Trust Management Executive will ratify the Policy..

7 Equality and Diversity

The Trust is committed to ensuring that, as far as is reasonably practicable, the way we treat staff reflects their individual needs and does not discriminate against individuals or groups on any grounds. Equalities Impact Assessment is included as Supporting Document 1.

8 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	People and Culture Committee	Annually
Ensuring up to date files	Quarterly audit	Audit by Company Secretary	Report to Dir P&C if necessary	Quarterly
Preparation for CQC inspection	Planned audit with the Company Secretary and/or deputy Company Secretary	Audit by the Quality hub	Report to Dir P&C, copied to Company Secretary	6 weeks prior to the CQC visit

Appendix 1 - New Starter Checklist Director and Director Equivalent

Appendix 2 - Annual Director Checklist

Appendix 3 - Self-Declaration

Appendix 4 – CQC preparation audit check list

Supporting Document 1 – Equalities Impact Assessment
Supporting Document 2 – Finance Impact Assessment

New Starter Checklist Director and Director Equivalent

Appendix 1

Please ensure that all the documentation below is retained on the employees' personal file, along with a copy of this form.

NAME:

POST:

Item	No	√	Date Checked / Completed	By Whom	Comment
Personal File Checklist				Deputy Company Secretary	
Application form / CV				Deputy Company Secretary	
Unconditional Offer Letter				Deputy Company Secretary	
Qualifications				Deputy Company Secretary	
Interview Notes				Deputy Company Secretary	
References				Deputy Company Secretary	
Workplace Health Clearance				Deputy Company Secretary	
Occupational Health Letter (if required)				Deputy Company Secretary	
Right to Work ID				Deputy Company Secretary	
Right to Work Check Checklist				Deputy Company Secretary	
ID Documents (not right to work)				Deputy Company Secretary	
Professional Registration Certificate or Pin (if required)				Deputy Company Secretary	
DBS Risk Assessment				Deputy Company Secretary	
DBS Clearance (Must be printed out from Atlantic Data & DBS Declaration deleted)				Deputy Company Secretary	
New Starter Form (ESR 1)				Deputy Company Secretary	
Pension Form (if required)				Deputy Company Secretary	
Signed Contract and Terms and Condition of Employment				Deputy Company Secretary	
Declaration of fitness signed and completed by candidate				Deputy Company Secretary	
Search of insolvency and bankruptcy register				Deputy Company Secretary	

completed (print screen saved on file)					
Search of disqualified directors register completed (print screen saved on file)				<i>Deputy Company Secretary</i>	
Minutes of remuneration committee kept on file if an individual is deemed suitable despite not meeting Fit and Proper Person requirements				<i>Deputy Company Secretary</i>	
Pre-employment / re-location expenses				<i>Deputy Company Secretary</i>	
Employment Reference – Tenant Referencing				<i>Deputy Company Secretary</i>	

Notes

- Any issues in obtaining the documentation to complete this checklist to be escalated to the Trust Chair for action.

I can confirm that all of the relevant documentation has been reviewed and dated:

Signed: _____ Date: _____
Deputy Company Secretary

I confirm that this Board member meets the Fit and Proper Person requirements as outlined by the CQC.

Signed: _____ Date: _____
Chair

Any Outstanding Documents at the time of original approval

Document	Date Provided	Confirmation initials	Chair's signature	Date

Annual Checklist Director and Director Equivalent

Appendix 2

Please ensure that all the documentation below is retained on the employees' personal file, along with a copy of this form.

NAME:

POST:

Item	No	√	Date Checked / Completed	By Whom	Comment
Professional Registration or PIN Check				Company Secretary	
Fit and Proper Persons Annual Directors Declaration				Company Secretary	
Annual Statement to Trust Board				Company Secretary	
Maintenance of the register of declared interests.				Company Secretary	
Annual checks for credit, bankruptcy and registration.				Company Secretary	
Mandatory Training				PA to CEO	
Formal appraisal processes.				PA to CEO	

Notes Any issues in obtaining the documentation to complete this checklist to be escalated to the Trust Chair for action.

I can confirm that all of the relevant documentation has been reviewed and dated:

I confirm that this Board member meets the Fit and Proper Person requirements as outlined by the CQC.

Signed: _____ Date: _____

Company Secretary

Outstanding Documents at the time of annual check

Document	Date Provided	Confirmation initials	Chair's signature	Date

Fit and Proper Person Annual Declaration for Director and Director Equivalent Posts

WORCESTERSHIRE ACUTE HOSPITALS NHS TRUST (“the Trust”)

“FIT AND PROPER PERSON” DECLARATION - 2018

1. It is a condition of employment that those holding director and director-equivalent posts provide confirmation in writing, on appointment and thereafter on demand, of their fitness to hold such posts. Your post has been designated as being such a post. Fitness to hold such a post is determined in a number of ways, including (but not exclusively) by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2008 (“the Regulated Activities Regulations”).
2. By signing the declaration below, you are confirming that you do not fall within the definition of an “unfit person” or any other criteria set out below, and that you are not aware of any pending proceedings or matters which may call such a declaration into question.

Regulated Activities Regulations

3. Regulation 5 of the Regulated Activities Regulations states that the Trust must not appoint or have in place an individual as a director, or performing the functions of or equivalent or similar to the functions of, such a director, if they do not satisfy all the requirements set out in paragraph 3 of that Regulation.
4. The requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are that:
 - (a) The individual is of good character;
 - (b) 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;
 - (c) 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;
 - (d) The individual has not been responsible for, 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

 - (e) None of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.
5. The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:
 - a) 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;
 - (b) 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;
 - (c) 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;
 - (d) The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;

- (e) 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;
- (f) The person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.
6. The grounds specified in Part 2 of Schedule 4 to the Regulated Activities Regulations which are the test of good character are:
- (a) Whether the person 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, would constitute an offence;
- (b) Whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of healthcare or social work professionals.
7. In addition the Trust requires individuals to declare that:
- (a) They are not subject to any investigation or under any performance management regime for any reason;
- (b) They are not aware of any incident or issue in their previous employment which may affect their status as a fit and proper person to fulfil their current/potential role;
- (c) They have not within the preceding two years been dismissed, other than by reason of redundancy from within a Health Service body or other organisation providing substantial services to the NHS; if there was a finding against the individual's previous employer in relation to their dismissal, they must provide details and consideration will be given to their eligibility to be a Director;
- (d) They are not an executive of another NHS Trust or Governor, Director, Chair, Chief Executive of another NHS body;
- (e) They are not disqualified as a Company Director under the Company Directors Disqualification Act 0986 in England and or Wales;
- (f) They are not prohibited from holding the position under any other law e.g. the Charities Act.

I acknowledge the extracts from the provider license, Regulated Activities Regulations and the Trust's constitution above. I confirm that I do not fit within the definition of an "unfit person" as listed above and that there are no other grounds under which I would be ineligible to continue in post. I undertake to notify the Trust immediately if I no longer satisfy the criteria to be a "fit and proper person" or other grounds under which I would be ineligible to continue in post come to my attention.

Name: _____

Position: _____

Signed: _____

Date: _____



Appendix 4



Worcestershire Acute Hospitals Trust
Regulation 19: Fit & Proper Persons Employed
Board Director Personal File Audit Tool



Date Audit Completed: <<Insert Date>>		Person Completing Audit: <<Insert Name>>										Assurance Provided					Actions agreed and in progress					No Evidence Available		NA Evidence Hold with NHSI		NA unless Chair of Committee		Completed in the presence of: Company Secretary/Deputy Company Secretary		
Role	Post Status (Substantive / Interim)	Name	Personal File Checklist	Application Form or CV	Offer Letters	Qualifications	Interview Notes	References	Occupational Health Clearance	Right to Work Checklist	Right to Work ID	ID Documents	Professional Registration	DBS Clearance	New Starter Form	Pension Forms	Contract	FPPT	Insolvency Check	Disqualified Directors Check	PDR									
Director Appointments																														
Chief Executive																														
Chief Nursing Officer																														
Chief Medical Officer																														
Chief Financial Officer																														
Chief Operating Officer																														
Director of Communications & engagement																														
Director of People and Culture																														
Director of Strategy & Planning																														
Chief Digital Officer																														
Company Secretary																														
Chairman																														
Chairman																														
Non Executive Director Appointments																														
Non Executive Director																														
Non Executive Director																														
Non Executive Director																														
Non Executive Director																														
Non Executive Director																														
Associate Non Executive Director																														
Associate Non Executive Director																														

Supporting Document 1 – Equality Impact Assessment form

To be completed by the key document author and included as an appendix to key document when submitted to the appropriate committee for consideration and approval.

Please complete assessment form on next page;

Herefordshire & Worcestershire STP - Equality Impact Assessment (EIA) Form
Please read EIA guidelines when completing this form

Section 1 - Name of Organisation (please tick)

Herefordshire & Worcestershire STP		Herefordshire Council		Herefordshire CCG	
Worcestershire Acute Hospitals NHS Trust	x	Worcestershire County Council		Worcestershire CCGs	
Worcestershire Health and Care NHS Trust		Wye Valley NHS Trust		Other (please state)	

Name of Lead for Activity	FPPT
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Details of individuals completing this assessment	Name	Job title	e-mail contact
	Kimara Sharpe	Company Secretary	Kimara.sharpe@nhs.net
Date assessment completed	28 Jan 2020		

Section 2

Activity being assessed (e.g. policy/procedure, document, service redesign, policy, strategy etc.)	Title: document		
What is the aim, purpose and/or intended outcomes of this Activity?	Robust policy for managing the fit and proper person		
Who will be affected by the development & implementation of this activity?	<input type="checkbox"/> Service User <input type="checkbox"/> Patient <input type="checkbox"/> Carers <input type="checkbox"/> Visitors	x <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Staff – board level directors only Communities Other _____
Is this:	<input checked="" type="checkbox"/> Review of an existing activity <input type="checkbox"/> New activity <input type="checkbox"/> Planning to withdraw or reduce a service, activity or presence?		

What information and evidence have you reviewed to help inform this assessment? (Please name sources, eg demographic information for patients / services / staff groups affected, complaints etc.	N/A
Summary of engagement or consultation undertaken (e.g. who and how have you engaged with, or why do you believe this is not required)	N/A
Summary of relevant findings	N/A

Section 3

Please consider the potential impact of this activity (during development & implementation) on each of the equality groups outlined below. **Please tick one or more impact box below for each Equality Group and explain your rationale.** Please note it is possible for the potential impact to be both positive and negative within the same equality group and this should be recorded. Remember to consider the impact on e.g. staff, public, patients, carers etc. in these equality groups.

Equality Group	Potential <u>positive</u> impact	Potential <u>neutral</u> impact	Potential <u>negative</u> impact	Please explain your reasons for any potential positive, neutral or negative impact identified
Age		x		N/A
Disability		x		N/A
Gender Reassignment		x		N/A
Marriage & Civil Partnerships		x		N/A
Pregnancy & Maternity		x		N/A
Race including Traveling Communities		x		N/A
Religion & Belief		x		N/A
Sex		x		N/A
Sexual Orientation		x		N/A
Other Vulnerable and Disadvantaged Groups (e.g. carers; care leavers; homeless;		x		N/A

Equality Group	Potential <u>positive</u> impact	Potential <u>neutral</u> impact	Potential <u>negative</u> impact	Please explain your reasons for any potential positive, neutral or negative impact identified
Social/Economic deprivation, travelling communities etc.)				
Health Inequalities (any preventable, unfair & unjust differences in health status between groups, populations or individuals that arise from the unequal distribution of social, environmental & economic conditions within societies)		X		N/A

Section 4

What actions will you take to mitigate any potential negative impacts?	Risk identified	Actions required to reduce / eliminate negative impact	Who will lead on the action?	Timeframe
	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A
How will you monitor these actions?	N/A			
When will you review this EIA? (e.g in a service redesign, this EIA should be revisited regularly throughout the design & implementation)	N/A			

Section 5 - Please read and agree to the following Equality Statement

1. Equality Statement

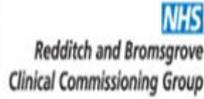
1.1. All public bodies have a statutory duty under the Equality Act 2010 to set out arrangements to assess and consult on how their policies and functions impact on the 9 protected characteristics: Age; Disability; Gender Reassignment; Marriage & Civil Partnership; Pregnancy & Maternity; Race; Religion & Belief; Sex; Sexual Orientation

1.2. Our Organisations will challenge discrimination, promote equality, respect human rights, and aims to design and implement services, policies and measures that meet the diverse needs of our service, and population, ensuring that none are placed at a disadvantage over others.

1.3. All staff are expected to deliver services and provide services and care in a manner which respects the individuality of service users, patients, carer's etc, and as such treat them and members of the workforce respectfully, paying due regard to the 9 protected characteristics.

Signature of person completing EIA	Kimara Sharpe
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Date signed	28-1-20
Comments:	
Signature of person the Leader Person for this activity	Kimara Sharpe
Date signed	28-1-20
Comments:	



Supporting Document 2 - Financial Impact Assessment

To be completed by the key document author and attached to key document when submitted to the appropriate committee for consideration and approval.

	Title of document:	Yes / No
1.	Does the implementation of this document require any additional Capital resources	No
2.	Does the implementation of this document require additional revenue	No
3.	Does the implementation of this document require additional manpower	No
4.	Does the implementation of this document release any manpower costs through a change in practice	No
5.	Are there additional staff training costs associated with implementing this document which cannot be delivered through current training programmes or allocated training times for staff	No
	Other comments:	None

If the response to any of the above is yes, please complete a business case and which is signed by your Finance Manager and Directorate Manager for consideration by the Accountable Director before progressing to the relevant committee for approval