

FIT AND PROPER PERSON TEST POLICY

Trust Board	Item: 16
Date: 26 January 2022	Enclosure: M
<p>Executive Summary: The attached policy provides a framework for the Trust to fulfil its obligation for ensuring its board directors are fit and proper people to hold office.</p> <p>It has been reviewed and no significant changes have been made.</p>	
For: Information <input checked="" type="checkbox"/> Assurance <input type="checkbox"/> Discussion and input <input type="checkbox"/> Decision/approval <input checked="" type="checkbox"/>	
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Risk Implications – Link to Assurance Framework or Corporate Risk Register:	-
Legal / Regulatory / Reputation Implications:	- Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
Link to Relevant CQC Domain:	
Safe <input type="checkbox"/> Effective <input type="checkbox"/> Caring <input type="checkbox"/> Responsive <input type="checkbox"/> Well Led <input checked="" type="checkbox"/>	
Link to Relevant Strategic Theme:	-
Document Previously Considered By:	Executive Management Committee
<p>Recommendations (what is the Board/committee being asked to do):</p> <p>Board are asked to note and approve the fit and proper person Policy</p>	

FIT AND PROPER PERSON TEST POLICY

This policy sets out the framework, which should be followed when undertaking the recruitment process to engage Executive and non- Executive Directors. It should also be used to ensure on-going compliance with the Fit & Proper Person Test standards. The relevant staff are expected to comply with the principles and processes outlined in this policy.

Policy Author:	Theresa Ekendu – HR Business Partner
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Impact Assessment Date:	

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1. 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 and the regulatory standards for the Fit and Proper Person Requirements of Directors which came into force on 1 October 2014 for all NHS bodies and for all providers on 1 April 2015.

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 Non-Executive Director, under given circumstances.

The regulations have been integrated into the Care Quality Commission's (CQC) 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 Person requirements lists categories of persons who are prohibited from holding office and for whom there is no discretion.

There is an expectation that senior leaders will set the tone and culture of the organisation so that staff adopt a caring and compassionate attitude. For this reason, in making Director appointments, Boards and Councils of Governors take account of the values of the organisation and a candidate's fit to these values.

Providers must not appoint a person to an Executive Director level post or to a Non-Executive post unless that person is:

- Of good character.
- Has the necessary qualifications, skills and experience.
- Is able to perform the work they are employed for after reasonable adjustments are made.
- Can provide information as set out in the regulations.
- Has satisfactory relevant checks.

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

- Determining to whom the requirements apply.
- Ensuring a robust process for assessing compliance with the 'Fit and Proper Person Test' requirements at recruitment and on an ongoing basis.
- Establishing a process for monitoring and record keeping (to be reported annually to the Board).
- Ensuring standard documentation (employment contracts, appointment letters, employment policies, etc.) contains the relevant information to ensure compliance.

1.2. Scope

This policy applies to all staff and governors involved in the recruitment and appointment of Executive and Non-Executive Directors or equivalent posts, holders of Executive and Non-Executive Director positions, and staff administering the Trust's processes for monitoring and record keeping.

The requirements of the FPPT apply to all Trust Board directors and equivalents (including both Executive and Non-Executive Directors) whether or not they hold voting rights.

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 judgment 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 THE POLICY

The aim of the policy is to ensure that holders of Executive and Non-Executive Director positions at the Trust are fit to carry out their role.

3. COMPLIANCE AND ASSURANCE

Directors will complete an annual fit and proper person declaration (Appendix 1). An annual report on compliance with this requirement will be presented to the Trust Board.

The table in Appendix 2 identifies the specific requirements of the Fit and Proper Persons test and sets alongside those requirements how the Trust will assure itself about the suitability of individuals.

4. RESPONSIBILITIES

4.1. The Chairman of the Trust Board will, if requested by the CQC:

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

4.2. The Director of Workforce will ensure that:

- Contracts of employment are appropriately worded and issued so as to ensure compliance with the regulations.
- All pre-appointment and ongoing checks are carried out in accordance with this policy
- Formal appraisal processes are operated to support the requirements of this policy.

4.3. The Company Secretary will ensure that:

- An annual self-declaration for all Directors is completed alongside the register of declared interests and that the registers are maintained.
- An annual report on compliance is received by the Board.

4.4. The relevant line manager will ensure that:

Directors with clinical responsibilities undertake their professional revalidation and maintain their registration

5. ASSOCIATED DOCUMENTS AND REFERENCES

NHS Employers, NHS Confederation & NHS Providers (2014) "Fit and proper Person Test" [nhsconfed.org](http://www.nhsconfed.org) [Online]
[http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Fitproper person test](http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Fitproper%20person%20test)

[guidance providers.pdf](#)

6. DISSEMINATION AND IMPLEMENTATION

This policy will be made available on the intranet.

7. CONSULTATION AND APPROVAL

The policy has been reviewed and approved by the Trust Board.

8. 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.

9. MONITORING COMPLIANCE WITH THE POLICY

Standard/process	Monitoring and audit			
	Method	By	Committee	Frequency
Instances of non-compliance with policy	Annual audit	Report by HR/Trust Secretary	Trust Board	Annually

APPENDIX 1

Pre-employment and Annual Declaration for Director and Director equivalent posts Fit and Proper Person Declaration

- 1 It is a condition of appointment 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 Trust's provider licence, the Health and Social Care Act 2008 (Regulated Activities), Regulations 2008 ("the Regulated Activities Regulations") and the Trust's constitution.
- 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.

Provider Licence

- 3 Condition GA(2) of Kingston Hospital NHS Foundation Trust's Provider Licence ("The Licence") provides that the Licensee shall not appoint as a director any person who is an unfit person, except with the approval in writing of Monitor.
- 4 Licence Condition GA(3) requires the Licensee to ensure that its contracts of service with its directors contain a provision permitting summary termination in the event of a director being or becoming an unfit person. The Licence also requires the Licensee to enforce that provision promptly upon discovering any director to be an unfit person, except with the approval in writing of Monitor.
- 5 An "unfit person" is defined at condition GA(5) of the Licence as:
 - (a) An individual:
 - (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
 - (ii) who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
 - (iii) who within the preceding five years has been convicted in the British Isles of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him; or
 - (iv) who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986; or
 - (b) a body corporate, or a body corporate with a parent body corporate:
 - (i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of sub-paragraph (a) of this paragraph, or

- (ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or
- (iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act appointed for the whole or any material part of its assets or undertaking; or
- (iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act; or
- (v) which passes any resolution for winding up; or
- (vi) which becomes subject to an order of a Court for winding up.

Regulated Activities Regulations

- 6 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.
- 7 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.
- 8 The grounds of unfitness specified in Par 1 of Schedule 4 to the Registered 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 carrying on the regulated activity, by or under any enactment.

Trust’s Constitution

- 9 The Trust’s constitution places a number of restrictions on an individual’s ability to become or continue as a director. A person may not become or continue as a director of the Trust if:
- (a) They have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - (b) They have made a composition or arrangement with, or granted a Trust deed for their creditors and have not been discharged in respect of it;
 - (c) They have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
 - (d) A person who is, or is the spouse or partner of, a member of a clinical commissioning group (for the purposes of the Health and Social Care Act 2012 established to commission NHS funded services) that commissions services from the Trust.

I acknowledge the extracts from the provider licence, 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: _____ Signed: _____

Position: _____ Date: _____

APPENDIX 2

Standard	Assurance	Evidence
<p>Providers should make every effort to ensure that all available information is sought to confirm that the individual is of good character as defined in Schedule 4, Part 2 of the regulations</p> <p><i>(Sch. 4, Part 2: 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. Whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professions.)</i></p>	<p>Employment checks are undertaken in accordance with NHS Employers pre-employment check standards and include:</p> <ul style="list-style-type: none"> • Two references, one of which must be most recent employer • Qualification and professional registration checks • Right to work checks • Identity checks • Occupational Health clearance • DBS checks (where appropriate) <p>In addition, we also carry out:</p> <ul style="list-style-type: none"> • Declarations of fitness by candidates 	<p>References</p> <p>Other pre-employment checks DBS checks where appropriate</p> <p>Signed declarations from applicants</p>
<p>If a provider discovers information that suggests an individual is not of good character after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.</p>	<p>Disciplinary policy and procedure provides for such investigations.</p> <p>Revised contracts allow for termination in the event of non-compliance with regulations and other requirements.</p>	<p>Contracts of employment (for EDs and director-equivalents)</p> <p>Terms and conditions of service agreements (for NEDs)</p> <p>Disciplinary policy and procedure.</p>
<p>When a provider deems the individual suitable despite not meeting the characteristics outlined in Schedule 4, Part 2 of these regulations, the reasons should be recorded and information about the decision should be made available to those that need to be aware.</p>	<p>This would be the subject of debate at the Nomination and Remuneration Committee (for EDs and director-equivalents) and at the council of governors (for NEDs). The minutes would record such decisions.</p> <p>The Chair would take advice for internal and external advisors as appropriate.</p>	<p>Minutes of meetings.</p>

Standard	Assurance	Evidence
Where specific qualifications are deemed by the provider as necessary for a role, the provider must make this clear and should only employ those individuals that meet the required specification, including any requirements to be registered with a professional regulator.	This recruitment is included within the job description for relevant posts and is checked as part of the pre-employment checks.	Person specification Recruitment policy and procedure
The provider should have appropriate processes for assessing and checking that the individual holds the required qualifications and has the competence, skills and experience required, (which may include appropriate communication and leaderships skills and a caring and compassionate nature), to undertake the role; these should be followed in all cases and relevant records kept.	Employment checks include a candidate's qualifications and employment references. The recruitment process also includes qualitative assessment and values-based questions. Interview notes to record decisions.	Recruitment policy and procedure Values-based questions Minutes of Council of Governors and Board meetings
The provider may consider that an individual can be appointed to a role based on their qualifications, skills and experience with the exception that they will develop specific competence to undertake the role within a specified timeframe.	Any such decision would be discussed by the Nomination and Remuneration Committee or Council of Governors and would be minuted. Actions would be subject to follow-up as part of ongoing review and appraisal.	NED appraisal framework ED appraisals
When appraising relevant individuals the provider has processes for considering a person's physical and mental health in line with the requirements of the role.	All postholders are subject to clearance by Occupational Health as part of the pre-employment process.	Occupational Health clearance
Wherever possible, reasonable adjustments are made in order that an individual can carry out the role.	This is already included in the Trust's Recruitment and Selection Policy.	Recruitment and Selection Policy Occupational Health clearance

Standard	Assurance	Evidence
<p>The provider has processes in place to assure itself that individual has not been at any time responsible for, privy contributed to, or facilitated any serious misconduct mismanagement in the carrying on of a regulated this includes investigating any allegation of such behaviour. Where the individual is professionally it may include fitness to practice proceedings professional disciplinary cases.</p> <p><i>“Responsible for, contributed to or facilitated” means that there is evidence that a person has intentionally or neglect behaved in a manner which would be be or would have led to serious misconduct or mismanagement.</i></p> <p><i>“Privy to” means that there is evidence that a person was aware of serious misconduct or mismanagement but did take the appropriate action to ensure it was addressed.</i></p> <p><i>“Serious misconduct or mismanagement” means behaviour that would constitute a breach of any CQC deems relevant to meeting these regulations or component”).</i></p>	<p>This has been incorporated as a specific declaration part of the pre-employment process.</p> <p>It is also incorporated into a revised reference template for all Director and Director-equivalent posts.</p>	<p>Director and NED Recruitment Information Pack</p> <p>Pre-employment declaration</p> <p>Reference Request for ED/NED</p>
<p>The provider must not appoint any individual who has been responsible for, privy to, contributed to, or facilitated, any serious misconduct or mismanagement (whether lawful or not) in the carrying on of a regulated activity; this includes investigating any allegation of such potential behaviour. Where the individual is professionally qualified, it may include fitness to practice proceedings and professional disciplinary cases.</p>	<p>This has been incorporated as a specific declaration as part of the pre-employment process.</p> <p>It is also incorporated into a revised reference request template for all director and director-equivalent posts.</p> <p>Trust Recruitment and Selection policy</p>	<p>NED Recruitment Information Pack Reference request for ED/NED</p>

Standard	Assurance	Evidence
<p>Only individuals who will be acting in a role that falls within the definition of a “regulated activity” as defined by the Safeguarding Vulnerable Groups Act 2006 will be eligible for a check by the Disclosure and Barring Service (DBS)</p> <p><i>(CQC recognises that it may not always be possible for providers to access a DBS check as an individual may not be eligible.)</i></p>	<p>DBS checks are undertaken only for those posts which fall within the definition of a “regulated activity” or which are otherwise eligible for such a check to be undertaken.</p>	<p>DBS policy (Check that we have one) DBS checks for eligible postholders</p>
<p>As part of the recruitment/appointment process, providers should establish whether the individual is on a relevant barring list.</p>	<p>Eligibility for DBS checks will be assessed for each vacancy arising.</p>	<p>DBS policy</p>
<p>The fitness of directors is regularly reviewed by the provider to ensure that they remain fit for the role they are in; the provider should determine how often fitness must be reviewed based on the assessed risk to business delivery and/or the service users posed by the individual and/or role.</p>	<p>Postholders undertake annual declarations of fitness to continue in post.</p> <p>Annual report to Board.</p>	<p>Annual declaration NED appraisal process ED appraisal process Board and Council of Governors’ minutes</p>
<p>The provider has arrangements in place to respond to concerns about a person’s fitness after they are appointed to a role, identified by itself or others, and these are adhered to.</p>	<p>Core HR policies including disciplinary policy provides these arrangements, and revised contracts (for EDs and director-equivalents) and agreements (for NEDs) incorporate maintenance of fitness as a contractual requirement.</p>	<p>HR policies ED contracts of employment NED agreements</p>
<p>The provider investigates, in a timely manner, any concerns about a person’s fitness or ability to carry out their duties, and where concerns are substantiated, proportionate, timely action is taken; the provider must demonstrate due diligence in all actions.</p>	<p>This will be undertaken if concerns are identified and revised contracts provide for termination if individuals fail to meet necessary standards.</p>	<p>Revised employment contracts for EDs and revised service agreement for NEDs HR policies</p>

Standard	Assurance	Evidence
Where a person's fitness to carry out their role is being investigated, appropriate interim measures may be required to minimise any risk to service users.	This would be reviewed when concerns are identified.	Disciplinary policy
The provider informs others as appropriate about concerns/findings relating to a person's fitness; for example, professional regulators, CQC and other relevant bodies, and supports any related enquiries/investigations carried out by others.	This would be completed if any concerns were identified.	Referrals made to other agencies

In the table above, unless the contrary is stated or the context otherwise requires, "ED" means executive directors and director-equivalents.

VERSION CONTROL SHEET

Version	Release	Author/Reviewer	Ratified by/ Authorised by	Changes (Please identify page no.)
1.	6/11/2015	Theresa Ekendu / Susan Simpson	Trust Board	New Policy
2	July 2017	Susan Simpson	Trust Board	Amend. 6.1. An amendment was approved to clarify wording on the Chair's responsibility to provide information to the CQC when requested.