

# Board of Directors Meeting

**Subject:** Care Quality Commission – Fit and Proper Person Requirement  
**Date:** Thursday 29 January 2015  
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## Executive Summary

On 30 October 2014 the Board received information regarding the consultation being undertaken by the Care Quality Commission in relation to *Guidance for NHS bodies on the fit and proper person requirements for directors and the duty of candour*.

The Care Quality Commission Fit and Proper Person Requirement came into force on 27 November 2014. As a result of this the Chair is required to confirm to the CQC that all new Directors have been assessed in line with the regulations and are declared a 'fit and proper person' for the role.

This paper describes in more detail the requirements of the Fit and Proper Person Requirement and also identifies the arrangements in place to ensure the requirements as set out in the Regulations are met.

## Recommendation

The Board is asked to:

- Note the Fit and Proper Person Requirements which came into effect on 27 November 2014
- Discuss and agree the actions being taken to ensure full implementation of the Regulations.

## Relevant Strategic Priorities (please mark in bold)

<b>To consistently deliver a high quality patient experience safely and effectively</b>	To develop extended clinical networks that benefit the patients we serve
To eliminate the variability of access to and outcomes from our acute services	<b>To provide efficient and cost-effective services and deliver better value healthcare</b>
To reduce demand on hospital services and deliver care closer to home	

<b>Links to the BAF and Corporate Risk Register</b>	
<b>Details of additional risks associated with this paper</b> ( <i>may include CQC Essential Standards, NHSLA, NHS Constitution</i> )	Requirement of CQC Standards

<b>Links to NHS Constitution</b>	
<b>Financial Implications/Impact</b>	
<b>Legal Implications/Impact</b>	The requirement to comply with the regulations is a legal requirement.
<b>Partnership working &amp; Public Engagement Implications/Impact</b>	
<b>Committees/groups where this item has been presented before</b>	--
<b>Monitoring and Review</b>	Board of Directors
<b>Is a QIA required/been completed? If yes provide brief details</b>	---

## Care Quality Commission – Fit and Proper Person Requirement for Directors

### Introduction

The Fit and Proper Person Requirement ('FPPR') for directors of NHS bodies is a direct response to the Francis Report. The FPPR came into force on 27 November 2014, brought into being by Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. On the same date, the CQC issued its own guidance on FPPR (copy of the document has been uploaded into the Reading Room), which NHS bodies are required to have regard to. This guidance states that "The FPPR for directors plays a major part in ensuring the accountability of directors of NHS bodies." The guidance will be updated and incorporated into CQC's guidance (to be issued on 1 April 2015) on meeting all fundamental standards.

The guidance makes it clear that it is a matter for NHS Bodies to ensure that the FPPR is met. CQC's role is to monitor and assess how well NHS Bodies discharge their responsibility.

As a result of this guidance it is necessary for the Trust to complete a number of activities, including:

- Identifying our "directors"
- Establishing a process for assessing directors' FPPR compliance at recruitment
- Establishing a process for monitoring and record keeping
- Updating our standard documents (employment contracts, appointment letters)

### Implementation of the Fit and Proper Persons Regulations

#### Determine to whom do the Regulations Apply?

Firstly it is necessary to identify to determine to whom the FPPR apply.

The CQC guidance describes "directors" as executive and non-executive directors and **any other person performing the functions of, or equivalent or similar functions to, a director**. It applies to executive and non-executive directors, permanent, interim and associate positions, irrespective of voting rights. It does not apply to governors.

It is proposed that in the first instance the Trust ensures the FPPR apply to all board members (voting and non-voting) and the Remuneration and Nominations Committee considers if there are any other individuals to which the FPPR apply. This should be completed by 28 February 2015. Following identification it will be necessary to advise these individuals that the FPPR apply and let them know what it means to them.

#### Establish a Process for Assessing Directors' FPPR Compliance

The FPPR must be applied to somebody before appointment and there is then a requirement to ensure FPPR is complied with during the course of the employment relationship.

Joint guidance from CQC, Monitor and the TDA on recruitment, performance management and disciplinary arrangements for Chief Executives and Directors will be published in due course.

The assessment requirements and approach proposed are as detailed below:

### **Employment Checks**

The Trust will undertake all relevant employment checks prior to appointment of the identified 'directors' – see checklist at Appendix 1. This will be in addition to the standard checks completed as outlined within the NHS Employment Check Standards.

Employment contracts and appointment letters have been amended to include the statement that a condition of continuing employment is that the individual remains a fit and proper person as required under the Regulations, the CQC guidance and under Monitor's licence (including future amendments) and the consequences of non compliance with the Regulations.

### **Good Character**

Annual Disclosure and Barring Service (DBS) checks will be undertaken, where appropriate to do so, together with annual checks of the relevant regulators' register. Employment contracts will be reviewed to ensure the appropriate statements relating to the declaration of criminal and regulatory investigations are included

### **Competence**

The assessment of competence will commence prior to appointment via the completion of the recruitment checks. Ongoing assessment will be undertaken via regular appraisal and the development of personal development plans, ensuring training and development needs are met.

### **Health**

All offers of appointment currently include the opportunity for medical screening and will be enhanced to include a self declaration of past health issues at recruitment.

### **Misconduct or Mismanagement**

This is clearly the most difficult area of assessment within the Regulations and refers to individuals *not being responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement....* This test is clearly wide ranging and uncertain in scope. There is no indication of how far back providers need to look when considering serious misconduct or mismanagement and it may be difficult to gather information from other countries where required.

Past employment history will be checked in detail and consideration will be given to the need to go further. The CQC guidance provides some clarity regarding further checks required as part of the FPPR due diligence and these will be reviewed and implemented.

### **Miscellaneous**

There are also a number of grounds of unfitness relating to for example, bankruptcy, etc which will also need to be assessed. The recruitment checklist at Appendix 1 includes these grounds of unfitness. Again contracts of employment have been updated to reflect these requirements.

### **Information Requirements**

The CQC regulations requires key information to be maintain on personal files, the checklist at Appendix 2 has been developed to ensure all required information is maintained.

### **Requirement for Assessment of continued Fitness**

In order to ensure the ongoing assessment of continued fitness it is proposed that a combination of the following activities are used:

- Ongoing duty to report as included in contracts of employment and offer letters
- Annual self declaration as shown at Appendix 3
- Annual checks for bankruptcy and registration
- Regular health checks where required
- Annual credit checks

- Completion of robust appraisals

### **Conclusion**

It is anticipated that the final parameters of the Fit and Proper Person Requirements will be set via the courts. It will therefore be necessary to monitor future developments in relation to the Regulations over the coming months.

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