

# **Fit and Proper Persons Employed Policy**

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Consultation Groups	
Approved by (Sponsor Group)	Remuneration and Appointments Committee of the Trust Board
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Services	Applicable to
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Community Health Services	

## Contents

<b>Section</b>	<b>Page Number</b>
1. Introduction	4
2. Scope	4
3. Duties and Responsibilities	5
4. The Fit and Proper Persons Test for Directors	6
5. Providing Assurance	7
6. The Nolan Principles	8
7. Failure to meet Fit and Proper Persons test for existing staff	8

## 1. INTRODUCTION

Under registration requirements the Trust is required to comply with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended) and the Care Quality Commission (Registration) Regulations 2009.

Regulation 5: *fit and proper persons: directors* [FPPR] describes a set of standards and places a duty on NHS providers not to appoint a person or allow a person to continue to be an executive director or equivalent or a non-executive director under given circumstances.

The purpose of the Fit & Proper Person Test is to ensure that the Trust is not managed or controlled by individuals who present an unacceptable risk to the organisation or to patients. This is defined in *Schedule 4 of the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014* in two parts, as follows:

### Unfit persons test (part 1)

Under Schedule 4, Part 1, a director will be deemed **unfit** if they:

- Have been sentenced to imprisonment for three months or more within the last five years [in particular circumstances this can be subject to flexibility]
- Are an undischarged bankrupt
- Are the subject of a bankruptcy order or an interim bankruptcy order
- Have an undischarged arrangement with creditors
- Are included on any barring list preventing them from working with children or vulnerable adults

### Good character (part 2)

Under Schedule 4, Part 2 a director will **fail** the 'good character' test, if they:

- Have 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
- Have been erased, removed or struck off a register of professionals maintained by a regulator of health or social care

This policy statement describes the approach taken by the Trust to provide the appropriate level of Fit & Proper Person Test assurance.

## 2. SCOPE

This policy applies to Directors and people performing the functions of, or functions equivalent or similar to the functions of a director. It applies to board directors, board members and equivalents who are responsible and accountable for delivering care, including associate directors and any other individuals who are members of the board, irrespective of their voting rights, including interim positions. The positions detailed below are defined as within the scope of this policy.

All directors who are required to be in attendance at Trust Board positions irrespective of voting rights:

- Chair
- Non-executive directors
- Executive Directors
- Director of HR & OD
- Chief Quality Officer

Director of Integrated Care

Equivalent positions  
Company secretary

### **3. DUTIES AND RESPONSIBILITIES**

#### **Chair**

The Chair has overall responsibility for compliance with the FPPR and ensuring that the fitness of all new directors has been assessed in line with the regulations and that all individuals within scope of FPPR are fit and proper individuals for their role.

It is the ultimate responsibility of the Chair to discharge the requirement placed on the Trust to ensure that all directors and 'equivalents' meet the fitness test and do not meet any of the unfit criteria, at appointment and ongoing.

#### **Remuneration and appointments committee of Trust Board**

Will receive an annual report on the application of FPPR to ensure ongoing compliance.

#### **Nominations Committee of the Trust Board and Council of Governors**

Will receive an annual report on the application of FPPR to ensure ongoing compliance. The Senior Independent Director will be responsible for ensuring the Chair's compliance.

#### **The Director of HR and OD**

Will administer the policy and:

- Ensure compliance with relevant obligations described in the Regulations
- Identify any changes to the regulations and recommend to the Remuneration and Appointments Committee and Nominations Committee of the Trust Board and Council of Governors the appropriate policy amendments
- Ensure that all appropriate documentation is completed, stored and available for inspection upon request.

#### **Individuals who fall within the policy**

Individuals who fall within the policy are responsible for:

- Providing consent to the required checks as described in this policy
- Signing the declaration that they are a fit and proper person on appointment and on an annual basis
- The provision of evidence of their qualifications, experience and identity documents on appointment or on request to confirm the competencies relevant to the position
- The identification of any issues which may affect their ability to meet the statutory requirements on appointment and bringing their issues on an ongoing basis to the Chief Executive (for Executive and other Directors and Chief Information Officer) and the Chairman for NEDs. The Chair will raise any issues with the Lead Governor as required.

#### 4. THE FIT AND PROPER PERSONS TEST FOR DIRECTORS

Further details of the requirements set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended) and the Care Quality Commission (Registration) Regulations 2009 are set out below.

Providers must not appoint a person to an executive director level post (including associate directors) or to a non-executive director post unless they are:

- Of good character

The regulations describe the following:

- 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, and
- Whether the person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.
- The person is an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged;
- 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;
- 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(40);
- The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- 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;
- The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment;
- The person has 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 discharging any functions relating to any office or employment with a service provider.

- Have the necessary qualifications, skills and experience
- Are able to perform the work that they are employed for after reasonable adjustments are made
- Can supply information as set out in Schedule 3 of the Regulations, as follows:

1. Proof of identity including a recent photograph.

2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997(38), a copy of a criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request)(39)

3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children or vulnerable adults.
4. Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to health or social care or children or vulnerable adults.
5. Where a person has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why employment in that position ended.
6. In so far as it is reasonably practicable to obtain, satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed or appointed to perform.
7. A full employment history, together with a satisfactory written explanation of any gaps in employment.
8. Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity.

## **5. PROVIDING ASSURANCE**

### **AT APPOINTMENT**

All new appointments to roles covered by this policy statement are subject to pre-employment checking in line with the NHS Employment Check Standards, which are maintained by NHS Employers. The checks currently cover the following:

#### **1. Identity**

#### **2. Right to work**

An annual audit of right to work checks of new joiners in the previous twelve months is carried out.

#### **3. Professional registration and qualifications**

Original certificates are required at appointment stage and professional registration sites are checked.

#### **4. Employment history and reference**

Employment history is provided at application stage. The Trust operates automatic inter authority transfers [IAT] for new joiners and this populates details of previous NHS service, including reasons for leaving previous employment. IAT information is considered at appointment and also reviewed each month and action taken as appropriate. Reference are taken up for the previous three years of employment.

#### **5. Criminal record and barring**

The appropriate level of CRB checking is carried out and at the enhanced level for those posts relevant includes checking against barred lists.

## 6. Work health assessments

Pre-employment health screening is carried out by a specialist occupational health provider.

Records of checks undertaken are maintained on the Trust Electronic Staff Record [ESR] and the individual electronic staff file. Paper copies may be produced and kept for inspection purposes.

Any concerns raised during pre-employment are considered by the Chair and the Director of Human Resources & Organisational Development.

### ONGOING

#### 1. Identity

This is a one-off check and repeat is not required

#### 2. Right to work

Details of temporary right to work are recorded on ESR and monthly compliance reporting ensures these are managed and updated as required.

#### 3. Professional registration and qualifications

Professional registration details are recorded on ESR and monthly compliance reporting ensures these are managed and updated as required.

#### 4. Employment history and reference

This is a one-off check and repeat is not required

#### 5. Criminal record and barring

CRB rechecking is carried out every three years.

#### 6. Work health assessments

The specialist occupational health provider supports the management of cases where health concerns arise after employment commences.

Records of checks undertaken are maintained on the Trust Electronic Staff Record [ESR] and the individual electronic staff file.

## 6. THE NOLAN PRINCIPLES

It is anticipated that this policy is operated alongside the Nolan principles Board members and equivalents are expected to promote and support these principles by leadership and example. These will be considered as part of annual appraisal and on-going supervision of board members.

## 7. FAILURE TO MEET FIT AND PROPER PERSONS TEST FOR EXISTING STAFF

If a concern regarding an individual is brought to the attention of the Trust, an appropriate investigation will be carried out by an appropriately person/body dependent on the particular circumstances.

Where an individual's fitness to carry out their role is being investigated appropriate interim measures may be required to minimise any risk to service users. This may mean that an individual's duties are temporarily varied or closely supervised pending investigation and in some cases suspension may be considered

Any subsequent action will be undertaken in line with procedures outlined in the Trust's Disciplinary Policy.