

Fit and Proper Persons Policy and Procedure

Summary	This policy outlines how East London NHS Foundation Trust (ELFT) will administer and routinely review the Fit and Proper Persons Requirement for Directors in accordance with Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (part 3)
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Services	Applicable to
Trust-wide	√
Community Health Services	
Mental Health and LD	
Primary Care	

Version Control Summary

Version	Date	Status	Comment/Changes
1.0	08.10.2015	Final	Policy Statement outlining the Trust's approach to fit and proper persons checks including scope and responsibilities
2.0	11.04.2018	Revised version	Policy reviewed in line with guidance issued by CQC in January 2018. Main change in respect of who the policy applies to
3.0	21.10.2021	Draft	Policy reviewed and redrafted in its entirety by Director of Corporate Governance. Policy updated to reflect good practice and alignment with other Trust policies, and includes processes that underpin the FPPR and to ensure there are checks and balances to minimise potential errors as well as to strengthen the internal control system
3.1	25.08.2022	Draft	<p>Policy reviewed taking account of feedback from staffside including:</p> <ul style="list-style-type: none"> • Para 4: Removal of abbreviations • Para 4: Clarification around meaning of taking regulatory action • Para 5: Confirmation proof of identity checks are in line with NHS Employment Check Standards • Para 5: Confirmation that HR policy and procedures would be followed in relation to reasonable adjustments • Para 6: Confirmation all Board Directors undertake annual appraisal/performance where training and personal development requirements are agreed to support them with ensuring they continue to have the appropriate level of skill and competence for the role; the Board also holds bi-monthly development sessions • Para 13: Included definition of 'regulated activity'

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1 INTRODUCTION

- 1.1 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3) [the Regulations] introduced a *fit and proper person requirement* (Regulation 5) for all Board Directors of NHS bodies.
- 1.2 Under the Regulations all provider organisations must ensure that all Board Director-level [Director] level and Very Senior Manager [VSM] appointments meet the Fit and Proper Persons Requirements [FPPR] 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 an Non-Executive Director [NED] under given circumstances.
- 1.3 The Trust must demonstrate that it has appropriate systems and processes in place to ensure that all new appointees and current Directors are, and continue to be, 'fit and proper' to undertake the role.
- 1.4 Part 3 of the Regulations has two sections relating to FPPR:
 - Section 1 describes the requirements relating to persons carrying on or managing a regulated activity: this includes Regulation 5 Fit and Proper Persons – Directors. The intention of this Regulation is to ensure that people who have Director level responsibility for the quality and safety of care, and for meeting the fundamental standards, are fit and proper to carry out this important role
 - Section 2 introduces the fundamental standards below which the provision of regulated activities and the care people receive must never fall: this includes Regulation 19 Fit and Proper Persons Employed. The intention of this Regulation is to make sure that providers only employ 'fit and proper' staff who are able to provide care and treatment appropriate to their role and to enable them to provide the regulated activity.
- 1.5 The Regulations have been integrated into the Care Quality Commission's [CQC] registration requirements and falls within the remit of their regulatory inspection approach. Guidance issued by the CQC emphasises the importance of the FPPR 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 from the recruitment stage and subsequently throughout Directors' employment.
- 1.6 Directors must meet certain criteria including that they are 'of good character'; have the qualifications, competence, skills and experience necessary for the relevant position; and are capable of undertaking the relevant position after any reasonable adjustments have been made. They must also not have been responsible for any serious misconduct and/or or mismanagement in the course of carrying on a regulated activity.
- 1.6 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 [Council] should take account of the values of the organisation and the candidate's fit to these values.
- 1.7 The purpose of the FPPR is not only to hold Directors to account in relation to their conduct and performance but also to instill confidence in the public that the individuals leading NHS organisations are suitable to hold their positions.

2 PURPOSE

- 2.1 The policy objectives are to:
 - Define the minimum standards for determining the fitness and propriety of individuals on appointment and on an ongoing basis to serve in their respective position within the Trust

- Outline how the Trust complies with the Regulations , including the evidence that demonstrates statutory obligations
- Define the individuals and/or roles to which this policy applies
- Describe the procedures in relation to the policy to help the Trust ensure that all Board Director-level appointments meet the FPPR and that Directors continue to be fit to hold their position
- Promote stakeholder confidence in the Trust and its officers.

3 SCOPE

- 3.1 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 and equivalents who are responsible and accountable for delivering care, irrespective of their voting rights, including interim and associate positions.
- 3.2 For the purpose of this policy, the following positions are defined within the scope of this policy (and referred to as 'Directors'):
- Trust Chair
 - Non-Executive Directors [NEDs]
 - Chief Executive [CEO]
 - Executive Directors
 - Company Secretary
 - Equivalent positions.
- 3.3 For clarity, this FPPR policy does not apply to Governors of the Trust.

4 DUTIES AND RESPONSIBILITIES

Role	Responsibilities
Chair	<ul style="list-style-type: none"> • Ultimate responsibility to discharge the FPPR placed on the Trust to ensure that all relevant post-holders (new and existing) meet the 'fitness' test and do not meet any of the 'unfit' criteria • Overall responsibility for compliance with the FPPR • Ensuring the fitness of all new and existing Directors has been assessed in line with the regulations on appointment and on an ongoing annual basis • Ensuring the necessary action is taken to ensure existing Directors who no longer meet the FPPR do not continue in their role
Senior Independent Director [SID]	<ul style="list-style-type: none"> • Overseeing the outcome of FPPR for the Chair • Undertaking any investigations into any concerns raised about the Chair
Chief People Officer (Executive Lead)	<ul style="list-style-type: none"> • Overseeing the implementation of the FPPR policy • Ensuring any FPPR tests undertaken comply with the process detailed in this policy, bringing non-compliance to the attention of the Chair and/or Senior Independent Director [SID] (as appropriate) • Supporting the Chair and/or SID with any investigations Ensuring that all appropriate documentation is completed, stored and available for inspection upon request
Recruitment Team	<ul style="list-style-type: none"> • Undertaking all pre-employment checks (including the component parts of the FPPR test) for Directors and providing evidence to demonstrate assurance • Ensuring the results (and evidence in the form of copies of certificates, etc) of the FPPR test undertaken on appointment are recorded within an individual's file • Ensuring any recruitment agencies/executive search companies involved in the recruitment process understand their responsibilities and comply

Role	Responsibilities
	with the requirements of this policy, i.e. that all necessary pre-employment checks (including FPPR) have been undertaken and evidence to demonstrate assurance is made available for inspection and retention by the Trust
Director of Corporate Governance	<ul style="list-style-type: none"> • Maintaining the Directors register of interests including annual updates • Ensuring the annual FPPR declarations are undertaken, recorded and evidenced on an individual's file • Confirming compliance with the policy in the Trust's annual report • Providing advice and support to the Trust Board and Council of Governors in respect of the administration of and compliance with the FPPR • Preparing annual reports for consideration by the appropriate committee as part of the appraisal process • Identifying any changes to the Regulations or guidance, recommending to the Board's Appointments & Remuneration Committee and Council's Nominations & Conduct Committee the appropriate policy amendments
Board of Directors Appointments & Remuneration Committee	<ul style="list-style-type: none"> • Ensuring ongoing compliance by receiving an annual report on the application of FPPR in relation to Executive Directors (and the Company Secretary) including the Chief Executive [CEO]
Council of Governors Nominations & Conduct Committee	<ul style="list-style-type: none"> • Ensuring ongoing compliance by receiving an annual report on the application of FPPR in relation to Non-Executive Directors [NEDs] including the Chair
Directors (individuals who fall within the policy)	<ul style="list-style-type: none"> • 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 • Providing evidence of their qualifications, experience and identity documents on appointment or on request to confirm the competencies relevant to the position • Identifying any issues that may affect their ability to meet the statutory requirements on appointment and bringing any issues on an ongoing basis to the CEO (for Executive Directors) and the Chair (for NEDs). The Chair will raise any issues with the Lead Governor as appropriate
Staff	<ul style="list-style-type: none"> • Raising any concerns via the appropriate Trust policies and procedures, e.g. through the Freedom To Speak Up or Raising Concerns or Whistleblowing policies
CQC (see appendix 1)	<ul style="list-style-type: none"> • Powers to assess whether Directors are fit to carry out their role • Powers to assess 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, will assess compliance as part of the well-led domain • Where appropriate will work alongside other regulators, e.g. professional bodies, to ensure that the correct processes are adhered to and information is shared when relevant and appropriate • Cannot prosecute for breach of the FPPR but can take regulatory action

5 FIT AND PROPER PERSONS REGULATIONS FOR DIRECTORS

5.1 Fit and Proper Persons Requirement Definition

- 5.1.1 Regulation 5 sets out the criteria that a Director must meet on appointment, and on an ongoing basis; they must:
- Be of good character
 - Have the necessary qualifications, skills and experience
 - Be able to perform the work that they are employed for after reasonable adjustments are made
 - Not have been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful 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)
 - Not be 'unfit' by reason of matters set out in para 5.2 below
 - Can provide information as set out in Schedule 3 of the Regulations (set out in para 5.4 below).
- 5.1.2 Schedule 4 of the Regulations describes the 'unfit person' test (part 1) and matters to be considered relating to 'good character' (part 2). Its purpose is to ensure that the Trust is not managed or controlled by individuals who present an unacceptable risk to the organisation or to service users/patients.
- 5.1.3 The document *Regulation 5: Fit and proper persons: directors* released by the CQC in 2018 provides additional guidance to help providers interpret and implement the regulation (summary attached at appendix 2).
- 5.1.4 This guidance will be taken into account by the Trust in reviewing an individual's compliance with FPPR. The document outlines:
- Definitions of misconduct and mismanagement and when proven misconduct or mismanagement should be assessed as 'serious'
 - Factors to consider around concerns regarding serious misconduct or mismanagement
 - Features that would normally be associated with 'good character' and factors to consider when assessing 'good character'.

5.2 Unfit Person Test

- 5.2.1 Under Schedule 4 Part 1, a Director is deemed 'unfit' if:
- 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.

5.2.2 These categories of 'unfitness' would prevent an individual from holding office or necessitate removal from his/her position as a Director.

5.3 Good Character

5.3.1 In determining whether an individual is of 'good character', consideration will be given to Schedule 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, and/or
- 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.

5.4 Information

5.4.1 Schedule 3 of the Regulations sets out the information to be provided:

- Proof of identity including a recent photograph
- Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997 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)
- 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
- Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to health or social care, or children or vulnerable adults
- 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
- 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
- A full employment history, together with a satisfactory written explanation of any gaps in employment
- 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

6 PROVIDING ASSURANCE

6.1 To provide assurance that the Trust meets the FPPR requirements, it has in place the following process to determine whether all new and existing Directors are and continue to be fit:

- A process to ensure that all new Board Director-level appointments are fit and proper as part of the recruitment process
- An annual process for regularly monitoring and reviewing the ongoing fitness of existing Directors to ensure they remain fit for their role, including consideration of serious mismanagement
- Principles for conducting investigations into concerns about the fitness of a Director
- A process for the right of appeal for Directors.

6.2 New Director Appointments

- 6.2.1 All appointments to roles covered by this policy will be subject to the individual satisfactorily meeting the FPPR prior to confirmation of offer of appointment
- 6.2.2 All new appointments are subject to pre-employment checking in line with the NHS Employment Check Standards including:
- Proof of identity
 - Evidence of right to work in the UK
 - Professional registration and qualifications (where relevant to the post): Original certificates are required at appointment stage and professional registration sites are checked
 - Employment history and references: 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. References are taken up for the previous three years of employment one of which must be the most recent employer
 - Disclosure and Barring Service: The appropriate level of DBS is carried out and at the enhanced level for those posts where relevant and where eligibility criteria is met
 - Occupational health assessment as relevant to the role.
- 6.2.3 The following registers will also be checked:
- Disqualified Directors' listings
 - Bankruptcy and insolvency
 - Removed Charity trustees
 - A check of any register held by the CQC or any publicly available information collated by the Regulator (web-based search).
- 6.2.4 As CQC expects Trusts to take account of some core public information sources when making Director-level appointments, the Trust will also consider whether the Director has ever breached any of the Nolan principles of public life by undertaking, but not limited to, a web and news search of the individual, but being mindful that not everything found on an internet search is factually accurate. "Core public information sources" includes information from:
- Public inquiry reports about the provider
 - Serious case reviews relevant to the Trust that employed the individual at the time of the allegations
 - Homicide investigations involving mental health Trusts
 - Criminal prosecutions against providers
 - Ombudsmen's reports relating to providers.
- 6.2.5 Where the Trust engages the services of a recruitment agency or executive search company to assist with the appointment, the consultants will be asked to carry out some or all of the checks, and documentary evidence that the checks have been completed satisfactorily must be provided.
- 6.2.6 Records of checks undertaken are maintained on the Trust's Electronic Staff Record [ESR] and the individual electronic staff file. Paper copies may be produced and kept for inspection purposes.
- 6.2.7 The chair of the appointments panel is responsible for ensuring compliance with FPPR check requirements with relevant support (Chief People Officer and/or Director of Corporate Governance) at the time of recruitment. The chair will declare that appropriate checks have been made in reaching a judgement of a candidate's fitness.

- 6.2.8 The Council of Governors is responsible for the appointment of the Chair and Non-Executive Directors, drawing on recommendations from the Council's Nominations & Conduct Committee. The Council will need to satisfy themselves that relevant employment checks, including checks which show compliance with FPPR, have been carried out and that the Board has adequate assurances on the robustness of procedures.
- 6.2.9 In respect of Executive Directors, the Board of Directors Appointments & Remuneration Committee is responsible for the appointment of Executive Directors including the CEO.
- 6.2.10 All Board Director appointments will take into account the Trust's obligations under the Regulations. Where the Trust makes a decision on the suitability of an individual, the reasons will be minuted.
- 6.2.11 Where the Trust deems that the appointee is suitable following investigation despite not meeting the characteristics outlined in Schedule 4 part 2 of the Regulations (good character) the reasons will be recorded in the minutes of the relevant meeting and the information about the decision will be made available.
- 6.2.12 Where specific qualifications are deemed as necessary for a role, this will be made clear and included in the recruitment information pack; only those individuals who meet the required specification will be appointed including any requirements to be registered with a professional regulator.
- 6.2.13 Disqualification: A failure or refusal by a candidate for appointment to comply with any of the procedures set out in this policy will immediately disqualify that person from the proposed appointment.
- 6.2.14 Ineligibility of candidates: If the candidate fails to show that they meet the FPPR, the Trust will withdraw the provisional offer of employment/appointment.
- 6.2.15 Concerns raised during pre-employment will be considered by the Chair and the Executive Director of People and Culture.

6.3 Ongoing Fitness

- 6.3.1 The Trust is responsible for ensuring that relevant individuals continue to meet the FPPR. This is done through an annual review in March/April.
- 6.3.2 All Directors are required to complete the self-declaration form (appendix 3); this declaration will be signed by the Chair (to confirm that the annual checks have been completed) and retained on the individual's personal file.
- 6.3.3 The annual appraisal process will provide an opportunity to discuss continued 'fitness' to ensure that the Director continues to have the appropriate level of skill, experience and competence for the role. Discussions at appraisal will also cover how the Director displays the Trust's values and behaviour standard including the leadership behaviour expected.
- 6.3.4 Enhanced DBS checks will take place on appointment and will be repeated every three years in line with Trust policy. In line with recognised best practice, Directors will be required to join the online Disclosure and Barring (DBS) update service. The costs for the initial DBS checks and the update service are detailed in the Trust's Expenses policy.
- 6.3.5 Checks on disqualification from acting as a Director, bankruptcy and insolvency will also be carried out annually.

- 6.3.6 Directors will be required to make the Trust aware as soon as practicable of any incident or circumstances which may mean they are no longer to be regarded as a fit and proper person.
- Annual checks against the disqualified directors register, bankruptcy and insolvency register, removed charity trustees register and relevant professional registers
 - Formal appraisal process by the relevant line manager.

6.4 Trust Board of Directors/Council of Governors Assurance

- 6.4.1 Revalidation of ongoing fitness will be recorded as part of the appraisal process; and will be reported to the Board's Appointments & Remuneration Committee or Council's Nominations & Conduct Committee as appropriate.
- 6.4.2 Confirmation of compliance will be declared in the Trust's annual report.

7 IDENTIFIED ISSUES OR CONCERNS REGARDING FPPR COMPLIANCE

- 7.1 If a concern regarding an individual is brought to the attention of the Trust, an appropriate investigation will be carried out in a timely and appropriate manner by an appropriately person/body dependent on the particular circumstances.
- 7.2 If these concerns are substantiated through evidence, further investigation and action will be taken using the Trust's Disciplinary policy and procedure.
- 7.3 An investigation may take the format of an internal investigation; internal investigation including an independent element; or an external investigation undertaken by an entirely independent investigator.
- 7.4 Any subsequent action will be undertaken in line with procedures outlined in the Trust's Disciplinary policy.
- 7.5 When an individual who is registered with a professional regulator no longer meets the FPPR, the Trust may inform the regulator and also take action to ensure the position is held by a person meeting the requirements.
- 7.6 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. Suspension or restriction from duties will be for no longer than necessary to protect the interests of Trust, patient safety and public confidence and/or where there is a risk that the Director's presence would impede the gathering of evidence in the investigation.
- 7.7 What constitutes a breach?**
- The Regulation is breached if the Trust has in place someone who does not satisfy the FPPR. Evidence of this could be if:
- A Director is unfit on a 'mandatory' ground such as a relevant undischarged conviction or bankruptcy. This will be determined by the Trust
 - The Trust does not have a proper process in place to enable it to make the robust assessments required by the FPPR
 - On receipt of information about a Director's fitness, a decision is reached on the fitness of the Director that is not in the range of decisions that a reasonable person would make or are reasonable adjustments
 - A Director has been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful 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.

7.8 Sharing of information by CQC

- CQC will send all information it receives that falls under FPPR to the Trust in relation to the Director in question (if continued to be employed by the Trust) following consent by the person providing the information or if CQC decides to proceed without it
- The Trust will be asked by the CQC to respond with the action identified it will take within 10 days. This response will need to satisfy CQC that the Trust has followed a robust process to ensure that the person in question is fit and proper for their role
- CQC will also advise the Director in question of the actions to be taken.

7.9 Historic allegation

- In line with CQC's national guidance, the Trust as the current employer has a duty to investigate historic allegations (not the employer where the allegations took place)
- The Trust will consider a level of proportionality and consistency in dealing with historic cases
- There is no time limit for considering FPPR concerns.

8 MONITORING OF IMPLEMENTATION AND COMPLIANCE

For monitoring	Lead	Method	Frequency	Reporting
FPPR test for newly appointed Directors	Chief People Officer / Director of Corporate Governance	Audit of personal files to ensure pre-employment checks (inc FPPR) undertaken for all new Director appointments	On appointment	Board of Directors Appointments & Remuneration Committee/ Council of Governors Nominations & Conduct Committee
Annual FPPR test self-declarations completed by existing Directors	Chief People Officer / Director of Corporate Governance	Audit of personal files to ensure annual FPPR declarations have been completed by existing Directors	Annually	Board of Directors Appointments & Remuneration Committee/ Council of Governors Nominations & Conduct Committee
Contracts of Employment	Chief People Officer / Director of Corporate Governance	Signed contract to be held on file	On appointment	
Credit, bankruptcy and registration checks	People and Culture	Checks for credit, bankruptcy and registration	Annually	On file
Declarations of Interest	Director of Corporate Governance	Annual check and self-declarations	Annually	Trust Board meetings
FPPR inc good character	CEO / Chair / SID	Review included in annual appraisal process	Annually	
Awareness	CEO Chair	Awareness of policy raised during recruitment process and included in main T&Cs of employment; also at local induction	On appointment	

- 8.1 Additional monitoring may result in response to the identification of any gaps or as a result of the identification of risks arising from the policy prompted by incident review, external reviews or other sources of information and advice including, but not limited to, commissioned audits and reviews, detailed data analysis, etc.
- 8.2 The table at appendix 6 identifies the standards Trusts are expected to meet throughout the course of an individual's employment in relation to Regulation 5 and identifies how the Trust assures itself about the suitability of individuals.

9 DOCUMENT REVIEW

- 9.1 This policy will be reviewed at least every three years or earlier in view of developments which may include legislative changes, national policy instruction or Trust Board decision.

10 GLOSSARY/DEFINITIONS

Term/ Abbreviation	Definition
Care Quality Commission [CQC]	Regulator for health and social care services in England
Board	Board of Directors at East London NHS Foundation Trust
Council	Council of Governors at East London NHS Foundation Trust
Director	For the purposes of this policy, Directors are the group of people constituted as the decision-making body of the Trust. This includes interim positions as well as permanent appointments
Fit and Proper Persons Requirement [FPPR]	Aims to ensure that registered providers (the Trust) appoint and have in place individuals who are fit and proper to carry out the Director role which includes having responsibility for the quality and safety of care (meeting existing requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
Good character	CQC'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
Misconduct	Conduct that breaches a legal or contractual obligation imposed on the Director
Mismanagement	Being involved in the management of the Trust or part of the Trust in such a way that the quality of decision-making and actions of managers falls below any reasonable standard of competent management
NED(s)	Non-Executive Director(s)
Regulated activity	Under the Safeguarding Vulnerable Groups Act 2006 regulated activity includes work (paid and unpaid) which involves certain close contact with children or vulnerable adults

11 POLICY REFERENCES/ASSOCIATED DOCUMENTATION

- CQC *Guidance for providers on meeting the regulations* March 2015 http://www.cqc.org.uk/sites/default/files/20150324_guidance_providers_meeting_regulations_01.pdf
- CQC *Regulation 5: Fit and proper persons: directors – Guidance for providers and CQC inspectors* January 2018 http://www.cqc.org.uk/sites/default/files/20180119_FPPR_guidance.pdf
- NHS Employment Standards <http://www.nhsemployers.org/your-workforce/recruit/employment-checks>
- NHS Improvement (2017) *Fit and proper persons requirements* December 2017 <https://improvement.nhs.uk/resources/fit-and-proper-persons-requirements>
- NHS Providers Briefing on *Fit & Proper Persons Regulations in the NHS: What do providers need to know?* Feb 2018 <http://nhsproviders.org/news-blogs/blogs/what-do-providers-need-to-know-about-the-fit-and-proper-persons-regulations>

APPENDIX 1

The role of the CQC

In the national guidance, CQC makes it clear that it has no remit to investigate the fitness of individuals. It is for the Trust to consider whether the Director in question remains fit and proper. CQC's role is to assess that Trusts have followed appropriate, effective and robust processes, and to take action against a Trust if they are failing to meet these requirements.

CQC cannot prosecute for breach of the FPPR or any of its part but as the regulator of health and social care services it can take regulatory action to address an individual's breach of a regulation, condition of registration or other relevant requirement.

CQC assesses compliance with the FPPR at three different stages:

- At the time of applications for registration
- During the inspection process, under the 'well-led' key question and key lines of enquiry as well as through the annual well-led inspection
- When concerns are raised about individuals.

The role of the CQC in determining whether a Trust's processes and investigations are satisfactory should be confined to forming a view on the quality of the evidence and whether it has been taken into account, rather than attempting to interrogate the decision of the Board. If CQC has its own concerns about a Director it will instigate enforcement action against the Trust.

Where appropriate, CQC will work alongside other regulators (such as the General Medical Council, Nursing and Midwifery Council, General Pharmaceutical Council and other relevant professional regulators), to ensure that the correct processes are adhered to and information is shared when relevant and appropriate.

APPENDIX 2

Requirements for Fit and Proper Persons

- A2.1 According to Regulations, Trusts must not appoint or have in place a Director unless they meet the following criteria:
- 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
 - Have not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful 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
 - Can provide information as set out in the Schedule 3 of the Regulations:
 - Proof of identity including a recent photograph
 - Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997 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)
 - 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
 - Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to:
 - (a) health or social care, or
 - (b) children or vulnerable adults
 - Where a person (P) 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 P's employment in that position ended
 - 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
 - A full employment history, together with a satisfactory written explanation of any gaps in employment
 - 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
 - For the purposes of this Schedule:
 - (a) "the appointed day" means the day on which section 30A of the Safeguarding Vulnerable Groups Act 2006 comes into force
 - (b) "satisfactory" means satisfactory in the opinion of the Commission
 - (c) "suitability information relating to children or vulnerable adults" means the information specified in sections 113BA and 113BB respectively of the Police Act 1997.
- A2.2 When assessing whether a person is of **good character**, para 5(4) of the Regulation states that Trusts should make every effort to ensure that, as a minimum, they seek all information to confirm the matters listed in Schedule 4 part 2. The process followed will take account of a person's honesty, trustworthiness, reliability and respectfulness.
- A2.3 **Good character** is legally defined as someone who has not been convicted of an offence in the UK or elsewhere and has not been erased, removed or struck off a healthcare

professional register. CQC's national guidance also includes the following factors as indicators of good character:

- Honesty
- Trustworthiness
- Integrity
- Openness
- Ability to comply with the law
- A person in whom the public can have confidence
- Prior employment history, including reasons for leaving
- If the individual has been subject to any investigations or proceedings by a professional or regulatory body
- Any breaches of the Nolan principles of public life
- Any breaches of the duties imposed on Directors under the Companies Act
- The extent to which the Director has been open and honest with the Trust
- Any other information which may be relevant, such as disciplinary action taken by an employer.

A2.4 A person will fail the **good character** test if they:

- Have been convicted in the UK or elsewhere of any offence which if committed in any part of the UK would constitute an offence, and
- Have been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

A2.5 If the Trust discovers information that suggests a person is not of good character after he/she has been appointed to a role, the organisation will take appropriate and timely action to investigate and rectify the matter.

A2.6 If the Trust considers the individual to be suitable despite existence of information relevant to issues identified in Schedule 4 part 2, the reasons will be recorded for future reference.

A2.7 Schedule 4 part 1 lists categories of **unfitness** that would prevent people from holding office or necessitate their removal from their position as a Director and for whom there is no discretion. A person is deemed **unfit if** 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
- Subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland
- Person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986
- Has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
- Included in the children's barred list or the adult's 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
- 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.

A2.8 The Trust will also need to assure themselves that Directors have not been complicit with serious **misconduct** or **mismanagement**. Misconduct or mismanagement is when a Director does something wrong either by doing something, not doing something or behaving in a certain way. CQC guidance includes the following descriptions:

- Misconduct is a breach of 'a legal or contractual obligation imposed on the Director' such as an employment contract, criminal law or relevant regulatory requirements
- Mismanagement is 'being involved in the management of an organisation in such a way that the quality of decision making and actions of the managers falls below any reasonable standard of competent management', e.g. failing to interpret data

appropriately, failing to learn from incidents or complaints, and failing to model standards of behaviour expected of those in public life.

- A.2.9 The Trust will also have to decide whether any concerns reach the threshold of being '**serious**' in nature and determine the appropriate response. CQC's guidance states that while minor breaches of security or failure to follow agreed policies and processes with limited repercussions would not amount to serious misconduct or mismanagement, incidences such as fraud, theft, assault, sexual harassment and bullying would breach this threshold.
- A.2.10 While a single incident of misconduct may amount to serious misconduct, an isolated incident is unlikely to constitute serious mismanagement unless it threatens public confidence in the Trust and individual concerned. Serious mismanagement is a 'course of conduct over time' and its seriousness can be assessed through the impact on quality and safety of care for service users, the safety and wellbeing of staff, and the Trust's viability.
- A.2.11 When assessing whether a Director's action(s) or omission(s) amount to serious misconduct or mismanagement the Trust should consider whether the Director played a central or peripheral role, and this will determine how seriously it should be taken. The Trust should also consider any mitigating factors.

APPENDIX 3

EAST LONDON NHS FOUNDATION TRUST

Fit and Proper Persons Requirement: Self-Declaration Form

In line with the requirements of Regulation 5 of the Health and Social Care Act 2008 (Regulation Activities) Regulation 2014 and East London NHS Foundation Trust’s Fit and Proper Persons Regulations policy, I hereby declare:

First Name		Surname	
Position			

Declaration	Confirmed Yes/No
I am of good character in that I have not been convicted in the UK of any offence or being convicted elsewhere of any offence which, if committed in any part of the UK, would constitute an offence	
I am of good character in that 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 the qualifications, competence, skills and experience necessary for the relevant position	
I am able, after reasonable adjustments are made, of properly performing tasks which are intrinsic to position for which I am appointed	
I have 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	
I satisfy the test that I am a fit person under Schedule 4 part 1 of the Regulations in that:	
I am not an undischarged bankrupt	
My estate has not had sequestration awarded in respect of it and if it has such sequestration has been discharged	
I am not 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	
I am not a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986	
I have not made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it	
I am not 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	
I am not prohibited from holding the relevant position, or in the case of an individual for carrying on the regulated activity, by or under any enactment	

I consent to the information provided in this Declaration Form being used by the Trust for the purpose of checking that I satisfy the requirements of the FPPR for the position applied for.

I understand and accept that if I knowingly withhold information or provide false and/or misleading information, this may lead to disciplinary action being taken against me in accordance with relevant Trust processes and could lead to the termination of the appointment.

I confirm that that the information I have provided above is correct and complete.

In addition to completing this self-declaration, I also understand it is a requirement that I make the Trust aware as soon as practicable of any incident or circumstances which may impact on my position, and that I provide details to the Chair or Senior Independent Director (as relevant) so that this can be considered by the Trust.

Signed		Name	
		Date	

Assurance Statement

I confirm that, having considered all the matters outlined in the Regulated Activities Regulations, and all the information and documentary evidence provided to me, the above Director meets the Fit and Proper Person Regulation requirements and I am satisfied that there are no other grounds under which the individual would be ineligible to be appointed to or continue in the post.

Name		Date	
Signature [Chair/CEO]		Title	

APPENDIX 4

EAST LONDON NHS FOUNDATION TRUST

Fit and Proper Persons Requirement: Important Information for Applicants

1 Fit and Proper Persons Regulations (FPPR): New Appointments

- 1.1 The aim of the FPPR is to ensure that all Board level appointments of NHS Foundation Trusts carrying on a regulated activity are responsible for the overall quality and safety of that care and for making sure that care meets the existing regulations and effective requirement of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3). FPPR Regulation 5 is about ensuring that those individuals in senior appointments are fit and proper to carry out this important role.
- 1.2 The regulation was introduced as a direct response to the failings at Winterbourne View Hospital and the Francis Inquiry report into Mid Staffordshire NHS FT which recommended that a statutory fit and proper person's requirement be imposed on health service bodies.

2 FPPR Declaration Requirements

- 2.1 The position for which you are applying is considered as a post that requires the FPPR test to be applied.
- 2.2 At the application stage, candidates are required to complete the Fit and Proper Persons Requirement Self-Declaration Form and attach this to their application for the position together with any other application requirements.
- 2.3 By signing the declaration, 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. This is required to ensure the Trust is able to properly discharge its requirement that all those who are Board Directors of the Trust meet the fitness test and that a post holder does not meet the 'unfit' criteria
- 2.4 The information that you provide in this declaration will be processed in accordance with current General Data Protection Regulation. It will be used for the purpose of determining your suitability for the senior position you are applying for. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud. This declaration will be kept securely and in confidence. Access to this information will be restricted to designated persons within the Trust who are authorised to view it as a necessary part of their work.
- 2.5 The Regulations require that post holders must:
 - Be of good character
 - Have the qualifications, competence, skills and experience necessary for the relevant office or position or work for which they are appointed
 - Are able to perform the work they are employed for after reasonable adjustments are made
 - Have not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful 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
 - Not be prohibited from holding office (e.g. Director's disqualification order)

A person is deemed unfit to hold senior office if they:

- Are an undischarged bankrupt
- Are subject to bankruptcy restrictions
- Are prohibited from holding an office or position under relevant legislation (e.g. Companies Act or Charities Act).

A person will fail the **good character** test if they:

- Have been convicted in the UK or elsewhere of any offence which if committed in any part of the UK would constitute an offence, and
- Have been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

3 Trust Pre-Appointment Processes

3.1 The following checks are undertaken for all appointments to the Trust:

- Proof of identity
- Professional registration and qualification checks (where relevant to the post)
- Employment history
- Two reference checks one of whom must be the most recent employer. Specifically this includes validation of a minimum period of three consecutive years of continuous employment or training and details of any gaps in service, and including any reasons for leaving
- Evidence of the right to work in the UK
- For Board Directors the enhanced Disclosure and Barring Service (DBS) checks (including children and vulnerable adults barred list).

3.2 Additionally, for posts that require the FPPR test the following must be in place

- Occupational health clearance
- FPPR Declaration Form assessed as meeting the requirements
- Checks against the register of disqualified Directors, the bankruptcy/insolvency register and the register of removed charities trustees
- A web search of the individual.

3.3 An appointment cannot commence until full compliance with the checks detailed above and is conditional upon the same.

APPENDIX 5

EAST LONDON NHS FOUNDATION TRUST

Fit and Proper Persons Requirement: Board Directors Checklist

This checklist (or similar) is completed for all applicants for the positions included in the Trust's Fit and Proper Persons policy.

Where the Trust engages the services of a recruitment consultancy to assist with an appointment, it will ask the consultants to carry out all or some of the checks and will request documentary evidence that the checks have been completed satisfactorily.

First Name		Surname	
Position		Date	

		Checked (initials)	Date/Comments
Identification Checks			
1	Evidence of the right to work checklist (NHS Employment Standards)		
2	Confirmation of any restrictions on right to work in UK		
3	Confirmation copies taken and verified		
Employment History			
4	Confirmation of full employment history		
5	Any gaps in employment/study have been clearly documented and written explanations provided		
Qualification Checks			
6	Original certificates verified for relevant qualifications to the role (as in JD/PS)		
7	Confirmation copies taken and verified		
Disclosure & Barring Service Checks			
8	Enhanced DBS check (including children and vulnerable adults barred list) received prior to commencement of contract		
9	Confirm e-DBS undertaken and date received		

Professional Registration			
12	Evidence of professional registration checked at initial appointment (where relevant)		
13	State professional body and details of registration		
References			
14	Reference from current employer		
15	Further relevant reference		
Occupational Health Checks			
16	Completed OH Declaration Form received		
17	OH referral completed if appropriate		
Fit and Proper Persons Checks			
18	Declaration Form received and confirmation of no cause for concern		
19	If there is any cause for concern, confirm outcome after discussion with Appointments Panel chair		
20	Confirm check against the 'barred' list: <ul style="list-style-type: none"> • Register of disqualified directors • Bankruptcy/insolvency register • Register of removed charities trustees 		
21	Confirm any relevant web search results		
Misconduct/Mismanagement Checks			
22	Search of CQC records (check if any provider for whom the individual has worked has had registration suspended/cancelled due to failings in care in last five years+)		
23	Check involvement of individual or any providers in previous inspections		
24	Review PHSO reports relating to providers to identify whether these give rise to any concern		

APPENDIX 6

Compliance with regulations

In the table below, unless the contrary is stated or the context otherwise requires, “ED” means Executive Directors and Director-equivalent and “NED” means Non-Executive Director.

Standard	Assurance	Evidence
<p>1 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>Schedule 4 Part 2: Whether the person has been convicted in the UK of any offence or been convicted elsewhere of any offence which, if committed in any part of the UK, 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 professionals.</i></p>	<p>Employment checks are undertaken in accordance with NHS pre-employment checks 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 <p>In addition, we also carry out:</p> <ul style="list-style-type: none"> • Declarations of ‘fitness’ by candidates • Search of insolvency and bankruptcy register • Search of disqualified directors register 	<ul style="list-style-type: none"> • References • Photo ID • Other pre-employment checks • DBS checks • FPPR signed declaration forms • Register(s) search results • List of referees
<p>2 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>	<ul style="list-style-type: none"> • Disciplinary policy provides for such investigations • Contracts have been revised to allow for termination in the event of non-compliance with regulations and other requirements <p>Actions identified to strengthen/maintain compliance:</p> <ul style="list-style-type: none"> • Review NEDs’ contract/terms and conditions 	<ul style="list-style-type: none"> • ED contracts of employment • NEDs terms and conditions of service agreements • Disciplinary policy • Standards of Business Conduct policy
<p>3 Where 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</p>	<ul style="list-style-type: none"> • This would be subject of debate at the Board Appointments & Remuneration Committee (for Executive Directors and Director-equivalents) and at the Council Nominations & Conduct Committee 	<p>Minutes of meetings</p>

Standard	Assurance	Evidence
should be made available to those that need to be aware	(for NEDs). The minutes would record such decisions <ul style="list-style-type: none"> • Chair would take advice from internal and external advisers as appropriate 	
4 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	<ul style="list-style-type: none"> • This requirement is included within the job/role description for relevant posts and is checked as part of the pre-employment checks • Proof of qualifications checked as part of the pre-employment checks 	<ul style="list-style-type: none"> • Job/role description/person specification • Recruitment policy and procedure
5 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 leadership skills and a caring and compassionate nature) to undertake the role; these should be followed in all cases and relevant records kept	<ul style="list-style-type: none"> • Employment checks include a candidate's qualifications and employment references • The recruitment process also includes qualitative assessment and values-based questions • Decisions and reasons for decisions recorded in minutes 	<ul style="list-style-type: none"> • Recruitment policy and procedure • Competency based questions • Values-based questions • Board/Council minutes
6 The provider may consider that an individual can be appointed to a role based on their qualifications, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timeframe	<ul style="list-style-type: none"> • Any such decision would be discussed by the Board Appointments & Remuneration or Council Nominations & Conduct Committees and would be minuted • Actions would be subject to follow-up as part of ongoing review and appraisal 	<ul style="list-style-type: none"> • ED appraisal framework • NED appraisal framework • Board/Council minutes
7 When appointing relevant individuals the provider has processes for considering a person's physical and mental health in line with the requirements of the role	<ul style="list-style-type: none"> • All post-holders are subject to clearance by Occupational Health as part of the pre-employment process • If a health issue is raised, should consider if it falls within definition of disability and if it does consider whether reasonable adjustments in compliance with the Equality Act 2010 can be made 	Occupational Health clearance
8 Wherever possible, reasonable adjustments are made in order that an individual can carry out the role	<ul style="list-style-type: none"> • This is a current requirement in the Trust's Recruitment policy (Equality Act 2010) • NHS employment check standards • Board/Council decisions 	<ul style="list-style-type: none"> • Recruitment policy • Board/Council minutes

Standard	Assurance	Evidence
<p>9 The provider has processes in place to assure itself that the individual has not been at any time responsible for, privy to, contributed to, or facilitated, any serious misconduct or mismanagement 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 practise proceedings and professional disciplinary cases.</p> <p><i>“Responsible for, contributed to or facilitated” means that there is evidence that a person has intentionally or through neglect behaved in a manner which would be considered to 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 not 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 legislation/enactment CQC deems relevant to meeting these regulations or their component parts.</i></p>	<ul style="list-style-type: none"> • Checks as set out in 1 <p>Actions identified to strengthen/maintain compliance:</p> <ul style="list-style-type: none"> • This will be incorporated as a specific declaration as part of the pre-employment process • This will be incorporated into a revised reference request template for all Director and Director-equivalent posts 	<ul style="list-style-type: none"> • ED/NED recruitment information pack includes FPPR information • FPPR pre-employment declaration • Reference requests
<p>10 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 practise proceedings and professional disciplinary cases.</p>	<ul style="list-style-type: none"> • Checks as set out in 1 • HR policies • Check publicly available information <p>Actions identified to strengthen/maintain compliance:</p> <ul style="list-style-type: none"> • This will be incorporated as a specific declaration as part of the pre-employment process • This will be incorporated into a revised reference request template for all Director and Director-equivalent posts 	<ul style="list-style-type: none"> • ED/NED recruitment information pack • Reference requests • HR policies
<p>11 Only individuals who will be acting in a role that falls within the definition of “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>Enhanced DBS checks (including children and vulnerable adults barred list) are undertaken for all Board Directors in line with CQC FPPR regulations (updated January 2018)</p>	<ul style="list-style-type: none"> • DBS policy • DBS checks for eligible post-holders

Standard	Assurance	Evidence
<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>		
12 As part of the recruitment/appointment process, providers should establish whether the individual is on a relevant barring list.	Eligibility for DBS/barring list checks will be assessed for each vacancy arising	<ul style="list-style-type: none"> • DBS policy
13 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.	<ul style="list-style-type: none"> • Post holders undertake annual declarations of fitness to continue in post • Checks of insolvency and bankruptcy register and register of disqualified directors undertaken every three years • Regular DBS checks • Regular checks of relevant professional regulator's register • Annual report to the Board and Council 	<ul style="list-style-type: none"> • Annual declaration • Board/Council minutes • Register checks • Continued assessment as part of appraisal process • Annual report
14 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.	<ul style="list-style-type: none"> • Arrangements included in core HR policies including Disciplinary policy and Standards of Business Conduct policy • Contracts (for Executive Directors) and agreements (for NEDs) include maintenance of fitness as a contractual requirement <p>Actions identified to strengthen/maintain compliance:</p> <ul style="list-style-type: none"> • Review NEDs' contract/terms and conditions 	<ul style="list-style-type: none"> • HR policies • Standards of Business Conduct policy • ED contracts of employment • NEDs agreements
15 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 and timely action is taken, the provider must demonstrate due diligence in all actions	<ul style="list-style-type: none"> • This will be undertaken if concerns are identified; action taken and recorded as required • Revised contracts provide for termination if individuals fail to meet necessary standards <p>Actions identified to strengthen/maintain compliance:</p> <ul style="list-style-type: none"> • Review NEDs' contract/terms and conditions 	<ul style="list-style-type: none"> • ED contracts of employment • NEDs agreements • HR policies • Standards of Business Conduct policy • Disciplinary policy
16 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	<ul style="list-style-type: none"> • This would be reviewed when concerns are identified • Core HR policies 	<ul style="list-style-type: none"> • Standards of Business Conduct policy • Disciplinary policy • Managerial action taken to backfill posts as necessary

Standard	Assurance	Evidence
17 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	<ul style="list-style-type: none"> • This would be reviewed when concerns are identified • Core HR policies 	Referrals made to other agencies if necessary