

<b>Title: Policy &amp; Procedure for the Fit &amp; Proper Persons Requirements</b>				
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## 1. 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.

The Fit and Proper Person Requirements focus on assessing the applicant's honesty, integrity, suitability and fitness, for example that they have the right level of qualifications, skills and experience, and that, with all reasonable adjustments, are able to undertake the roles and responsibilities of the position being offered.

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)

## 2. Aim

The aim of this policy document is to ensure that individuals within Director positions comply with the Fit and Proper Persons requirements.

## 3. The Requirements

The Care Quality Commission states that unless an individual satisfies all the requirements set out in Regulation 5, a service provider must not appoint or have in place an individual—

- as a director of the service provider, or
- performing the functions of, or functions equivalent or similar to the functions of a director.

The requirements that are referred to are that:

- the individual is of good character
- 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,
- the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed,
- the individual has not 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 providing a service elsewhere which, if provided in England, would be a regulated activity, and

Information relating to the requirements must be available to be supplied to the CQC in relation to each individual who holds such a position

Where an individual who holds a relevant position but no longer meets the requirements, the Trust must:

- take such action as is necessary and proportionate to ensure that the position in question is held by an individual who meets such requirements, and
- if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.

See Appendix 1 for further information.

#### **4. Trust Process**

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

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.

The Trust will ensure that the FPPR is applied to all board members (voting and non-voting). The Remuneration and Nominations Committee will consider regularly if there are any other individuals to which the FPPR apply.

Due consideration will be given to the application of FPPR for individuals that are covering board member positions in the absence of Director colleagues. This will be undertaken by the Chief Executive and Chairman and decisions will be fully documented.

##### **Process for Assessing Directors’ FPPR Compliance**

The FPPR must be applied to an individual before appointment. There is then a requirement to ensure FPPR is complied with during the course of the employment relationship.

The assessment requirements and Trust approach 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 2. This will be in addition to the standard checks completed as outlined within the NHS Employment Check Standards.

Employment contracts and appointment letters for directors include a 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) as well as 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.

### **Competence**

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

### **Health**

All directors will be required to complete an Occupational Health self-declaration. Clearance from Occupational Health as 'fit' for the position applied for will be gained.

### **Misconduct or Mismanagement**

This is 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. Past employment history will be checked in detail through gaining a complete employment history and detailed references.

### **Miscellaneous**

There are also a number of grounds of unfitness relating to for example, bankruptcy, which will also need to be assessed. The recruitment checklist at Appendix 2 includes these grounds of unfitness. Again contracts of employment have been updated to reflect these requirements.

These checks will be completed online through the following websites:

<https://www.insolvencydirect.bis.gov.uk/eiir/> - Insolvency register

<http://wck2.companieshouse.gov.uk/dirsec> - Disqualified directors register

### **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 on-going assessment of continued fitness it is proposed that a combination of the following activities are used:

- On-going 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
- Completion of robust appraisals

The checklist at Appendix 4 will be completed to demonstrate continued fitness.

## **5. 5.—Absence of evidence to support appointment**

In the event that a director is at the point of commencing employment or is found whilst employed to be unable to evidence all requirements, the Executive Director of Human Resources will bring to this to the attention of the Chairman and Chief Executive who will jointly undertake a risk assessment and consider any potential and proportionate restrictions in working practice that should be placed on the individual prior to evidence becoming available and to facilitate commencement/continuation of employment.

The evaluation of risk and any agreed restrictions should be recorded as appropriately in either appendix 2 or 4.

#### **5-6. Consultation**

This Policy has been agreed with the JSPF

#### **6. Communications**

As part of their induction new staff will be made aware of Trust Policies and this Policy will be available on the Trust Intranet site. The Policy will be communicated to staff by the Communications team and additional information and training provided for managers as required.

Appendix 1 – CQC Guidance on Regulation 5

Component of the regulation	Providers must have regard to the following guidance
<p><b>5(1)</b> This regulation applies where a service provider is a body other than a partnership</p>	<ul style="list-style-type: none"> <li>This regulation applies to all providers that are not individuals or partnerships.</li> </ul>
<p><b>5(2)</b> Unless the individual satisfies all the requirements set out in paragraph (3), a service provider must not appoint or have in place an individual—</p> <p>(a) as a director of the service provider, or</p> <p>(b) performing the functions of, or functions equivalent or similar to the functions of a director.</p>	<ul style="list-style-type: none"> <li>For NHS bodies it applies to executive and non-executive, permanent, interim and associate positions, irrespective of their voting rights. The requirement will also apply to equivalent director posts in other providers, including trustees of charitable bodies and members of the governing bodies of unincorporated associations.</li> <li>Where a local authority is a provider, the regulations will not apply to elected members as they are accountable through a different route.</li> </ul>
<p><b>5(3)(a)</b> the individual is of good character</p>	<ul style="list-style-type: none"> <li>When assessing whether a person is of good character, providers must follow robust processes to make sure that they gather all available information to confirm that the person is of good character, and they must have regard to the matters outlined in Schedule 4, Part 2 of the regulations. It is not possible to outline every character trait that a person should have, but we would expect to see that the processes followed take account of a person's honesty, trustworthiness, reliability and respectfulness.</li> <li>If a provider discovers information that suggests a person 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.</li> <li>Where a provider considers the individual to be suitable, despite existence of information relevant to issues identified in Schedule 4, Part 2, the provider's reasons should be recorded for future reference and made available.</li> </ul>
<p><b>5(3)(b)</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,</p>	<ul style="list-style-type: none"> <li>Where providers consider that a role requires specific qualifications, they must make this clear and should only appoint those candidates who meet the required specification, including any requirements to be registered with a professional regulator.</li> <li>Providers must have appropriate processes for assessing and checking that the candidate 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 must be followed in all cases and relevant records kept.</li> <li>We expect all providers to be aware of, and follow, the</li> </ul>

	<p>various guidelines that cover value-based recruitment, appraisal and development, and disciplinary action, including dismissal for chief executives, chairs and directors, and to have implemented procedures in line with the best practice. This includes the seven principles of public life (Nolan principles).</p>
<p><b>5(3)(c)</b> the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed,</p>	<ul style="list-style-type: none"> <li>• This aspect of the regulation relates to a person's ability to carry out their role. This does not mean that people who have a long-term condition, a disability or mental illness cannot be appointed. When appointing a person to a role, providers must have processes for considering their physical and mental health in line with the requirements of the role.</li> <li>• All reasonable steps must be made to make adjustments for people to enable them to carry out their role. These must be in line with requirements to make reasonable adjustments for employees under the Equality Act 2010.</li> </ul>
<p><b>5(3)(d)</b> the individual has not 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 providing a service elsewhere which, if provided in England, would be a regulated activity, and</p>	<ul style="list-style-type: none"> <li>• Providers must have processes in place to assure themselves that a person has not been 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 and making independent enquiries.</li> <li>• Providers must not appoint any person 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.</li> <li>• A director may be implicated in a breach of a health and safety requirement or another statutory duty or contractual responsibility because of how the entire management team organised and managed its organisation's activities. In this case, providers must establish what role the director played in the breach so that they can judge whether it means they are unfit. If the evidence shows that the breach is attributable to the director's conduct, CQC would expect the provider to find that they are unfit.</li> <li>• Although providers have information on when convictions, bankruptcies or similar matters are to be considered 'spent' there is no time limit for considering serious misconduct or responsibility for failure in a previous role.</li> </ul>
<p><b>5(3)(e)</b> none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.</p>	<ul style="list-style-type: none"> <li>• A person who will be acting in a role that falls within the definition of a "regulated activity" as defined by the Safeguarding Vulnerable Groups Act 2006 must be subject to a check by the Disclosure and Barring Service (DBS).</li> <li>• Providers must seek all available information to assure themselves that directors do not meet any of the</li> </ul>

	<p>elements of the unfit person test set out in Schedule 4 Part 1. Robust systems should be in place to assess directors in relation to bankruptcy, sequestration, insolvency and arrangements with creditors. In addition, where a director meets the eligibility criteria, providers should establish whether the person is on the children's and/or adults safeguarding barred list and whether they are prohibited from holding the office in question under other laws such as the Companies Act or Charities Act.</p> <ul style="list-style-type: none"> <li>• If a provider discovers information that suggests an individual is unfit after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.</li> </ul>
<p><b>5(6)</b> Where an individual who holds an office or position referred to in paragraph (2)(a) or (b) no longer meets the requirements in paragraph (3), the service provider must—</p> <p><b>(a)</b> take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements, and</p> <p><b>(b)</b> if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.</p>	<ul style="list-style-type: none"> <li>• Providers must assess and regularly review the fitness of directors to ensure that they remain fit for the role they are in. Providers must determine how often to review fitness based on the assessed risk to business delivery and/or to the people using the service posed by the individual and/or role.</li> <li>• Providers must have arrangements in place to respond to concerns about a person's fitness in relation to Regulation 5(3) and (4) after they have been appointed to a role, which either they or others have identified, and providers must adhere to these arrangements.</li> <li>• Providers must investigate, in a timely manner, any concerns about a person's fitness or ability to carry out their duties, and where concerns are substantiated, they must take proportionate, timely action. Where a person's fitness to carry out their role is being investigated, appropriate interim measures may be required to minimise any risk to people who use the service.</li> </ul>



Appendix 2 – Trust Recruitment Checklist

**Regulation 5: Fit and Proper Person Requirements  
Directors and Non-Executive Directors – Recruitment Checklist**

**Post Title:**

**Preferred Candidate:**

**(To be read in conjunction with the NHS Employment Check Standards)**

Documents checked confirming right to work in the UK	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Documents checked confirming identity	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Recent photograph checked and kept on file	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Detailed review of full employment history has been undertaken to include review of external information as necessary Comments on any information/issues identified:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Two detailed references have been received (one from most recent employer)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Original documentation relating to Qualifications and Professional Registration checked	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Occupational Health Review undertaken (if required)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Disclosure and Barring Service (DBS) check completed (where appropriate)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Search of insolvency and bankruptcy register and disqualified directors register completed	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Recruitment Checks Completed by:

Name \_\_\_\_\_ Position \_\_\_\_\_  
Signed \_\_\_\_\_ Date \_\_\_\_\_

Fit and Proper Person Regulation Compliance Confirmed-:

Name Sean Lyons Position **Chairman**  
Signed \_\_\_\_\_ Date \_\_\_\_\_

In the event that not all evidence is available at the time of commencement, the Chairman and Chief Executive are required to evaluate the risks and identify any restrictions to be placed upon the individual prior to evidence being available, outlining these below.

Chairman \_\_\_\_\_ Chief Executive \_\_\_\_\_  
Date \_\_\_\_\_ Date \_\_\_\_\_

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Appendix 3: Self Declaration Form

**Regulation 5: Fit and Proper Person Requirements**  
**Directors and Non-Executive Directors - Self-Declaration form**

On 20<sup>th</sup> November 2014 the Care Quality Commission (CQC) published [guidance](#) on the fit and proper person requirements and duty of candour which came into force for all NHS providers from 27<sup>th</sup> November 2014. These regulations play a major part in ensuring the accountability of directors (executive, non-executive, permanent, interim and associate positions, irrespective of voting rights) of NHS bodies and outline the requirements for robust recruitment and employment processes for board level appointments. As part of the assurance against the new Fit and Proper Person requirements for new and existing board members, you are required to answer the following questions, sign, date and return.

Have you got the qualifications, competency, skills and experience which are necessary for your current position at SFHFT	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are you able by reason of health (after reasonable adjustments are made) of properly performing tasks which are intrinsic to the office or position for which you are employed at SFHFT	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you 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	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you been subject of any of the following: <ul style="list-style-type: none"> <li>• undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.</li> <li>• subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.</li> <li>• a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.</li> <li>• a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.</li> <li>• 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.</li> <li>• 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.</li> </ul>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you 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?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you ever been found not to be a fit and proper person for the purposes of Regulation 5 ( <i>future appointments</i> )	<input type="checkbox"/> Yes	<input type="checkbox"/> No

As a Director, it is also recommended that you also familiarise yourself with the Trust's Constitution, its Monitor Licence and also the NHS Foundation Trust Code of Governance, as these are the Trust's core governance documents with which the Board of Directors and Council of Governors are expected to comply. Copies are available on Monitor's website and the Corporate Services office will also offer support and advice as appropriate

I hereby agree that the above is accurate

Name

Position

Signed

Date

Appendix 4: Personal File Checklist for on-going fitness

**Regulation 5: Fit and Proper Person Requirements**  
**Directors and Non-Executive Directors – Information Requirements: Personal File Checklist**

**Post Title:**

**Appointment:**

Proof of Identity including a recent photograph	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Where relevant, DBS check and/or barring information under the Safeguarding Vulnerable Groups Act 2006	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to health or social care, or children of vulnerable adults	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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 that person’s employment in that position ended	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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	<input type="checkbox"/> Yes	<input type="checkbox"/> No
A full employment history, together with a satisfactory written explanation of any gaps in employment	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Such other information as is required to be kept by the service provider under any enactment which is relevant to that individual	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Information Requirements completed by:

Name \_\_\_\_\_ Position \_\_\_\_\_  
 Signed \_\_\_\_\_ Date \_\_\_\_\_

Fit and Proper Person Regulation Compliance Confirmed :

Name Sean Lyons Position **Chairman**  
 Signed \_\_\_\_\_ Date \_\_\_\_\_

In the event that not all evidence is available at the time of commencement, the Chairman and Chief Executive are required to evaluate the risks and identify any restrictions to be placed upon the individual prior to evidence being available, outlining these below.

Chairman \_\_\_\_\_ Chief Executive \_\_\_\_\_  
Date \_\_\_\_\_ Date \_\_\_\_\_

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