

Corporate Fit and Proper Persons Policy

W20

Additionally refer to:

Disciplinary Policy

Verification of Professional Registration Policy

Employee Performance Management Policy & Procedure

Appraisals and Pay Progression Policy

Recruitment and Selection Policy

Freedom to Speak Up Policy

Managing Conflict of Interest Policy

Care Quality Commission. Regulation 5: Fit and Proper Persons: Directors (January 2018)

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

Care Quality Commission. Fit and proper persons requirement: directors (NHS trusts) (June 2018)

<https://www.cqc.org.uk/guidance-providers/nhs-trusts/fit-proper-persons-requirement-directors-nhs-trusts>

NHSE Fit and Proper Person Test Framework

NHSE Guidance for Chairs on implementation of the Fit and Proper Person Test

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V1	May 18	V Maher	Final	Approved
V1.1	May 18	C Jowett	Final	Addition of annual declarations for Board
V1.2	July 20	H Kauldhar	Final	Changes to reflect audit feedback and addition of: Appendix 1. Standard Operating Procedure. Appendix 2. Disclosure Form - New Starter. Appendix 3. Disclosure Form - existing post holders (Annual review and ad hoc declaration).
V1.3	January 2021	E Wilkins	Draft	Full review and update of policy following audit feedback.
V1.4	Sept 2023	N Dowd	Final	Added flag on front page that policy is under review and new requirements apply from 30 th September 2023.
1.5	Sept 2023	N Dowd	Draft	Changes to comply with NHSE Framework. Appendix 1 replaced with new checklist. Clarity added to the scope of the regulations. Additional information added about recruitment processes.
1.6	October 2023	N Dowd	Final	Minor amendments following consultation.

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Policy on a page

This Policy applies to all Board members, including:

- executive directors and non-executive directors (NEDs), irrespective of voting rights
- interim (all contractual forms) as well as permanent appointments, where interim arrangements exceed 6 weeks
- those individuals who are called 'directors' within Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

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.

Providers must not appoint to any board member post until all the fit and proper person requirements (FPPR) have been met and approved by the Chair.

The Trust will make every reasonable effort to assure itself about existing post holders and new applicants and to make specified information about board directors available to the CQC on request.

The Chair holds the ultimate accountability for adhering to the Regulations and the NHSE Framework. The Director of Governance / Company Secretary will ensure the compliance with this policy working closely with the People & OD Team and will ensure that evidence of compliance is maintained electronically on the personal files of board members and on the Electronic Staff Record system.

The Trust is responsible for ensuring the continued "fitness" of those persons to whom the Requirements apply.

Where matters are raised that cause concerns relating to an individual being fit and proper to carry out their role the Chair will address this in the most appropriate, relevant and proportionate way and in accordance with the NHSE Framework.

1.0 Introduction

The 'fit and proper persons' test set out in Regulation 5 of the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* (referred to as the 2014 Regulations) came into force on 27th November 2014 and is aimed at making sure those individuals who have authority in organisations that deliver care, are responsible for the overall quality and safety of that care, and as such can be held accountable if standards of care do not meet legal requirements.

This policy complies with the detailed framework published by NHS England in August 2023 (available [here](#)), taking effect from 30th September 2023 onwards. This policy should be read in conjunction with the NHSE framework.

2.0 Purpose

- 2.1 All provider organisations must ensure that Board 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 a Board member if this test is not met.
- 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 The requirements of paragraph 3 of Regulation 5 of the Regulated Activities are that the following requirements must be satisfied to appoint to a director role;
 - a) The individual is of good character;
 - b) The individual has the qualifications, competence skills and experience which are necessary for the relevant office or position or the work for which they are employed;
 - c) The individual is able by reason of their health, after reasonable adjustments are made, to properly perform tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed;
 - d) The individual has not been responsible for, privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity; and
 - e) None of the grounds of unfitness specified in Part 1 schedule 4 apply to the individual (as per the Regulated Activities Regulations detailed below).

The Fit and Proper Person Requirements lists categories of persons who are prohibited from holding office and for whom there is no discretion. The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are;

- a) The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged;
- b) The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restriction order, or an order to like effect made in Scotland or Northern Ireland;
- c) The person is a person whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- d) The person has made a composition or arrangement with, or granted a trust deed for creditors and not been discharged in respect of it;

- e) The person is included in the children's barred list or the adults barred list maintained under section 2 of the Safeguarding Vulnerable Group Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland'
 - f) The person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.
 - g) The person is 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.
- 2.4 Providers have a general obligation to ensure that they only employ individuals who are fit for their role, the 'fit and proper persons' test must be applied for all new and existing board members and there must be systems and processes in place to provide ongoing assurance that the requirements are met. There is a duty on the organisation to take such action as is necessary and proportionate to ensure ongoing compliance.
- 2.5 There is an expectation that senior leaders set the tone and culture of the organisation that leads to staff adopting a caring and compassionate attitude. As such, an assessment of a candidate's values for all Director appointments are critical to take account of the values of the organisation and the candidate's fit to these values.

3.0 Scope

- 3.1 This Policy applies to all Board members, including:
- both executive directors and non-executive directors (NEDs), irrespective of voting rights
 - interim (all contractual forms) as well as permanent appointments where interim arrangements exceed 6 weeks
 - those individuals who are called 'directors' within Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 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 Where Interim Executive Directors are in place, the requirement to comply with and meet the standards also applies if the position is likely to, or does, exceed 6 weeks.

4.0 Procedure

- 4.1 The fit and proper person's requirements (FPPR) place the ultimate responsibility on the Chair to discharge the requirement placed on the Trust, to ensure that all relevant post holders meet the fitness test and do not meet any of the 'unfit' criteria. Further detail is provided in the CQC Guidance for NHS Bodies: Fit and Proper Persons: Directors, November, 2014

http://www.cqc.org.uk/sites/default/files/20141120_doc_fppf_final_nhs_provider_guidance_v1-0.pdf

4.2 The Trust will make every reasonable effort to assure itself about existing post holders and new applicants and to make specified information about board directors available to the CQC on request.

4.3 Recruitment

4.4 Appointments of new board members must be made through a robust and thorough recruitment process. The selection process for all Executive Director posts will be robust, ensuring that the specific qualifications, skills and experience required for the role are set out in the job description and person specification and thoroughly tested.

4.5 The selection process must, as a minimum, include an interview panel process and value-based interview/ assessment.

4.6 In assessing competence, skills and experience as part of the recruitment process, reference must also be made to the NHS Leadership Competency Framework (LCF) for board level leaders (expected October 2023).

4.7 Non-Executive Directors are appointed by NHS England. The recruitment process for Non-Executive Directors is led by the NHS England Appointments team, who will obtain references, conduct the required electronic checks under the FPPT framework, and obtain signed self-attestations. The Trust will, however, be responsible for requesting a DBS check and Occupational Health Assessment on each individual prior to appointment. Once the NHSE Selection Panel has approved an appointment, and the Appointments Team have conducted satisfactory FPPT checks, all FPPT documentation together with the letter of appointment issued by NHSE, will be requested by the Trust, and will be retained on the Non-Executive Director's local electronic personal file, along with all local recruitment and appointment information and checks, as described above. All information will be made available to the CQC on request.

4.8 The same process as above will apply to the appointment of the Chair.

4.9 For Non-Executive Director appointments, whilst NHSE will conduct the checks described above, the Chair will need to approve the locally requested DBS and Occupational Health Assessment, prior to NHSE appointment. No Non-Executive Director should therefore be appointed and take up their post until all FPPT checks have been completed and approved by the Chair, as appropriate.

4.8 Full FPPT Assessment

4.9 A documented, full FPPT assessment will be carried out by the Trust in the following circumstances:

1. New appointments in board member roles, whether permanent or temporary, where greater than six weeks, this covers:

- a) new appointments that have been promoted within an NHS organisation
 - b) temporary appointments (including secondments) involving acting up into a board role on a non-permanent basis
 - c) existing board members at one NHS organisation who move to another NHS organisation in the role of a board member
 - d) individuals who join an NHS organisation in the role of board member for the first time from an organisation that is outside the NHS.
2. When an individual board member changes role within their current NHS organisation (for instance, if an existing board member moves into a new board role that requires a different skillset).
 3. Annually; that is, within a 12-month period of the date of the previous FPPT to review any changes in the previous 12 months.
- 4.10 A full FPPT assessment will consist of the checks listed in Appendix 1.
- 4.11 All checks must be recorded, evidenced, signed and dated by the Trust's Recruitment Team. The Director of Governance/ Company Secretary will then review the checks and share the evidence with the Chair for approval. Evidence of checks for Executive Directors will also be shared with the CEO. The Senior Independent Director (SID, see section 5.5) will review and approve the locally requested checks (DBS and OH) upon recruitment of a new Chair, the annual review of FPPT checks on the Chair, and the Chair's 3-yearly DBS check.
- 4.12 Evidence of the checks and the Chair's approval will be documented on the individual's personal file and on the Trust's Electronic Staff Records (ESR) system.
- 4.13 Dealing with Concerns**
- 4.14 If the Trust discovers at any point, information that suggests an individual Director does not meet the 'Fit and Proper Persons' criteria, the matter shall be referred immediately to the Chair (or the Senior Independent Director, if the concern relates to the Chair- see section 5.5).
- 4.15 All adverse findings must be evidenced with a written record held on the personal file.
- 4.16 The Chair shall take appropriate and timely action to investigate and rectify the matter, taking expert advice as necessary and ensuring any issues are dealt with in accordance with the Trusts People Policies and the NHSE Framework (see NHSE Chair's guidance document). There may be occasions where the Trust would contact NHS England for advice or to discuss a case directly. Where appropriate, findings in relation to a person's fitness may be referred to the relevant professional / regulatory body/bodies.
- 4.17 The Chair, in discussion with NHS England, will put in place Interim arrangements, if required, during any period of investigation, suspension or restriction from duties. Should there be sufficient evidence to support the allegation(s), then the Trust may terminate the appointment of the Director with immediate effect, in line with the Trust's Disciplinary policy.

4.18 Employment References

- 4.19 In 2023 the NHSE Framework introduced a standardised board member reference to ensure greater transparency, robustness and consistency of approach when appointing board members within the NHS. The template can be found [here](#).
- 4.20 When recruiting into a board member role, at least one reference should be obtained on the standardised reference form wherever possible. Further details can be found in section 3.9.2 of the NHSE Framework. This applies to permanent and temporary appointments and internal appointments (unless the candidate is moving from one director position to another). It also applies where a board member from another organisation joins the Trust in a non-board level role.
- 4.21 References should cover a minimum of 6 years. Where this is not possible, additional character or personal references should be sought.
- 4.22 References are not required for Non-Executive Director reappointments, ie where NHSE have agreed an extension for a further term of office, however NHSE will carry out the required online FPP checks, and obtain a new signed self-attestation form prior to confirming reappointment
- 4.22 When a board member leaves the Trust, or a reference request is received for an existing board member, a reference will be produced on the standardised reference form. This process will be led by the Director of Governance / Company Secretary with input from the People & OD team. The draft reference will be shared with the Chair for approval before being issued (or the Senior Independent Director (SID) if the reference is for the Chair). The completed reference will then be stored in the personal file for future use.

5.0 Roles and Responsibilities

5.1 The Chair

The Chair holds the ultimate accountability for adhering to the Regulations and the NHSE Framework. Responsibilities of the Trust Chair are listed in section 3.6 of the Framework ([here](#)). These include:

- Ensure the Trust has proper systems and processes in place to make robust assessments required by the FPPT
- Ensure the results of the full FPPT, including annual self-attestations for each board member, are completed and retained
- Ensure an appropriate programme is in place to identify and monitor the development needs of board members.
- Conclude whether board members are fit and proper

5.2 Care Quality Commission

- 5.2.1 The regulations give the Care Quality Commission powers to assess whether both Executive and Non-Executive Directors are fit to carry out their role and whether providers have in place adequate and appropriate arrangements to ensure directors are fit and proper persons both at recruitment and whilst in post.

- 5.2.2 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.

5.3 Board post holders within the scope of the FPPR

- 5.3.1 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 requirements of the Fit and Proper Persons Regulations, the NHSE Framework and this policy.

5.4 Director of Governance / Company Secretary

- 5.4.1 The Director of Governance / Company Secretary will ensure the compliance with this policy, working closely with the People & OD Team, and will ensure that evidence of compliance is maintained electronically on the personal files and ESR records of qualifying post holders.

5.5 Senior Independent Director (SID)

- 5.5.1 The SID is a Non-Executive Director who oversees the application of the Fit and Proper Person role for the Chair. Annually, the SID or deputy chair will review and ensure that the chair is meeting the requirements of the FPPT (see section 4.5)
- 5.5.2 Additionally, with the support of the Company Secretary, the SID can undertake investigations into any concerns raised about the Chair, including where the Chair has notified the SID they may no longer comply with Fit and Proper Persons requirements.

6 Governance and Records

The Director of Governance in conjunction with the Chair and the Remuneration Committee will ensure prompt action in accordance with Regulation 5, in the event of non-compliance with the policy by any qualifying post holder as per section 4.10.

Personal data relating to the FPPT assessment will be retained in local record systems and the Trust's ESR system.

6.1 On-going Governance

- 6.1.1 In conjunction with the Director of Workforce, the Director of Governance, on behalf of the Chair, who has ultimate accountability, will submit at least quarterly updates to the Remuneration Committee, providing assurance on the Fit and Proper Person checks and escalate any risks/ required action.
- 6.1.2 In addition, an annual assurance report will be submitted to the Trust Board and Remuneration Committee which will also be published in the Trust's Annual Report. The Trust must also submit an annual report to NHSE.

7 Review Process

- 7.1 This policy will be reviewed if there are legislative changes, within 3 years or where other significant reasons arise.

7.2 In order that this document remains current, the appendix can be amended and approved during the lifetime of the document without the policy having to return to the ratifying committee.

8 Equality Impact Assessment (EQIA)

8.1 This policy applies to all employees equally and has no positive or negative impact on the protective characteristics within the Equality Act (2010).

9 Training

9.1 Appropriate training and guidance will be provided for those who carry out checks or have other responsibilities under this policy.

10 Process for Monitoring Compliance

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
Assurance of Fit and Proper Person checks	Annual submission to NHSE	Director of Governance	Annual	Remuneration Committee
Assurance of Fit and Proper Person checks	Audit	Director of Governance	At least quarterly	Remuneration Committee
Annual assurance report of Fit and Proper Person checks	Audit	Director of Governance	Annual	Trust Board and within Trust's Annual report.

11 References

9.1 Care Quality Commission. Regulation 5: Fit and Proper Persons: Directors (January 2018)

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

9.2 NHS Employers. Employment Checks

<https://www.nhsemployers.org/your-workforce/recruit/employment-checks>

9.3 Care Quality Commission. Fit and proper persons requirement: directors (NHS trusts) (June 2018)

<https://www.cqc.org.uk/guidance-providers/nhs-trusts/fit-proper-persons-requirement-directors-nhs-trusts>

9.4 [NHSE Framework](https://www.england.nhs.uk/publication/nhs-england-fit-and-proper-person-test-framework-for-board-members/)

<https://www.england.nhs.uk/publication/nhs-england-fit-and-proper-person-test-framework-for-board-members/>

9.5 [NHSE Guidance for Chairs](https://www.england.nhs.uk/publication/guidance-for-chairs-on-implementation-of-the-fit-and-proper-person-test-for-board-members/)

<https://www.england.nhs.uk/publication/guidance-for-chairs-on-implementation-of-the-fit-and-proper-person-test-for-board-members/>

Appendix 1 – Full Fit and Proper Person Assessment

As outlined in section 3.10.1 of the NHSE Framework a full fit and proper person assessment will consist of:

- First name*
- Second name/surname*
- Organisation* (that is, current employer)
- Staff group*
- Job title* (that is, current job description)
- Occupation code*
- Position title*
- Employment history:*
 - This would include detail of all job titles, organisation departments, dates, and role descriptions.
 - Any gaps that are because of any protected characteristics, as defined in the Equality Act 2010, would not need to be explained.
- Training and development
- References:* (see section 4.14 of the policy)
- Last appraisal and date
- Disciplinary findings
 - That is, any upheld finding pursuant to any trust policies or procedures concerning employee behaviour, such as misconduct or mismanagement, this includes grievance (upheld) against the board member, whistleblowing claims against the board member (upheld) and employee behaviour upheld finding. Any ongoing and discontinued investigations relating to Disciplinary/ Grievance/Whistleblowing/Employee behaviour should also be recorded.
- Type of DBS disclosed* †
- Date DBS received* †
- Disqualified directors register check
- Date of medical clearance* (including confirmation of OHA)
- Date of professional register check (eg membership of professional bodies)
- Insolvency check
- Self-attestation form signed (Appendix 3 of the NHSE Framework [here](#))
- Social media check
- Employment tribunal judgement check
- Disqualification from being a charity trustee check
- Board member reference*
- Sign-off by chair/CEO.

* Fields marked with an asterisk (*) – these do not require validation as part of the annual FPPT unless a specific reason arises. However, these fields should still be updated in the event of a change to the information held.

† While not requiring annual validation, DBS checks will be done on a three-year cycle.