



Fit and Proper Persons: Directors (Application of Regulation 5)

Document Control Sheet

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Target Audience	Board Members, Trust Secretary, Recruitment Team

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This procedure supersedes all previous issues.

This procedure covers both the Trust (North East Ambulance Service NHS Foundation Trust) and its subsidiary company North East Ambulance Service Unified Solutions (NEASUS). References to NEAS or Trust within this procedure also cover NEASUS and its employees.

1. Introduction and scope

This procedure document outlines how the Trust should apply Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5: Fit and Proper Persons (Directors).

The Regulation applies to Executive and Non-Executive Directors, including permanent, interim and associate positions, irrespective of voting rights (known within this procedure as 'Board Members').

The Trust has interpreted this Regulation to include:

- All Executive Directors
- All Non-Executive Directors
- Associate Non-Executive Directors
- Any interim Directors appointed to act as Board Members

The purpose of the Regulation is to ensure that all Board level appointments of NHS bodies carrying out a regulated activity are fit and proper to carry out the role of overseeing the quality and safety of care provided by the body.

This means that Board Members should be of good character, have the required skills, experience and knowledge and that their health enables them to fulfil the management function. None of the criteria of unfitness should apply, which include bankruptcy, sequestration and insolvency, appearing on barred lists and being prohibited from holding directorships under other laws. Board Members should not have been involved or complicit in any serious misconduct, mismanagement or failure of care in carrying out a regulated activity.

This procedure document also indirectly outlines how the Trust should achieve compliance with the Director element of provider license Condition G4 – Fit and Proper Persons (which is very similar in content but less detailed than Regulation 5).

2. Duties and responsibilities

Person / Group	Role and Responsibilities
Policy Review Group (PRG)	<ul style="list-style-type: none"> • Reviewing the procedure and making a recommendation to the respective Executive Director on whether they are robust and fit for purpose
Director of People and Development	<ul style="list-style-type: none"> • Signing off this procedure once assurance is received from the Policy Review Group that the procedure is robust and fit for purpose • To be the lead Director overseeing the

Person / Group	Role and Responsibilities
	implementation and adherence to Regulation 5, including providing professional advice to the Chair and Chief Executive on the interpretation of employment-related issues.
Trust Secretary	<ul style="list-style-type: none"> Responsible for undertaking the annual checks on Board Members and liaising with the Recruitment team to ensure that checks are completed as part of the pre-employment process.
Recruitment Business Partner	<ul style="list-style-type: none"> Responsible for ensuring that checks are completed as part of the recruitment process for Board Members.
Recruiting manager	<ul style="list-style-type: none"> Responsible for working with the recruitment team to ensure that the recruitment process adheres to the fit and proper person requirements.
Chairman	<ul style="list-style-type: none"> To ensure that the annual appraisal process for Non-Executive Directors assesses the ongoing compliance with the regulations.
Senior Independent Director	<ul style="list-style-type: none"> To ensure that the annual appraisal process for the Chairman assesses the ongoing compliance with the regulations.
Chief Executive	<ul style="list-style-type: none"> To ensure that the annual appraisal process for Executive Directors assessing the ongoing compliance with the regulations.
Board Members	<ul style="list-style-type: none"> To ensure ongoing compliance with the regulation and this procedure and inform the Trust of any circumstances which may impact upon the ability to comply.

3. PROCEDURE FOR RECRUITMENT

When advertising the role there should be a clear reference to the need to comply with fit and proper persons requirements. This should also be included within the person specification.

Where specific qualifications are required for a role, this must be made clear in the job-description and the Trust must verify the validity of qualifications as part of the pre-employment checks.

There is a need to ensure that the recruitment process is values-based, as this will help to form the assessment of whether candidates are of 'good character'. CQC describe good practice as including personal values and behaviours such as:

- honesty
- trustworthiness
- integrity
- openness (also referred to as transparency)
- ability to comply with the law

The interview process should include some specific questions designed to test compliance with the key components of the Regulation, including 'good character'.

In respect of competence to fulfil the role this should be assessed as part of the recruitment process. The Kark Review of the Fit and Proper Person Test (2018) recommended that all directors should meet specified standards of competence. The Review referred to the following high-level competencies:

- Board governance
- Clinical governance
- Financial governance;
- Patient safety and medical management
- Recognising the importance of information on clinical outcomes
- Responding to serious clinical incidents and learning from errors
- The importance of learning from whistleblowing and 'speaking up'
- Empowering staff to make autonomous decisions and to raise concerns
- Ethical duties towards patients, relatives and staff
- Complying and encouraging compliance with the duty of candour
- The protection, security and use of data
- Current information systems relevant for health services
- The importance of issues of equality and diversity both within the trust in workforce issues and in relation to appointments to the Board
- The importance of complying on a personal basis with the Nolan principles.

The majority of these competencies should be tested via the person specification and/or the recruitment process.

'Good character' and fitness to practice should also be assessed through the pre-employment checks process. This must include:

- two references, one of which must be from the most recent employer;
- qualification and professional registration checks;
- right to work checks;
- proof of identity checks;
- occupational health clearance;
- DBS checks for Board Members;
- search of insolvency and bankruptcy registers; and

- search of disqualified directors register.

In respect of DBS checks the CQC updated its guidance in 2018 to state that they expect providers to undertake an enhanced DBS check for directors to check that they are on the children's and / or safeguarding barred list where they meet the eligibility criteria. Whether a particular post meets the eligibility criteria is for each trust to determine. At NEAS the following posts are deemed to meet the eligibility criteria for an enhanced DBS with barred list check on appointment:

- Chief Executive
- Chief Operating Officer
- Director of Quality, Patient Safety, Innovation and Improvement
- Medical Director

These posts either carry out regulated activities or undertake day-to-day management or supervision of staff who carry out regulated activities.

Standard DBS checks are carried out on appointment for all other Board Members, the Trust Secretary and Associate Director of Communications and Engagement.

Candidates must complete a self-assessment / declaration to confirm their compliance with the Regulation prior to commencing employment.

4. PROCEDURE FOR ONGOING COMPLIANCE

On-going compliance with the Regulation for Board Members currently in post must be assessed annually. This is facilitated through:

- The completion of an annual self-declaration by all Board Members;
- Annual checks on insolvency, bankruptcy, director disqualification and registration with professional bodies (where registration is required for the role); and
- The annual appraisal process, which should assess performance and competence, ultimately contributing towards an on-going assessment of character.

For Non-Executive Directors seeking re-appointment compliance with the Regulation must be considered and ultimately confirmed to the Governor Nomination and Remuneration Committee and to the Council of Governors before re-appointments can be approved / ratified.

All Board Members' employment contracts include specific reference to the contractual need to continue to comply with the Regulation.

5. Addressing non-compliance

The Trust will investigate in a timely manner any concerns regarding a Board Member's fitness or ability to carry out their duties. An investigation will be conducted

in line with the appropriate People and Development policy / procedure depending upon the nature of the non-compliance.

The Trust has a duty to inform others as appropriate about material concerns/findings relating to a person's fitness; for example, professional regulators, CQC and other relevant bodies, and support any related enquiries/investigations carried out by others.

6. Associated Trust documentation

The following Trust documents should be referred to in conjunction with this procedure:

- DBS policy
- Recruitment policy
- Disciplinary policy
- Freedom to Speak up (Raising Concerns) policy

Version Control - Table of Revisions

All changes to the document must be recorded within the 'Table of Revisions'.

Version number	Document section/ page number	Description of change and reason (e.g. initial review by author/ requested at approval group)	Author/ Reviewer	Date revised
03	Full review	Full review with updates made to roles and responsibilities, DBS check information, linkages to other policies and new checklists to assist in achieving compliance	Trust Secretary	October 2020

APPENDIX A: The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5: Fit and proper persons: directors

5.—(1) This regulation applies where a service provider is a health service body.

(2) Unless the individual satisfies all the requirements set out in paragraph (3), the service provider must not appoint or have in place an individual—

(a) as a director of the service provider, or

(b) performing the functions of, or functions equivalent or similar to the functions of, such a director.

(3) The requirements referred to in paragraph (2) 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, 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

(e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

(4) In assessing an individual's character for the purposes of paragraph (3)(a), the matters considered must include those listed in Part 2 of Schedule 4.

(5) The following information must be available to be supplied to the Commission in relation to each individual who holds an office or position referred to in paragraph (2)(a) or (b)—

(a) the information specified in Schedule 3, and

(b) such other information as is required to be kept by the service provider under any enactment which is relevant to that individual.

(6) 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—

(a) 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

(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.

APPENDIX B – Recruitment and Pre-Employment Checklist

Check	To be completed by:	Completed? YES / NO	Issues to escalate? YES / NO If so, include date of escalation and to whom	Date check completed and by whom
Advertisement for the position includes clear reference to fit and proper person requirements	Recruitment team			
Person specification to include clear reference to fit and proper person	Recruiting manager			
Recruitment process to be values-based and tests the core Board Member competencies	Recruitment team and Recruiting manager			
Interview questions to test 'good character'	Recruiting manager			
2 references obtained, including one from most recent employer	Recruitment team			
Qualification checks	Recruitment team			
Professional registration checks <ul style="list-style-type: none"> • Confirmation that individual is registered to carry out the proposed role • Details of any limitation on their registration that might affect the duties proposed • Details of any current or previous fitness to practice proceedings/professional disciplinary proceedings. 	Recruitment team			

Fit and Proper Persons: Directors

Check	To be completed by:	Completed? YES / NO	Issues to escalate? YES / NO If so, include date of escalation and to whom	Date check completed and by whom
Right to work checks	Recruitment team			
Proof of identity checks	Recruitment team			
Occupational health clearance	Recruitment team			
DBS check at appropriate level for the role	Recruitment team			
Completion of fit and proper person checklist by candidate	Recruitment team to co-ordinate			
Bankruptcy and insolvency check: Register	Trust Secretary			
Bankruptcy and debt relief restrictions check: Register	Trust Secretary			
Disqualified Directors check Register	Trust Secretary			
Run an internet search for news articles or other information which may identify fit and proper person related issues. <i>Document the details here.</i>	Trust Secretary			

APPENDIX C – ANNUAL CHECKLIST

Board Member:

Financial year:

Check	To be completed by:	Completed? YES / NO	Issues to escalate? YES / NO If so, include date of escalation and to whom	Date check completed and by whom
Completion of self-declaration	Each Board Member			
Bankruptcy and insolvency check: Register	Trust Secretary			
Bankruptcy and debt relief restrictions check: Register	Trust Secretary			
Disqualified Directors check Register	Trust Secretary			
Professional registration check	Trust Secretary			
Appraisal completed for the year	Line manager			
For Non-Executive Directors only – if re-appointment was sought then evidence that fit and proper considerations were made	Trust Secretary			

Date fit and proper annual checks were completed:

APPENDIX D: FIT AND PROPER PERSON SELF-DECLARATION



North East Ambulance Service **NHS**
NHS Foundation Trust

NORTH EAST AMBULANCE SERVICE NHS FOUNDATION TRUST

FIT & PROPER PERSONS REGULATIONS

BOARD MEMBER DECLARATION

NAME.....
.....

I the undersigned declare that:

I am a fit and proper person and are not/have not been subject to any restrictions which would prevent me from continuing to hold the office of Director of the Trust and I will not do anything which will cause me to be disqualified from acting as a Director, including, without limitation, any act or omission which may result in you failing to meet the requirements of paragraph 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended or substituted from time to time) or the conditions of any NHS Provider licence (fit and proper person test).

In particular I confirm that:

- I am of good character in that:
 - I am not an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged
 - I am 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

- I am not the subject of a moratorium period under a debt relief (under Part VIIA (debt relief orders) of the Insolvency Act 1986(40)
- I have not made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
- I am not included in the children’s barred list or the adults barred list maintained under Section 2 of the Safeguarding Vulnerable Groups Act 2006 (or any corresponding group maintained in Scotland or Northern Ireland
- I am not prohibited from holding the relevant office or position, or from carrying on the regulated activity, by or under any enactment
- I have 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 a regulated activity or providing a service elsewhere which, if provided in England would be a regulated activity

Note: A Board Member who meets any of the above criteria is prevented from holding office without discretion.

- I have not 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.

Note, a criminal conviction does not automatically bar you from holding the position. It does however require the Trust to make an objective decision as to your suitability for the role in NEAS based on the information available.

- I have not been erased, removed, struck off a register of professionals maintained by a regulator of health care or social work professionals
- I have the qualifications, skills, competence and experience for my current role.
- I am able to perform the duties of the role after reasonable adjustments are made.

SIGNED.....

PRINT NAME.....

DATE.....