

Executive Summary

Report to the Board of Directors

Being Held on 27 July 2021

Subject	Fit and Proper Persons Policy and Procedure
Supporting TEG Member	Sandi Carman, Assistant Chief Executive
Author	Debbie Padwick, Head of HR Services
Status¹	For ratification

PURPOSE OF THE REPORT

To seek ratification of the Fit and Proper Persons Policy and Procedure following approval by the Trust Executive Group on 14 July 2021.

KEY POINTS

- The Fit and Proper Persons Policy and Procedure has been reviewed and updated.
- The policy has been extended apply to Governors and ensures the Trust complies with The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 Regulation 5: Fit and Proper Persons Requirement and meets the conditions of the Trust's Provider Licence.
- The policy appendices are available in the document library on Convene and on the I Drive.

IMPLICATIONS²

AIM OF THE STHFT CORPORATE STRATEGY 2017-2020		TICK AS APPROPRIATE
1	Deliver the Best Clinical Outcomes	
2	Provide Patient Centred Services	
3	Employ Caring and Cared for Staff	
4	Spend Public Money Wisely	✓
5	Deliver Excellent Research, Education & Innovation	

RECOMMENDATIONS

The Board of Directors is asked to **RATIFY** the Fit and Proper Persons Policy and Procedure.

APPROVAL PROCESS

Meeting	Date	Approved Y/N
Trust Executive Group	14/07/2021	Y
Board of Directors	27/07/2021	

Fit and Proper Person Policy and Procedure

1. Introduction

The purpose of the policy and procedure is to ensure the Trust complies with The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 Regulation 5: Fit and Proper Persons Requirement and meets the conditions of the Trust’s Provider Licence.

2. Purpose

Providers of healthcare services for the NHS must ensure that their Directors (or Directors and Governors in the case of NHS foundation trusts) satisfy specified requirements. In particular, Directors must meet the fit and proper person test set out in regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the FPP Regulations).

Under the terms of the NHS Provider Licence, foundation trusts must ensure that their directors and governors meet appropriate standards of personal behaviours and technical competence. Licence condition G4 - Fit and proper persons as Governors and Directors (also applicable to those performing equivalent or similar functions - applies to all providers holding an NHS provider licence.

Regulation 5 has been introduced as a direct response to the failings at Winterbourne View Hospital and the Francis Inquiry report into Mid Staffordshire NHS Foundation Trust, which recommended that a statutory fit and proper person’s requirement be imposed on health service bodies. This policy outlines the application of this test for new appointments and existing postholders.

In addition, where the Trust engages an interim at a senior level equivalent to the posts above the same process FPPR (fit and proper person’s requirements) test will apply if they are employed or registered as an external worker. Where an interim is sourced by an agency the recruitment agency will be made aware of the FPPR process and must confirm that they have undertaken the necessary checks. Executive search companies will be required to provide relevant evidence for inspection and retention to allow the Trust to assure itself that candidates for Board and TEG level appointments meet the fit and proper persons test.

3. Scope and exceptions

This policy applies to:

Setting	Trust Wide
Individuals	This policy and procedure applies to all Board appointments i.e. Executive and Non-Executive directors and also those senior

	managers which are formally recognised as members of the Trust Executive Group. This includes permanent, interim and associate positions. The policy also refers to Foundation Trust Governors and notes relevant arrangements in place with regard to the election or nomination to seats on the Council of Governors.
Speciality	NA

4. Policy Details

1. Meeting the Requirements of Regulation and Provider Licence Condition G4

The fit and proper person's requirements (FPPR) places 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

The objective of NHS Provider Licence condition G4 is to prevent an unfit person from holding office as a Director or governor. Annex 4 of the Trust's Constitution sets out the eligibility provisions for holding office as a Governor on the Trust's Council of Governors.

The Trust will purposefully seek to assure itself regarding about the suitability of existing post holders and new applicants to Board and TEG level positions and to make specified information about Board Directors available to CQC on request.

Individuals who fall into the categories above must satisfy the Chair that they:

- Are of good character
- Hold the required qualifications and have the competence, skills and experience required for the relevant office for which they're employed
- Are able, by reason of their physical and mental health, after any required reasonable adjustments if required, capable of properly performing their work
- Can supply relevant information as required by schedule 3 of the act, i.e. documentation to support the FPPR.
- Not have been responsible for or privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on regulated activity (or providing a service elsewhere which if provided in England would be a regulated activity).

In accordance with schedule 4 part 1 of the act a person is deemed "unfit" if

- 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.
- 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.
- 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.

In accordance with part 2 of the Act a person will fail the good character test if they;

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

Annex 4 of the Trust Constitution sets out the specific eligibility requirements for the Council of Governors and should be read in conjunction with the standards set out above.

Assessment of on-going fitness

5(i) On-going fitness - annual process

The annual appraisal process will provide an opportunity to discuss continued "fitness", competence and how the post holder role displays the Trust values and behaviour standard including the leadership behaviour expected. The CEO will be responsible for appraising the Executive Directors, whilst the Chair will be responsible for appraising the Non-Executive Directors. The CEO will be appraised by the Chair. The Chair will be appraised through the agreed 360° appraisal process that includes feedback from Governors, Non-Executive Directors and Executive Directors.

There will be an annual requirement for post holders / office holders to complete a further form of declaration confirming that they continue to be a fit and proper person. Confirmation of compliance will be published in the Trust's Annual Report.

Individuals 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, and provide details of the issue, so that this can be considered by the Trust using the Fit and Proper Persons Requirement Disclosure Form Existing post holders ([Appendix 1](#)).

5(ii) Concerns regarding an individual's continued FPPR compliance

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 on a case-by-case basis. Where it is necessary to investigate or take action the Trust's current processes will apply using, where applicable, the Trust's

capability process (managing performance or sickness absence), Disciplinary procedure or afforded a similar process to this if the potential discontinuation could be due to 'some other substantial reason'. There may be occasions where the Trust would contact NHSE/I for advice or to discuss a case directly.

The Trust reserves the right to suspend a Director or restrict them from duties on full pay / emoluments (as applicable) to allow the Trust to investigate the matters of concern. Suspension or restriction from duties will be for no longer than necessary to protect the interests of service users or the Trust and/or where there is a risk that the Director's presence would impede the gathering of evidence in the investigation.

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.

The Code of Conduct for the Council of Governors and Annex 4 of the Trust Constitution will apply in respect of matters relating to Trust Governors.

Where an individual who is registered with a professional regulator (GMC, NMC etc.) no longer meets the fit and proper person's requirement the Trust must inform the regulator, and also take action to ensure the position is held by a person meeting the requirements. Directors may personally be accused and found guilty by a court of serious misconduct in respect of a range of already prescribed behaviours set out in legislation. Professional regulators may remove an individual from a register for breaches of codes of conduct.

6.Process for New Appointments / Governor Elections and Nominations

Board and TEG level appointments

The Trust's comprehensive pre-employment checking processes are determined by the NHS employment standards and include the following:

1. Proof of identity
2. DBS check
3. Occupational Health Clearance as relevant to the role
4. Evidence of the right to work in the UK
5. A check of employment history and two references one of whom must be the most recent employer. Specifically, this include validating a minimum of three years continuous employment including details of any gaps in service. The number of references may differ for each applicant, depending on how many episodes of employment they may have had in the last three years prior to making their application.
6. Qualifications/registration applicable to role

In addition, the following registers will be checked:

- Disqualified directors
- Bankruptcy and insolvency
- Removed Charity Trustees

- CQC expects trusts to take account of some core public information sources when making director-level appointments and expects trusts to consider whether the director has ever breached any of the Nolan principles of public life. Undertaking Google and news searches of the individual is also advised. However, trusts should be mindful that not everything that can be found on an internet search is factually accurate.
- 'Core public information sources' include information from public inquiry reports, serious case reviews relevant to the trust that employed the individual at the time of the allegations, homicide investigations for mental health trusts, criminal prosecutions and ombudsmen's reports

The FPPR requirements introduce the requirement to complete a FPPR Declaration form for new employees ([Appendix 3](#)). This form and summary guidance ([Appendix 4](#)) will be included with the application pack and form part of the application process for the position.

While the Trust will have regard to information on when convictions, bankruptcies or similar matters are considered 'spent' there is no time limit for considering serious misconduct or responsibility for failure in a previous role.

The Chair of the appointments panel will be responsible for ensuring compliance supported by the relevant recruitment support (HR, Medical HR or Assistant Chief Executive.) A detailed checklist will be completed and will be retained on the post holder's personal file for the purposes of audit ([Appendix 5](#)).

The Council of Governors is responsible for the appointment and removal of the Chair, and the Non-Executive Directors, drawing on the recommendations of the Council of Governors Nomination and Remuneration Committee. In respect of Executive Directors, this responsibility will be discharged by the Board of Directors' Nomination and Remuneration Committee which is responsible for the appointment and removal of the Executive Directors. Any executive or non-executive appointment will take into account the Trust's obligations under the Regulations and NHS Provider Licence. Where the Trust makes a decision on the suitability of an individual, the reasons will be minuted by the Trust's Assistant Chief Executive, or an Officer nominated by them.

Where the Trust deems that the individual who is to be appointed is suitable, despite not meeting the characteristics outlined in Schedule 4, Part 2 of the Regulations (Good Character), the reasons will be recorded by the Trust Assistant Chief Executive in the minutes of the relevant meeting: i.e. the Board of Directors' Nomination and Remuneration Committee (in the case of Executive Directors) or the Council of Governors and the Council of Governors' Nomination and Remuneration Committee (in the case of Non-Executive Directors, the 'Relevant Meeting') and the information about the decision will be made available. The appointment process will include an evaluation against the Trust's values, and any relevant external guidance. External advice will be sought as necessary.

Where specific qualifications are deemed by the Trust as necessary for a role, the Trust will make this clear and will only appoint those individuals that meet the required specification; including any requirements to be registered with a professional regulator.

The Trust will carry out employment checks on a candidate's qualifications and employment records. The recruitment process will necessarily include a qualitative

assessment and an assessment on the alignment of the individual's values against the Trust PROUD values.

Where the Trust considers that an individual can be appointed to a role based on their qualification, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timescale any such discussions or recommendations will be recorded by the Trust Assistant Chief Executive. in the minutes of the Relevant Meeting. Any discussion, recommendation or decision must also be recorded in the minutes.

If the Director has a physical or mental health disability, wherever possible, reasonable adjustments will be made to enable the individual to carry out the role that they have been appointed to. Any prospective candidate will need to complete the 'Fit and Proper Person' Declaration at [Appendix 2](#). In the event the prospective candidate identifies any physical or mental health concerns (and subject to further information being obtained from the candidate, if necessary) their appointment will be subject to clearance by Occupational Health as part of the pre-appointment process. Any discussion or decision as to whether a candidate is appointable on grounds of health will be recorded by the Trust Assistant Chief Executive.in the minutes of the Relevant Meeting.

Elected and Nominated Governors

Eligibility criteria for election and nomination to seats on the Trust's Council of Governors are included in Annex 2 of the Trust's Constitution, and pre-appointment checks are undertaken by the Foundation Trust Office in line with best practice and regulatory requirements.

The Council of Governors are appointed to the Council of Governors at a full meeting of the Council of Governors (in line with Annex 2 of the Trust Constitution) and can be removed by the Council of Governors by a resolution by not less than three-quarters of the remaining Governors present at that meeting in line with paragraph 13 / Annex 4 of the Trust Constitution.

If the Governor has a physical or mental health disability, wherever possible, reasonable adjustments will be made to enable the individual to carry out the role that they have been appointed to.

5. Roles and responsibilities

Role	Responsibility
The Chair	To ensure implementation of the policy
The Director of HR and Staff Development / Assistant Chief Executive	To ensure records are maintained on personal files To ensure implementation of the annual self-declaration process

The Council of Governors' Nomination and Remuneration (for Non-Executive Directors) and the Board of Directors' Nomination and Remuneration Committee (for Executive and TEG appointments)	To receive reports regarding new appointments
Foundation Trust Office	To provide confirmation to the Chair that that relevant checks have been undertaken for all newly appointed Governors and any matters raised will be discussed with the Assistant Chief Executive.

6. Monitoring

Standard, process or issue to be monitored	Monitoring method	Monitored by	Reported to	Frequency
Ongoing fitness for Executive, Non-Executive Directors and Governors	Annual self-declaration	Director of HR and Staff Development. Assistant Chief Executive	Compliance will be published in Trusts annual report	Annually

7. Definitions

Term	Description
Term	Definition description here

8. References

All relevant employment legislation

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

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>

The NHS Provider Licence

<https://www.gov.uk/government/publications/the-nhs-provider-licence>

9. Associated Trust and external documents

All HR Policies

Standards of Business Conduct Policy

Code of Conduct for the Council of Governors

Trust Constitution

External Documentation

NHS Foundation Trust Code of Governance. Monitor 2014

<https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>

10. Appendices

Appendix 1 - Fit and Proper Persons Requirement Personal Disclosure Form - Existing post holders

Appendix 2 – Recruitment and Selection processes to meet Fit and Proper Persons Regulations (FPPR)

Appendix 3 - Fit and Proper Persons Requirement Personal Disclosure Form - Applicants

Appendix 4 – Fit and Proper Persons Requirement - Important information for applicants

Appendix 5 – Fit and Proper Persons Requirement - New Applicants Employment Checklist

Appendix 6 – Supplementary information to support reference request

11. Document control

Ref	339
Version	2
Status	FINAL DRAFT
Executive Lead	Mark Gwilliam, Director of Human Resources
Author	Debbie Padwick, Head of HR Services
Approval body	Trust Executive Group
Data approved	14/07/2021
Ratification body	Board of Directors
Date ratified	TBC
Issue date	TBC
Review date	14/07/2024

12. Version history

Version	Date issued	Brief summary of changes	Author
1	23/10/2015		D Padwick
2	TBC	Reference to Governor regulations	D Padwick

13. Consultation and review

Groups / persons consulted	Date
Chief Executive's Office, Trust Executive Group (TEG), Board of Directors, Staff Side Colleagues	July 21

14. Intended recipients

All staff who should:

Be aware of the document and where to access it	HR, Medical HR and Foundation Trust Office Trust Executive Group and Board members and members of the Council of Governors
Understand the document	HR, Medical HR and Foundation Trust Office Trust Executive Group and Board members

	and members of the Council of Governors
Have a good working knowledge of the document	HR, Medical HR and Foundation Trust Office Members of both the Nomination and Recruitment Committees of the Board of Directors and of the Council of Governors

15. Equality impact assessment

Protected group	Impact*	Advances equality	Eliminates discrimination	Fosters good relations
Race, nationality	Neutral			
Religion, belief and non-belief	Neutral			
Disability	Neutral			
Sex	Neutral			
Gender reassignment	Neutral			
Sexual orientation	Neutral			
Age	Neutral			
Pregnancy and maternity	Neutral			
Marriage and civil partnership	Neutral			
Human rights	Neutral			
Carers	Neutral			
Other groups	Neutral			

*Impact:

Positive: Will actively promote or improve equality of opportunity or address unfairness or tackle discrimination

Negative: Will have a negative or adverse impact which will cause disadvantage or exclusion

Neutral: No likely impact on any of the protected groups

15.1 Supporting information

NA

15.2 Information not currently available

NA

15.3 Analysis of effects and outcomes

15.4 Outcome of equality impact assessment

No major change needed	Adjust Policy / proposal	Adverse impact but continue	Stop and remove policy / proposal
✓			

15.5 Action plan

Action to address negative impact	By whom	By when	Resource implication

16. Other impacts

Financial implications	NA
Training implications	NA
Other	NA

17. Document imprint

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