

Fit and Proper Persons Policy and Standard Operating Procedure

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Associated Policy or Standard Operating Procedures	See Appendix 1 of Policy		

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INTRODUCTION

1.1 This policy has been developed in response to the requirements placed on NHS providers, following the introduction of the Care Quality Commission's new regulatory standards for the Fit and Proper Person Requirements of directors to ensure compliance with Regulation 5.¹

2. PURPOSE

2.1 The Integrated Care Boards (ICBs) and 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.

2.2 This regulation has been integrated into the Care Quality Commission's (CQC) registration requirements, and falls within the remit of their regulatory and inspection approach.

2.3 ICBs and Providers must not appoint to an qualifying post 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

2.4 Guidance issued by the Care Quality Commission 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 Care Quality Commission's role being to monitor and assess how well this responsibility is discharged.

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

2.6 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.

2.7 This policy therefore addresses

- who the requirements apply to

¹ <http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors>

- a robust process for assessing directors' Fit and Proper Person Requirements compliance at recruitment and on an on-going basis
- a process for monitoring and record keeping

3. SCOPE

- 3.1 This Policy presents a summary of the standards Executive and Non-Executive Directors and other Board level posts must comply with and the ICB process for monitoring and record keeping.
- 3.2 Guidance describes “directors” as Executive and Non-Executive Directors and any other persons performing the functions of or similar functions, to a director.
- 3.3 For the purpose of the ICBt it has been agreed that the requirement should apply to all Executive Directors, Non Executive Directors and ICB Board level posts. This will be kept under review taking account of the emerging national guidance.
- 3.4 Where interim Directors are in place, assurance will be required from the providing organisation/agency that the Fit and Proper Persons Test has been completed in line with best practice. Where procured directly, contractual arrangements with the individual should include a stipulation to demonstrate they meet the requirements.

4. DEFINITIONS

- 4.1 **Good Character:** The Care Quality Commissions definition of “good character” is not the objective test of having no criminal convictions but rather a judgement to be made as to whether a person’s character is such that they can be relied upon to do the right thing under all circumstances.

5. ROLES AND RESPONSIBILITIES

5.1 *Care Quality Commission*

- 5.1.1 The regulations give the Care Quality Commission powers to assess whether Directors falling under the remit of this policy are fit to carry out their role and whether the ICBs and providers have in place adequate and appropriate arrangements to ensure directors are fit and proper persons both on recruitment and whilst in post.
- 5.1.2 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.

5.2 Board Postholders within the scope of the FPPR

5.2.1 Non-Executive Directors & Executive Directors and other Board level posts within the scope of this policy must ensure they comply with and continue to comply with the requirement of the Fit and Proper Persons Test and this policy.

5.4 Director of Corporate Governance

5.4.1 The Director of Corporate Governance will ensure the compliance with this policy working closely with the Recruitment Team and the Chief People Officer and will ensure that evidence of compliance is maintained on the personal files of qualifying postholders.

5.4.2 The Director of Corporate Governance, in conjunction with the Chairman and the Remuneration Committee will also ensure prompt action in accordance with Regulation 5, in the event of non-compliance with the policy by any qualifying postholder.

6. COMPLIANCE ON RECRUITMENT

6.1 The ICB has in place robust processes with regard to recruitment of posts within the scope of this policy. These processes include pre-employment checks in line with NHS Employers pre-employment check standards. All appointments under this policy will include:

- Determination of specific qualifications / requirements set out within job descriptions and person specifications
- Identity checks
- Qualification and registration checks
- Right to work checks
- Disclosure and Barring Service (DBS) checks
- At least two references, one being from the most recent employer
- Search of insolvency and bankruptcy register
- Review of full employment history seeking explanation of any gaps in employment
- Health questionnaire and Occupational Health clearance
- Interview processes including panel interviews
- Values based recruitment – values tested through interview process
- Checks recorded and evidenced
- Search of disqualified directors register
- Completion of a self-declaration (appendix 1) confirming that none of the unfit criteria apply.

7. ASSESSMENT OF CONTINUED COMPLIANCE

7.1 The ICB is responsible for ensuring the continued “fitness” of those persons to whom the Requirements apply. It is intended this requirement will be fulfilled through a number of processes including:

- An on-going duty to report to be included in contracts of employment.
 - The completion of an annual self-declaration by individuals within the scope of the policy.
 - Annual checks for credit, bankruptcy and registration.
 - Formal appraisal processes addressing the Fit and Proper Person Requirements.
 - Maintenance of the register of declared interests.
- Where a board member no longer meets the fit and proper person’s requirement, action will be taken in accordance with Regulation 5.²

8. REFERENCES

- 8.1 Care Quality Commission. Regulation 5: Fit and Proper Persons: Directors (2015)_
<http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors>
- 8.2 NHS Employers, NHS Confederation & NHS Providers (2014) “Fit and Proper Person Test Briefing and Toolkit <http://www.nhsconfed.org/resources/2014/12/fit-and-proper-person-test-briefing>
- 8.3 NHS Employers. NHS Employment Check Standards
- 8.4 Care Quality Commission. Guidance for NHS bodies. fit and proper person requirements for directors (March 2015).

² <http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors>

Fit and Proper Persons Declaration

To be completed by the applicant/existing member of staff

Please **print** the declaration form and sign using a **black** or **blue** ball point pen.

In signing this declaration you are confirming that you fully understand the terms outlined within “the Regulations” and the information you have provided is accurate and correct.

Should you be aware of any pending proceedings or matters which may call such a declaration into question, please provide additional information in the space provided.

It is important to stress that our organisation aims to promote equality of opportunity and is committed to treating all individuals for positions fairly and on merit. Any information disclosed which we believe may have a bearing on your suitability for the position, will be discussed with you. If we do not raise this information with you, this is because we do not believe that it should be taken into account. In any event, you still remain free, should you wish, to discuss the matter with the recruiting manager or, where already employed, with your direct line of management.

I, the undersigned, declare that:

- I am of good character:
- I have not been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.
- I have not been convicted in the United Kingdom of any offence (including cautions, reprimands or final warnings) which are not “protected” (as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013) and which are considered **unspent** (meaning current) under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute as an offence which is not “protected”.
- I have the necessary qualifications, competence, skills and experience for the relevant office, or position for which I am applying/or am already employed to do.
- I do not know of any health issues, after reasonable adjustments are made, which may prevent me from properly performing tasks which are intrinsic to the position for which I am applying/or work for which I am employed to do.
- I do not meet any of the unfit criteria as outlined below:

- I have not been responsible for, been 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 in providing a service elsewhere which, if provided in England, would be a regulated activity.
- I am not an un-discharged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
- I am not subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.
- I have not been served with a moratorium period under a debt relief order, which applies under Part VIIA (debt relief orders) of the Insolvency Act 1986(1).
- I have not made a composition arrangement with, or been granted with a trust deed for creditors, which has not been discharged.
- I am not prohibited from holding the relevant office, or position by, or under any enactment.

This statement specifically relates to positions which, because of their activities and responsibilities, are deemed as ‘regulated activity’ under the Safeguarding Vulnerable Groups Act 2006 (as amended) and as such fall eligible for an enhanced check with barring information through the Disclosure and Barring Service (known as a DBS check). Where the employing organisation has identified your position as being eligible for such as check, please confirm that the following statement is correct.

I am not included under the children’s barred list or the adults’ barred list which is maintained by the Disclosure and Barring Service (DBS), or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.

Additional information

Where providing additional information, please indicate which statement this relates to

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Print name:		Witnessed by:	
Signature:		Signature:	
Occupation:		Occupation:	
Email address:		Email address:	
Telephone no:		Telephone no:	
Date signed:		Date signed:	

Data Protection

The information that you provide in this declaration form will be processed in accordance with the *Data Protection Act 1998*. It will be used for the purpose of determining your fitness to hold a director level position under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. By signing this declaration form you consent to the information you provide in the form to be processed for this purpose. This declaration will be kept securely and in confidence. Access to this information will be restricted to designated persons within the organisation who are authorised to view it as a necessary part of their work.

Forms should be returned to:

Name: Lisa Ellis

Job title: Workforce and Recruitment Manager

Email address: lisa.ellis@staffsstoke.icb.nhs.uk