

MEETING**Agenda Item:****Subject:****Fit and Proper Person Test****Date:****Thursday 30 October 2014****Author:****Karen Fisher, Executive Director of Human Resources****Lead Director:****Karen Fisher, Executive Director of Human Resources****Executive Summary**

Consultation on the Care Quality Commission *Guidance for NHS bodies on the fit and proper person requirements for directors and the duty of candour* closed on 17 October 2014. This consultation was launched resulting from Recommendation 79 of the Mid Staffordshire enquiry which raised concerns about the fitness of directors at Mid Staffordshire Hospital.

The new registration requirement is such that all directors (defined as all board level positions – directors and ‘equivalents’ and non executive directors) of providers registered with the CQC must meet a fit and proper person test. Originally it was anticipated that this requirement would come in force on 1 October 2014 but this is now likely to be mid November 2014. When agreed the guidance will apply to new appointments only, not current postholders, however it is likely to be expected that organisations will establish a process to assess existing directors.

It is the responsibility of the Chair of the board to ensure that all new directors meet the new requirements.

To be a fit and proper person the following must all be met:

- be of good character
- have the qualifications, skills and experience necessary for the office or position
- be capable by reason of their health... of properly performing tasks intrinsic to their office or position
- not have been responsible for, privy to, contributed to or facilitated any misconduct or mismanagement (whether unlawful or not) in the course of discharging functions relating to their office or position previously
- not be prohibited from holding the office or position

Grounds of Unfitness are outlined within Schedule 1 of the draft regulations and include but not exclusively – being convicted in the UK of any criminal offence and being subject to imprisonment; is an undischarged bankrupt and is included in the children’s or adults’; barred list under Section 2 Safeguarding Vulnerable Groups Act 2006.

A Fit and Proper Persons test is not novel. As a Foundation Trust we are required to ensure that Governors and Directors meet Monitor’s Fit and Proper Persons Test as part of our licence. However, the Monitor test is less demanding than the test under the proposed Regulations. For example there is no equivalent to the restriction in appointing individuals who have been involved in serious mis-management. It remains to be seen if Monitor will amend their test to bring it into line with the Fit and Proper Persons Test contained within the Regulations.

The Fit and Proper Persons Test is generally a list of factors which are considered in recruitment, eg Does the candidate have the right qualifications and skills? Are they fit and healthy to do the role (after any reasonable adjustments are made? Have they been made bankrupt (or similar)? And have they committed any acts of serious misconduct or mismanagement?

Following implementation of the Regulations it is anticipated the following issues will need to be considered/actioned:

- Review existing recruitment processes for board members to ensure that:
 - all selection processes include assessment under the new criteria
 - the chair/chief executive personally sign off all board level appointments
- Review information gathering/decision making processes – ensure there is a clear investigation process in place that occurs in a timely manner
- Review contracts of employment for board members and consider making it a condition of continuing employment that they remain a fit and proper person and making it clear that a finding of unfitness is a ground for dismissal without notice
- Review and ensure there is a clear process for dealing with interim cover arrangements, ensuring the requirements are met
- Consider and agree how often fitness will be reviewed for directors

In summary the Fit and Proper Persons Regulations, when implemented, enhance the current Monitor requirements necessary for our licence, it will however be necessary to review a number of our current procedures as outlined when the regulations take effect.

Recommendation for the Board of Directors:

- Not the introduction of the Fit and Proper Persons effective from October 2015
- Not the actions required to support implementation

Relevant Strategic Objectives (please mark in bold)	
Achieve the best patient experience	Achieve financial sustainability
Improve patient safety and provide high quality care	Build successful relationships with external organisations and regulators
Attract, develop and motivate effective teams	

Links to the BAF & Corporate Risk Register	
Details of additional risks associated with this paper (may include CQC Essential Standards, NHSLA, NHS Constitution)	The Trust will be required to meet the requirements of the Fit and Proper Persons Test
Links to NHS Constitution	Staff – your responsibilities
Financial Implications/Impact	---
Legal Implications/Impact	Compliance is legally required.
Partnership working & Public Engagement Implications/Impact	N/A
Committees/groups where this item has been presented	N/A
Monitoring and Review	Executive Director of HR and Director of Corporate Services will monitor implementation of the requirements.
Is a QIA required/been completed?	N/A