

Fit and Proper Persons Policy

For completion by Author			
Author(s) Name and Title:	Karan Wheatcroft, Director of Risk and Improvement		
Scope:	Board of Directors	Classification:	Non-Clinical
Version Number:	2.1	Review Date:	July 2024
Replaces:	Fit & Proper Persons Policy v2.0		
To be read in conjunction with the following documents:	Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, Monitor and CQC guidance, Code of Conduct for Board of Directors, LHCH Constitution, HR Policy		
Document for public display:	Yes		
Executive Lead	Karan Wheatcroft, Director of Risk and Improvement		

For completion by Approving Committee			
Equality Impact Analysis Completed:	Yes		
Endorsement Completed:	Yes	Record of Changes	N/A
Authorised by:	Board of Directors	Authorisation date:	26/07/2023

For completion by Document Control					
Unique ID No:	BD01(16)	Issue Status:	Approved	Issue Date:	
After this document is withdrawn from use it must be kept in archive for the lifetime of the Trust, plus 6 years.					
Archive:	Document Control	Date Added to Archive:			
Officer responsible for Archive:	Document Control Administrator				

Contents

POLICY STATEMENT 3

1. Roles and Responsibilities 4

2. Procedure..... 5

3. Policy Implementation Plan..... 6

4. Monitoring of Compliance 7

5. Appendices 7

6. Equality Analysis Framework..... 9

7. Endorsed By:- 10

8. Record of Changes..... 11

POLICY STATEMENT

The 'fit and proper persons' test set out in Regulation 5 of the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* (updated 2022) came into force on the 27th November 2014 and is aimed at making sure that those individuals who have authority in organisations that deliver care are responsible for the overall quality and safety of that care, and as such can be held accountable if standards of care do not meet legal requirements.

The 2014 regulations were introduced in response to the failings at the Winterbourne View Hospital and the Francis Inquiry into Mid Staffordshire NHS Foundation Trust. [A new Fit and Proper Framework was introduced by NHS England in 2023.](#)

This Policy applies to all Board Directors – Executive and Non-Executive; Associate (non-voting) attendees of the Board and Governors. It applies to all permanent, acting and interim Board level positions.

Whilst providers have a general obligation to ensure that they only employ individuals who are fit for their role, the 'fit and proper persons' test must be applied for all new Directors and Governors; and there must be systems and processes in place to provide ongoing assurance that the requirements are met. There is a duty on the organisation to take such action as is necessary and proportionate to ensure ongoing compliance.

The requirements are that:

- (a) The individual is of good character;
- (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;
- (c) 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;
- (d) The individual has not been responsible for, ~~privy to~~, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) ~~in the course of carrying on while carrying out~~ a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity; and
- (e) None of the grounds of unfitness specified in [part 1 of Schedule 4](#) ~~the provider licence~~ apply to the Individual.

The grounds of unfitness specified in [Part of Schedule 4 to the Regulated Activities Regulations](#) are: ~~the provider licence to the Regulated Activities.~~

Fit and Proper Persons

~~Current version is held on the Intranet~~

Version No.2.0
July 2019

Check with Intranet that this printed copy is the latest issue

Page 3 of 11

Regulations are:

- (a) the person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged;
- (b) the person is 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;
- (c) the person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- (d) the person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- (e) the person is 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;
- ~~(f) a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on that person;~~
- ~~(f)~~ (g) the person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.

The good character requirements referred to in Regulation 5 as specified in Part 2 of Schedule 4 to the Regulated Activities Regulations relate to:

- (a) whether the person has 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
- (b) whether the person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

1. Roles and Responsibilities

The Chair

~~It is the responsibility of the Trust Chair to:~~

- ~~• Confirm the fitness of all new Directors and Governors, as assessed in line with the regulations~~
- ~~• Ensure that an on-going fitness review is included within the annual appraisals of all Board Directors and annual declaration for Governors~~
- ~~• Deal appropriately with any breach as required, seeking expert advice if deemed appropriate and discussing any concerns with the relevant Nominations Committee; this includes putting in place appropriate interim arrangements, pending an investigation, where this is required.~~

The Trust Chair is accountable for taking all reasonable steps to ensure the FPPT process is effective and that the desired culture of their NHS organisation is maintained to support an effective FPPT regime. As such, chairs' responsibilities are:

- a) Ensure the NHS organisation has proper systems and processes in place so it can make the robust assessments required by the FPPT.
- b) Ensure the results of the full FPPT, including the annual self-attestations for each board member, are retained by the employing NHS organisation.
- c) Ensure that the FPPT data fields within ESR are accurately maintained in a timely manner.
- d) Ensure that the board member references/pre-employment checks (where relevant) and full FPPT (including the annual self-attestation) are complete and adequate for each board member.
- e) Ensure an appropriate programme is in place to identify and monitor the development needs of board members.
- f) On appointment of a new board member, consider the specific competence, skills and knowledge of board members to carry out their activities, and how this fits with the overall board.
- g) Conclude whether the board member is fit and proper.
- h) Chairs will also complete an annual self-attestation that they themselves are in continued adherence with the FPPT requirements. On an annual basis, chairs should confirm that all board members have completed their own FPPT self attestation and that the FPPT is being effectively applied in their NHS organisation.
- i) Ensure that for any board member approved to commence work or continue in post despite there being concerns about a particular aspect of the FPPT, they document the reason(s) as to why there has been an issue about whether a board member might not be fit and proper and the measures taken to address this. A local record of this should be retained. A summary of this should also be included in the annual FPPT submission form to the relevant NHS England regional director.

Senior Independent Director

Annually, the senior independent director (SID) will review and ensure that the chair is meeting the requirements of the FPPT

All Directors (Executive, Non-Executive, Associate (non-voting), Permanent, Acting, Interim) and Governors

To make annual self-declarations in a form prescribed by the Chair and to provide any additional information or evidence requested in order to demonstrate compliance with Fit and Proper Persons requirements.

The Director of Risk and Improvement (Company Secretary)

Must inform the Chair of any concerns relating to individual self-declarations or arising from other checks such as insolvency registers and registers of disqualified directors

Chief People Officer

Formatted: Font: (Default) Arial, 12 pt

It is the responsibility of the Chief People Officer to:

- maintain oversight and due diligence in respect of appointment processes including pre- employment checks and adequacy of references;
- ensure that employment contracts (T&Cs for NEDs) refer to the requirement to comply with the Regulations and Code of Conduct for Board Directors;
- ensure DBS checks are conducted on appointment and thereafter at intervals of no greater than 3 years

Nominations Committee

The Trust has two Nominations and Remuneration Committees dealing with the appointment of Non-Executive Directors and Executive Directors respectively. These Committees are responsible for ensuring the assessment of candidates for Board positions and in the case of Non-Executive Directors, the recommendation of candidates for appointment by the Council of Governors. Each committee must ensure that the appropriate due diligence is undertaken in respect of the preferred candidate, prior to appointment. Where any issue comes to light, this must be investigated and documented in support of the final recruitment decision.

For issues arising in respect of existing Directors, the Chair may refer any concerns of on-going tenure to the relevant Nominations Committee. Any interim arrangements required pending a Fit and Proper Person investigation will be considered by the relevant Nominations Committee.

The removal of an Executive/Associate Director will be a decision for the Nomination & Remuneration Committee (Executive).

Council of Governors

The removal of a Non-Executive Director will be a decision for the Council of Governors following a recommendation from the Nomination & Remuneration Committee (Non-Executive Directors).

2. Procedure

2.1 New Appointments

In order to confirm that the individual is of good character, the Trust will make pre-employment checks which will include the following:

- Full employment history with documented explanation of any gaps
- Obtaining two references ([using the Board member reference template](#)), one of which should be from the most recent employer;
- qualification and professional registration checks;
- right to work checks;
- proof of identity;
- occupational health clearance;
- appropriate DBS clearance;
- search of insolvency and bankruptcy register;
- due diligence in relation to (or privy to) previous misconduct, mismanagement or professional disqualification

Version No.2.0	Fit and Proper Persons	Page 4 of 11
July 2019	Current version is held on the Intranet	
Version No.2.0	Check with Intranet that this printed copy is the latest issue	Page 5 of 11
July 2019	Current version is held on the Intranet	
	Check with Intranet that this printed copy is the latest issue	

The selection process for all Director posts will be robust ensuring that the specific skills and experience required for the role are set out in a person specification and thoroughly tested.

The above will be overseen by the Chief People Officer and evidence of the checks will be documented on the individual's personal file.

On appointment, the individual will be required to complete a 'Fit and Proper Persons' self-declaration (Appendix 1). This will be retained on the individual's personal file.

2.2 On-going Review of Existing Directors

An assessment of on-going fitness will be undertaken each year as part of the annual appraisal process and all Directors will be required to update their self-declarations (Appendix 1) annually. DBS clearance will [also](#) be renewed every three years. [The Chair is accountable for maintaining oversight of ongoing fitness.](#)

2.3 Joint appointments across different NHS organisations

For joint appointments across different NHS organisations, the full FPPT would need to be completed by the designated host/employing NHS organisation and in concluding their assessment they will need input from the chair of the other contracting NHS organisation to ensure that the board member is fit and proper to perform both roles.

The host/employing NHS organisation will then provide a 'letter of confirmation' to the other contracting NHS organisation to confirm that the board member in question has met the requirements of the FPPT.

The chair of the other contracting NHS organisation has the responsibility to keep the host/employing NHS organisation abreast of changes and any matters that may impact the FPPT assessment of the board member.

For the avoidance of doubt, where two or more organisations employ or appoint (in the case of a chair or NED) an individual for two or more separate roles at the same time, each organisation has a responsibility to complete the FPPT.

If the FPPT assessment at one organisation finds an individual not to be FPP, the chair should update their counterpart of any other NHS organisation(s) where the individual has a board-level role and explain the reason. To note, the issue at one organisation may be one of role-specific competence, which may not necessarily mean the individual is not FPP at the other organisation

2.43 Dealing with Concerns

If the Trust discovers at any point, information that suggests an individual Director does not meet the 'Fit and Proper Persons' criteria, the matter shall be referred immediately to the Chair (or the Senior Independent Director, if the concern relates to the Chair).

The Chair shall take appropriate and timely action to investigate and rectify the matter, taking expert advice as necessary and ensuring any issues are dealt with in accordance with the Trust's HR policies. Any concerns will be referred to the relevant Nominations Committee. Where appropriate, findings in relation to a person's fitness may be referred to

Formatted: Indent: Left: 0.04 cm, Space After: 6 pt, Line spacing: single

the relevant professional/regulatory body/bodies.

The Chair, in discussion with the relevant Nominations Committee, will put in place interim arrangements, if required, during any period of investigation. The removal of any Director will be in accordance with the LHCH Constitution, with decision to remove resting with the Nominations Committee (Executive) for Executive/Associate Directors and Council of Governors for Non-Executive Directors.

Removal of a Governor will be in accordance with the LHCH Constitution.

2.54 Personal Data

Personal data relating to the FPPT assessment will be retained in local record systems and specific data fields in the NHS Electronic Staff Record (ESR).

FPPT outcomes must be entered onto ESR and ESR FPPT Dashboard generated for Chair review. Once satisfied with the test the Chair must update and sign off each Board member on ESR. An annual submission form will be generate for Chair sign off and submitted to the NHSE Regional Director. The NHSE FPPT central team will collate records from NHSE regions.

2.65 Board Member Reference Request

NHS organisations will need to request board member references (Appendix 2), and store information relating to these references so that it is available for future checks; and use it to support the full FPPT assessment on initial appointment.

NHS organisations should maintain complete and accurate board member references at the point where the board member departs, irrespective of whether there has been a request from another NHS employer and including in circumstances of retirement. Both the initial and board member references should be retained locally on ESR.

Board member references will apply as part of the FPPT assessment when there are new board member appointments, either internal to a particular NHS organisation, internal to the NHS, or external to the NHS. This applies whether permanent or temporary where greater than six weeks; specifically:

a. New appointments that have been promoted within an NHS organisation.

b. Existing board members at one NHS organisation who move to another NHS organisation in the role of a board member.

c. Individuals who join an NHS organisation in the role of board member for the first time from an organisation that is outside of the NHS.

d. Individuals who have been a board member in an NHS organisation and join another NHS organisation not in the role of board member, that is, they take a non-Board level role.

3. Policy Implementation Plan

The Director of Risk and Improvement will maintain this policy and oversee implementation, conducting an audit of personal files for all existing Directors for review to sign off by the Trust Chair.

The Director of Risk and Improvement will manage the annual self-declaration process on behalf of the Chair.

4. Monitoring of Compliance

The Director of Risk and Improvement will maintain the policy and support the Chair in compiling an evidence checklist for each Director; and will maintain a system of annual review of self-declarations by the Board of Directors.

5. Appendices

APPENDIX 1

Annual Self Declaration Form (See below)

APPENDIX 2

[Board Member Reference Template \(See below\)](#)

Formatted: Font: 12 pt, Not Bold, Font color: Auto

Formatted: Font: 12 pt

Formatted: Indent: Left: 0.04 cm

Appendix 1 Fit and Proper Persons Test

Self-attestation form replaced
with new NHSE version

Fit and Proper Person Test annual/new starter* self-attestation Liverpool Heart and Chest Hospital

I declare that I am a fit and proper person to carry out my role. I:

- am of good character
- have the qualifications, competence, skills and experience which are necessary for me to carry out my duties
- where applicable, have not been erased, removed or struck-off a register of professionals maintained by a regulator of healthcare or social work professionals
- am capable by reason of health of properly performing tasks which are intrinsic to the position
- am not prohibited from holding office (eg directors disqualification order)
- within the last five years:
 - I have not been convicted of a criminal offence and sentenced to imprisonment of three months or more
 - been un-discharged bankrupt nor have been subject to bankruptcy restrictions, or have made arrangement/compositions with creditors and has not discharged
 - nor is on any 'barred' list.
- have not been responsible for, 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.

The legislation states: if you are required to hold a registration with a relevant professional body to carry out your role, you must hold such registration and must have the entitlement to use any professional titles associated with this registration. Where you no longer meet the requirement to hold the registration, any if you are a healthcare professional, social worker or other professional registered with a healthcare or social care regulator, you must inform the regulator in question.

Should my circumstances change, and I can no longer comply with the Fit and Proper Person Test (as described above), I acknowledge that it is my duty to inform the chair.

Name and job title/role:	
Professional registrations held (ref no):	
Date of DBS check/re-check (ref no):	
Signature:	
Date of last appraisal, by whom:	
Signature of board member:	

Date of signature of board member:	
For chair to complete	
Signature of chair to confirm receipt:	
Date of signature of chair:	

|

|

Appendix 2: The board member reference template

Formatted: Font: 14 pt, Bold

STANDARD REQUEST: To be used only AFTER a conditional offer of appointment has been made.

[Date]

Human resources officer/name of referee

Recruitment officer

External/NHS organisation receiving request

HR department initiating request

Dear [HR officer's/referee's name]

Re: [applicant's name] - [ref. number] – [Board Member position]

The above-named person has been offered the board member position of [post title] at the [name of the NHS organisation initiating request]. This is a high-profile and public facing role which carries a high level of responsibility. The purpose of NHS boards is to govern effectively, and in so doing build patient, staff, public and stakeholder confidence that the public's health and the provision of healthcare are in safe hands.

Taking this into account, I would be grateful if you could complete the attached confirmation of employment request as comprehensively as possible and return it to me as soon as practically possible to ensure timely recruitment.

Please note that under data protection laws and other access regimes, applicants may be entitled to information that is held on them.

Thank you in advance for your assistance in this matter.

Yours sincerely

[Recruitment officer's name]

Board Member Reference request for NHS Applicants:

To be used only AFTER a conditional offer of appointment has been made.

Information provided in this reference reflects the most up to date information available at the time the request was fulfilled.

1. Name of the applicant (1)**2. National Insurance number or date of birth****3. Please confirm employment start and termination dates in each previous role**

A: (if you are completing this reference for pre-employment request for someone currently employed outside the NHS, you may not have this information, please state if this is the case and provide relevant dates of all roles within your organisation)

B: (As part of exit reference and all relevant information held in ESR under Employment History to be entered)

Job Title:

From:

To:

Job Title

From:

To:

Job Title:

From:

To:

4. Please confirm the applicant's current/most recent job title and essential job functions (if possible, please attach the Job Description or Person Specification as Appendix A):

(This is for Executive Director board positions only, for a Non-Executive Director, please just confirm current job title)

5. Please confirm Applicant remuneration in current role (this question only applies to Executive Director board positions applied for)

Starting:

Current:

6. Please confirm all Learning and Development undertaken during employment: (this question only applies to Executive Director board positions applied for)**7. How many days absence (other than annual leave) has the applicant had over the last two years of their employment, and in how many episodes?**

(only applicable if being requested after a conditional offer of employment)

Days
Absent:

Absence Episodes:

8. Confirmation of reason for leaving:

9. Please provide details of when you last completed a check with the Disclosure and Barring Service (DBS)

(This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board)

Date DBS check was last completed.

Date

Please indicate the level of DBS check undertaken (basic/standard/enhanced without barred list/or enhanced with barred list)

Level

If an enhanced with barred list check was undertaken, please indicate which barred list this applies to

Adults ☐
Children ☐
Both ☐

10. Did the check return any information that required further investigation?

Yes ☐

No ☐

If yes, please provide a summary of any follow up actions that need to/are still being actioned:

11. Please confirm if all annual appraisals have been undertaken and completed

Yes ☐

No ☐

(This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board)

Please provide a summary of the outcome and actions to be undertaken for the last 3 appraisals:

12. Is there any relevant information regarding any outstanding, upheld or discontinued complaint(s) or other matters tantamount to gross misconduct or serious misconduct or mismanagement including grievances or complaint(s) under any of the Trust's policies and procedures (for example under the Trust's Equal Opportunities Policy)?

Yes ☐

No ☐

(For applicants from outside the NHS please complete as far as possible considering the arrangements and policy within the applicant's current organisation and position)

If yes, please provide a summary of the position and (where relevant) any findings and any remedial actions and resolution of those actions:

13. Is there any outstanding, upheld or discontinued disciplinary action under the Trust's Disciplinary Procedures including the issue of a formal written warning, disciplinary suspension, or dismissal tantamount to gross or serious misconduct that can include but not be limited to:

- Criminal convictions for offences leading to a sentence of imprisonment or incompatible with service in the NHS
- Dishonesty
- Bullying
- Discrimination, harassment, or victimisation
- Sexual harassment
- Suppression of speaking up
- Accumulative misconduct

Yes ☐

No ☐

(For applicants from outside the NHS please complete as far as possible considering the arrangements and policy within the applicant's current organisation and position)

If yes, please provide a summary of the position and (where relevant) any findings and any remedial actions and resolution of those actions:

14. Please provide any further information and concerns about the applicant's fitness and propriety, not previously covered, relevant to the Fit and Proper Person Test to fulfil the role as a director, be it executive or non-executive. Alternatively state Not Applicable. (Please visit links below for the CQC definition of good characteristics as a reference point) (7)(12)

Regulation 5: Fit and proper persons: directors - Care Quality Commission (cqc.org.uk)

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (legislation.gov.uk)

15. The facts and dates referred to in the answers above have been provided in good faith and are correct and true to the best of our knowledge and belief.

Referee name (please print): Signature:

Referee Position Held:

Email address: Telephone number:

Date:

Data Protection:

This form contains personal data as defined by the Data Protection Act 2018 and UK implementation of the General Data Protection Regulation). This data has been requested by the Human Resources/ Workforce Department for the purpose of recruitment and compliance with the Fit and Proper Person requirements applicable to healthcare bodies. It must not be used for any incompatible purposes. The Human Resources/Workforce Department must protect any information disclosed within this form and ensure that it is not passed to anyone who is not authorised to have this information.

6. Equality Analysis Framework

Department/Function	Human Resources
Lead Person	Janet Doran
Contact Details	Janet.doran@lhch.nhs.uk
Name of Strategy/ Policy/ Procedure/Service to be Analysed (Including procurement)	Fit and Proper Persons
Is this a new or existing Strategy/Policy/Procedure/Service?	New
<p>1. What are the main aims and/or objectives of the strategy/ policy/procedure/service and to what extent is equality a relevant consideration? (e.g. a policy that lists the frequency of checking the temperatures of hospital fridges would have no relevance to equality (NR) but a change or cut back to a current service would have relevance (R)).</p> <p>Take account of the protected characteristics (PC's)/ groups and outline your reasons for your chosen category in as much detail as possible. Tick "R" or "NR" at the top of this page. If "NR" has been chosen finish here once your reasons have been given in the box on the right.</p>	<p>Compliance with Regulation 5 of the <i>Health and Social Care Act 2008 (Regulated Activities) Regulations 2014</i></p> <p>This Policy applies to all Board Directors - Executive and Non-Executive; and Associate (non-voting attendees of the Board. It applies to all permanent acting and interim Board level positions.</p> <p>Whilst providers have a general obligation to ensure that they only employ individuals who are fit for their role, the 'fit and proper persons' test must be applied for all new Directors; and there must be systems and processes in place to provide on-going assurance that the requirements are met. There is a duty on the organisation to take such action as is necessary an proportionate to ensure on-going compliance.</p>

7. Endorsed By:

Name of Lead Clinician / Manager or Committee Chair	Position of Endorser or Name of Endorsing Committee	Date
---	---	------

Karan Wheatcroft	Director of Risk and Improvement	June <u>Sept</u> 2023
------------------	----------------------------------	----------------------------------

8. Record of Change

Section Number	Version Number	Date of Change	Description of Amendment	Description of Deletion	Description of Addition	Reason
All	2.2	June 2023	Updates to reflect code of governance	Regulation reference	Includes 3 year DBS	New code of governance 2023
<u>All</u>	<u>2.3</u>	<u>Sept 2023</u>	<u>Chairs responsibilities expanded.</u> <u>New self-attestation form.</u> <u>Annual submission to NHSE.</u>	<u>=</u>	<u>New Board member reference.</u> <u>Use of ESR for records.</u> <u>Arrangements for joint appointments.</u>	<u>Updates to reflect new NHS England FPPT framework</u>