

FIT AND PROPER PERSON TEST Policy

May 2015
V1.5

TARGET AUDIENCE (including temporary staff)	
People who need to know this document in detail	All Trust Directors, General and Service Managers including temporary staff
People who need to have a broad understanding of this document	All other Trust Managers including temporary staff
People who need to know that this document exists	All Trust Staff including temporary staff

Policy Author: Company Secretary

Approved by: The Board

Date: 19th May
2015

Ratified by: The Chair

Date: 20th May
2015

Date of next review: May 2017

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1. INTRODUCTION

1.1 Purpose

This policy has been developed in response to the requirements placed on NHS providers, following the introduction of the new regulatory standards for the Fit and Proper Person Requirements of directors, which came into force on the 27th November 2014.

All provider organisations must ensure that director level appointments meet the 'fit and proper persons test' and the regulations place a duty on NHS providers not to appoint a person or allow a person to continue to be an Executive Director or equivalent or Non-Executive Director under given circumstances.

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

Providers must not appoint to an Executive Director level post or to a Non-Executive post unless they are:

- Of good character
- Have the necessary qualifications, skills and experience
- Are able to perform the work they are employed for after reasonable adjustments are made
- Can provide information as set out in the regulations

Guidance issued by the Care Quality Commission emphasises the importance of the Fit and Proper Person Requirements in ensuring the accountability of directors of NHS bodies. NHS bodies have a responsibility to ensure the requirements are met with the Care Quality Commission's role being to monitor and assess how well this responsibility is discharged.

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

There is an expectation of senior leaders to set the tone and culture of the organisation that leads to staff adopting a caring and compassionate attitude. As such in making Director appointments, Boards and Councils of Governors take account of the values of the organisation and the candidate's fit to these values.

On the basis of the guidance, it is necessary for the Trust to assure itself with regard to a number of issues, including:

- Determining who the Requirements apply to
- Ensures a robust process for assessing directors' Fit and Proper Person Requirements compliance at recruitment and on an on-going basis
- Establishing a process for monitoring and record keeping
- Updating standard documentation (employment contracts, appointment letters, employment policies, etc.)

1.2 Scope

This Policy presents a summary of the standards Executive and Non-Executive Directors must abide to and the Trust process for monitoring and record keeping.

The scope of the new requirements cover all NHS bodies – including NHS Trusts, NHS Foundation Trusts and Special Health Authorities that are required to register with the Care Quality Commission (CQC).

1.3 Definitions

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

2. FIT AND PROPER PERSON TEST POLICY

2.1 The role of the Care Quality Commission

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 on recruitment and whilst in post.

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.

2.2 Role of Monitor

Subject to NHS Foundation Trust authorisation, standard condition G4 of the provider license requires that a Foundation Trust must not appoint or allow an “unfit” person to remain in post without Monitor’s permission. At present Monitor’s definition of an “unfit” person is the narrower definition as set out within Schedule 7 of the NHS Act 2006 as amended by the Health & Social Care Act 2012 and as such is not aligned to the view of the Care Quality Commission.

Monitor can use its enforcement powers to deal with a breach which requires the Foundation Trust concerned to remove the unfit person from office or by taking such action itself.

2.3 National Guidance and Toolkit

NHS Providers, NHS Employers and the NHS Confederation have published guidance and a toolkit on how NHS organisations may reasonably interpret and meet the Fit & Proper Person Requirements. This will undoubtedly evolve further over time as understanding of the approach being taken by the Care Quality Commission, Monitor and the NHS Trust Development Authority is developed.

FIT AND PROPER PERSON TEST

The guidance and toolkit has been used to inform with regard to the Trust's current compliance with the Fit and Proper Person Requirements and to identify those matters where further action is required.

2.4 Who do the Requirements apply to?

Guidance describes "directors" as Executive and Non-Executive Directors and any other persons performing the functions of or similar functions, to a director.

For the purpose of the Trust it is proposed, in the first instance, the Requirement should apply to all Executive Directors and anyone accountable to the Chief Executive who is called Director. This will be kept under review taking account of the emerging national guidance.

Where interim Executive Directors are in place, assurance will be required from the providing organisation/agency that the Fit and Proper Persons Test has been completed in line with best practice. Where procured directly, contractual arrangements with the individual should include a stipulation to demonstrate they meet the requirements.

2.5 Compliance at recruitment:

The Trust has in place robust processes with regard to recruitment of Executive Directors, these processes including the following:

Pre-employment checks (in accordance with NHS Employers pre-employment check standards):

- Documented recruitment policies, Procedures and guidance
- Determination of specific qualifications / requirements set out within job descriptions person specifications
- Identity checks
- Qualification and registration checks
- Right to work checks
- Disclosure and Barring Service (DBS) checks
- References, at least two, which one must be most recent employer
- Search of insolvency and bankruptcy register
- Review of full employment history seeking explanation of any gaps in employment
- Health questionnaire and Occupational Health clearance
- Interview processes including panel interviews
- Values based recruitment – values tested through interview process
- Checks recorded and evidenced
- Search of disqualified directors register.

To date, as an NHS Trust, the recruitment processes associated with Non-Executive Director appointments has been undertaken by the Appointments Commission and more recently by the NHS Trust Development Authority.

Recent notification has been received from the NHS Trust Development Authority with regard to changed made to Non-Executive Director terms and conditions of appointment

mainly in response to Fit and Proper Persons regulations and requesting completion of a self-declaration confirming that none of the unfit criteria apply. A copy of this declaration will be held by the Company Secretary of the Trust together with a further self-declaration proposed to be completed on the attainment of NHS Foundation Trust status (nb. Both Executive, Associate Medical, and Non-Executive Directors).

Subject to the Trust being authorised as an NHS Foundation Trust, future Non-Executive Directors will be appointed by the Trust's Council of Governors, with associated processes being managed by the Trust's Company Secretary. The Nominations Committee has reviewed terms of reference setting out the committee's responsibilities in relation to Fit and Proper Person Requirements.

On authorisation as a FT The Nomination Committees will need to satisfy itself that the necessary checks have been undertaken and that the Board has appropriate assurance with regard to the robustness of Procedures.

Where Trust Council of Governors deems the individual suitable, the reasons should be recorded and the information about the decision made available to those that need to be aware. Reports, debates, and recommendations are carried out by the Nomination Committee, the Council of Governors, and the Board of Directors for the appointment of Non-Executive and Executive directors respectively; and decisions and reasons for decisions are recorded in minutes. External advice should be sought as necessary. This is also relevant when appointing a suitable individual with the expectation that they develop specific competence to undertake the role within a specified timeframe; the follow-up process should be included as part of the continuing review and appraisal.

Consequences of false, inaccurate, or incomplete information are included in recruitment packs.

2.6 Further Actions:

A range of further actions have been identified and are currently being taken forward. The actions include:

- The review and amendment of recruitment and appraisal documentation and associated policies and Procedures to incorporate and reflect the Fit and Proper Person Requirements, including the introduction of disqualified directors register checks as part of recruitment and continued "fitness" processes;
- To review and amend the terms of reference of the Trust Board Nomination Committee to reflect the Fit and Proper Person Requirements;
- Development of formal recruitment processes for Non-Executive Directors post NHS Foundation Trust authorisation aligned to NHS Employers pre-employment check standards;
- Decisions and reasons for decisions regarding Executive and Non-Executive Directors appointment will be recorded in the minutes.

A detailed action plan is being developed, the implementation of which is proposed to be overseen and monitored by the Quality Committee.

3. RESPONSIBILITIES

The **Chief Executive** has ultimate responsibility for the organisation and is supported by the Executive Directors.

Non – Executive Directors & Executive Directors must ensure they conduct SCT business in accordance with Trust policy.

The **policy author** is responsible for ensuring the policy follows the appropriate Trust format and complies with the recognised development, consultation, approval, and ratification process.

Service managers / team leaders are responsible for promoting and implementing the policy.

All staff are required to complete in full and as directed any templates or proformas as instructed, for use as part of this policy.

4. ASSOCIATED DOCUMENTS AND REFERENCES

Medical Director (2011a) “[The Being Open Process](http://thepulse/downloads/Trustwide-policies-Procedures/governance/being-open-process.pdf)”, *The Pulse* [Online] <http://thepulse/downloads/Trustwide-policies-Procedures/governance/being-open-process.pdf> [Accessed at 05 May 2015]

Medical Director (2011b) “[Being Open and Duty of Candour Policy and Procedure](http://thepulse/downloads/trustwide-policies-procedures/governance/beingopen-dutyofcandour.pdf)”, *The Pulse* [Online] <http://thepulse/downloads/trustwide-policies-procedures/governance/beingopen-dutyofcandour.pdf> [Accessed at 14 May 2015]

NHS Employers, NHS Confederation & NHS Providers (2014) “Fit and Proper Person Test” nhsconfed.org [Online] http://www.nhsconfed.org/~media/Confederation/Files/public%20access/Fit_proper_person_test_guidance_providers.pdf [Accessed 05 May 2015]

5. MONITORING COMPLIANCE

5.1 Assessment of continued Fitness:

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

- An on-going duty to report to be included in contracts of employment (revised contracts of employment to reflect NHS Foundation status and incorporating Fit and Proper Requirements currently being developed).
- The completion of an annual self-declaration by all Directors.
- Introduction of annual checks for credit, bankruptcy and registration.

- Formal appraisal processes. Such processes are already in situ for both Executive and Non-Executive Directors and will be enhanced to appropriately address the Fit and Proper Person Requirements.
- Maintenance of the register of declared interests

6. DISSEMINATION AND IMPLEMENTATION

This policy will be made available on the intranet, and publicised through Contact (the Trust internal electronic newsletter).

7. CONSULTATION, APPROVAL, RATIFICATION & REVIEW

The Company Secretary, Chair and Head of Human Resources have been consulted during the writing of this policy.

The Terms and Conditions Group have reviewed the policy and suggested amendments. The Joint Consultative and Negotiating Committee have been made aware of the creation of the policy.

The Board will approve the Policy; and the Chair will ratify it.

The Company Secretary will revise the Policy every 2 years unless there is a change in guidance prior to the scheduled review, in which case the review will be brought forward.

8. VERSION CONTROL

Record of Changes		
Date	Version	Changes / Comments
01/05/2015	1.1	
05/05/2015	1.2	Restructured information to best fit Trust's template
06/05/2015	1.3	Added assurance processes from the toolkit missing from the document
08/05/2015	1.4	Changes made in response to review by Terms and Conditions Group including renaming the document.
15/05/2015	1.5	Changes made in response to ELT read through on 11/05/2015, and discussion at Board Seminar on 14/05/2015.
19/05/2015	1.6	Changes made in response to ELT feedback.

Appendix A

The Trust aims to design and implement services, policies & other procedural documents and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

Under the Equality Act 2010, policy or other procedural document authors have a statutory duty to give “due regard” to issues of race, disability, gender (including transgender), religion or belief, age, sexual orientation and human rights when developing their policy or other procedural document. This means that policy or other procedural document authors have to assess the potential for their document to discriminate on any of these grounds. Alternatively, the impact of the policy or other procedural document on these groups might be positive or the same for everyone.

1 Name of Policy or Service	Fit and Proper Person Test Policy		
2 Service and Directorate	Corporate		
3 Objectives What is the purpose of this policy or service?	Ensure the appropriate Policies are in place to ensure Executive and Non-Executive are fit and proper for their role.		
4 Analysis completed By (Author? Equality Lead? Other?)	a) Name	b) Job Title	
5 Does the policy or service have an effect on Staff and/or the Public? (please ✓)			
Staff	Yes	✓	No
Public	Yes		No
			✓

Equality law protects people on the following grounds:	Is your policy or service relevant to this area of equality or human rights?		If relevant, is the effect positive or negative		Evidence of the effect (e.g. statistics, research, surveys, results of engagement, etc.)	Is further action required?	
	Yes	No	Positive effect	Negative effect		*Yes	No
Age		√					
Disability		√					
Gender (including pregnancy and maternity)		√					
Transgender		√					
Race and Ethnicity		√					
Religion and Belief		√					
Sexual Orientation (including civil partnership)		√					
Human Rights		√					

* Complete the following Equality Analysis Action Plan only for equality grounds marked: *Yes further action required.

Equality Analysis Action Plan								
Equality grounds ticked *Yes requiring further action:	Does your policy or service:			Any action taken to date	Action to be taken	Target date	Responsible Person(s)	Expected Outcome (including monitoring arrangements)
	Discriminate?	Eliminate discrimination or promote equality?	Promote good relations between groups?					

Equality Analysis: Equality and Diversity Lead sign off		
Signed		Date

RATIFICATION CHECKLIST
Trust Board Seminar 14th May 2015

Agenda Item: 4
 Policy Title **Fit and Proper Persons Test**
 Policy Author Company Secretary
 Presented By **FT Programme Lead**
 Purpose **Ratification**

Checklist for Ratification		
1.	Summary	
	This policy has been developed in response to the requirements placed on NHS providers, following the introduction of the new regulatory standards for the Fit and Proper Person Requirements of directors, which came into force on the 27th November 2014.	
2	Format	
	Has the standard SCT template been used?	Yes Comments:
3	Consultation	
	Please identify who has been consulted in the writing of this document: Head of Human Resources, Terms and Conditions Group, Joint Consultative and Negotiating Committee, Company Secretary, Chief Executive Officer, Chair, Executive Directors, Non-Executive Directors.	
	Does the committee agree that the right people been consulted with?	Yes Comments
	Does anybody else need to be consulted prior to ratification:	No Please state who:
4	Approval	
	Please state the name of the Group that has approved this document?	Name: Sussex Community Trust Board
	Date of Group Approval	Date: 19 th May 2015
5	Equality Analysis	
	Has the Equality Impact Assessment been completed?	Yes Comments
6	Review	
	Please state the timescale for review:	2 years or sooner if there is a change in legislation.

<i>For completion by the Chair of the Committee</i>	
Policy Ratified	Yes
Signature of Chair (Executive Director) (Print Name): Sue Sjuve (SCT Chair)	
Additional actions required for ratification:	