

Fit and Proper Persons (for Directors) Policy

Author:	Deputy Director of HR
Document Owner:	Executive Director of HR & OD
Revision No:	4
Document ID Number	POLCHR041
Approved By:	HR Operations Group
Implementation Date:	December 2017
Date of Next Review:	December 2020

Fit and Proper Persons (for Directors) Policy

Document Control / History

Revision No	Reason for change
1	New policy following changes to the Health and Social Care Act 2008
2	Updated policy following one year policy review
3	16 November 2017
4	December 2017

Consultation

Joint Staff Committee

© Medway NHS Foundation Trust [2017]

Fit and Proper Persons (for Directors) Policy

Table of Contents

TO BE READ IN CONJUNCTION WITH ANY POLICIES LISTED IN TRUST ASSOCIATED DOCUMENTS.	4
1 INTRODUCTION	4
2 PURPOSE / AIM AND OBJECTIVE	4
3 DEFINITIONS	5
4 (DUTIES) ROLES & RESPONSIBILITIES	5
5 MONITORING AND REVIEW	7
6 EQUALITY IMPACT ASSESSMENT STATEMENT & TOOL	7
7 REFERENCES	8

Fit and Proper Persons (for Directors) Policy

To be read in conjunction with any policies listed in Trust Associated Documents.

1 Introduction

- 1.1 The Health and Social Care Act 2008 (Regulated Activities) Regulations came into force for all healthcare providers from 1 April 2015.
- 1.2 Within the new regulations, the fit and proper person requirements came into effect from 27 November 2014 for NHS Bodies.
- 1.3 This policy outlines the approach the Trust takes to meet the requirements of the fit and proper persons standards.

2 Purpose / Aim and Objective

- 2.1 The Trust has an obligation to ensure that we only employ individuals who are fit for their role, and we are required to assess the fitness of nominated individuals to ensure that they are of good character, are physically and mentally fit, have the necessary qualifications, skills and experience for the role, and can supply certain information (including a Disclosure and Barring Service (DBS) check and a full employment history).
- 2.2 The fit and proper person requirements for Directors has a wider impact, in both the scope of its application and the nature of the test. It is clear that individuals who have authority in the Trust and that are responsible for the overall quality and safety of the care that we provide, can be held accountable if standards of care do not meet legal requirements.
- 2.3 The fit and proper person requirements will apply to Executive and Non-Executive Directors, Non-Board Directors including Associate and Deputy Directors.. It will be the responsibility of the Trust Chair to ensure that all Directors meet the fitness test and do not meet any of the 'unfit' criteria.
- 2.4 In addition to the standard requirements of good character, health, qualifications, skills and experience, the regulations go further by barring individuals who are prevented from holding the office (for example, under a Director's Disqualification Order), and significantly, excluding from office people who – "have been responsible for, 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 discharging any functions relating to any office or employment with a service provider".
- 2.5 This is a significant restriction which will enable the Care Quality Commission (CQC) to decide that a person is not fit to be a Director on the basis of any previous misconduct or incompetence in a previous role for a service provider. This would be the case even if the individual was working in a more junior capacity at that time, or working outside England.

Fit and Proper Persons (for Directors) Policy

3 Definitions

- 3.1 'Fit and Proper Persons' can be defined as individuals at Board Director level that are:
- of good character (schedule 4, part 2 of the regulations);
 - have the appropriate qualifications (or equivalent experience), are competent and skilled (including that they show a caring and compassionate nature and appropriate aptitude);
 - have the relevant experience and ability (including an appropriate level of physical and mental health, taking account of any reasonable adjustments); and
 - exhibit appropriate personal behaviour and business practices;
 - is not 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;
 -
- 3.2 In addition, people appointed to Board Director equivalent roles must not have been responsible for, or known, contributed to or facilitated any serious misconduct or mismanagement in carrying on a regulated activity.

4 (Duties) Roles & Responsibilities

4.1 Trust Chair

- 4.1.1 The Trust Chair will confirm to the CQC that the fitness of all new Executive and Non-Executive Directors, Non-Board Directors including Associate and Deputy Directors has been assessed in line with the Fit and Proper requirements under the Health and Social Care Act 2008 (Regulated Activities) Regulations and that they are satisfied that they are fit and proper individuals for that role.
- 4.1.2 The Trust Chair will be assured by the Company Secretary that all Non-Executive Directors meet the definition of the Fit and Proper Persons requirements under the Health and Social Care Act 2008 (Regulated Activities) Regulations and take action as necessary and proportionate to ensure that the position in question is held by an individual who meets such requirement. Where the individual is a health care professional, social worker or other professional and during the course of their tenure they become 'unfit' the Chair will be responsible for ensuring that the regulator is notified.

4.2 Chief Executive

- 4.2.1 The Chief Executive will be assured by the Director of HR & OD that all Executive and Non-Board Directors including Associate and Deputy Directors meet the definition of the Fit and Proper Persons requirement

Fit and Proper Persons (for Directors) Policy

under the Health and Social Care Act 2008 (Regulated Activities) Regulations and take action as necessary and proportionate to ensure that the position in question is held by an individual who meets such requirement. Where the individual is a health care professional, social worker or other professional and during the course of their tenure they become 'unfit' the Chief Executive will be responsible for ensuring that the regulator is notified.

4.3 Director of HR & OD

4.3.1 The Director of HR & OD will be responsible for ensuring that all recruitment and selection processes to Executive and Non-Board Directors including Associate and Deputy Directors positions and subsequent recruitment checks comply with the Fit and Proper Persons requirements under the Health and Social Care Act 2008 (Regulated Activities) Regulations.

4.3.2 The Director of HR & OD will be responsible for ensuring that all Executive and Non-Board Directors including Associate and Deputy Directors complete a Fit and Proper Persons self- declaration at commencement of employment and two yearly thereafter.

4.3.3 The Director of HR & OD will advise on the process where an Executive or Non-Board Directors including Associate and Deputy Directors is deemed unfit- this will ordinarily result in the Disciplinary or Performance Policy being applied.

4.4 Trust Secretary

4.4.1 The Trust Secretary will be responsible for ensuring that all recruitment and selection processes to Non- Executive Director positions and subsequent recruitment processes comply with the Fit and Proper Persons requirements under the Health and Social Care Act 2008 (Regulated Activities) Regulations.

4.5 Board Director and Non-Board Directors including Associate and Deputy Directors

4.5.1 All Board and Non-Board Directors including Associate and Deputy Directors positions will complete a Fit and Proper Persons self- declaration at appointment and annually thereafter.

4.5.2 All Board Directors and Non-Board Directors including Associate and Deputy Directors are required to declare to their line manager and to the Director of HR & OD (for Executives/Non-Board Directors including Associate and Deputy Directors) and Company Secretary (for Non-Executives) should prior to the commencement of their appointment or during the course of their employment/ tenure become 'unfit'.

4.6 Care Quality Commission (CQC)

4.6.1 The CQC will cross-check notifications about new Directors against other information that they hold or have or have access to, to decide whether the Trust wants to look further into the individual's fitness. The CQC will also have regard to any other information that they hold or obtain about Directors,

Fit and Proper Persons (for Directors) Policy

in line with current legislation on when convictions, bankruptcies or similar matters are to be considered 'spent'.

- 4.6.2 Where a Director is associated with serious misconduct or responsibility for failure in a previous role, the CQC will have regard to the seriousness of the failure, how it was managed, and the individual's role within that. There is no time limit for considering such misconduct or responsibility. Where any concerns about an existing Director come to the attention of the CQC, they may also ask the Trust to provide the same assurances.
- 4.6.3 Should the CQC use their enforcement powers to ensure that all Board Directors are fit and proper for their role, they will do this by imposing conditions on the Trust's registration to ensure that the Trust takes the appropriate action to remove the Board Director.

5 Monitoring and Review

What will be monitored	How/Method / Frequency	Lead	Reporting to	Deficiencies/ gaps Recommendations and actions
Policy review	Every three years	Author		Where gaps are recognised, action plans will be put into place
Compliance of checks undertaken for Board Directors	Two yearly	Head of Resourcing Services	Director of HR & OD	Where gaps are recognised action plans will be put into place
Compliance of checks undertaken for Non-Executives	Two yearly	Trust Secretary	Chair	Where gaps are recognised action plans will be put into place

6 Equality Impact Assessment Statement & Tool

All public bodies have a statutory duty under The Equality Act 2010 (Statutory Duties) Regulations 2011 to provide "evidence of analysis it undertook to establish whether its policies and practices would further, or had furthered, the aims set out in section 149(1) of the [Equality Act 2010]"; in effect to undertake equality impact assessments on all procedural documents and practices. Authors should use the Equality Impact Toolkit to assess the impact of the document.

In the first instance this will mean screening the document and, where the screening indicates, completing a full assessment. The Toolkit can be found on the Trust website <http://www.medway.nhs.uk/our-foundation-trust/publications/equality-and-diversity/equality-impact-assessments/>

Fit and Proper Persons (for Directors) Policy

A document will not be considered approved until the author has confirmed that the screening process has been carried out and where required a full impact assessment has been completed. Where a full assessment is completed this should be submitted along with the document for approval.

7 References

Document	Ref No
References:	
Trust Associated Documents:	
SOP0178 - Recruitment Procedure	
SOP0174 - Fit and Proper Persons - Procedure	
SOP0226 - Disciplinary Procedures	
SOP0227 - Performance Management Procedure	

If you would like a Braille or large print copy of this policy please contact the Human Resources Department and it will be arranged

END OF DOCUMENT