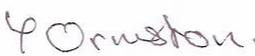




Fit and Proper Persons: Directors (Application of Regulation 5)

Document Control Sheet

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1. 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 full Regulation is included at Appendix A for reference, and compliance with this Regulation is assessed by CQC as part of its inspection regime.

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 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). The extract from the Trust's license is included in Appendix B for reference.

2. RESPONSIBILITY

- 2.1 It is the responsibility of the **Head of HR** to ensure that recruitment and appointment processes comply with the Regulation.
- 2.2 It is responsibility of the **Trust Secretary** to ensure that annual checks on Directors are completed to ensure ongoing compliance.
- 2.3 It is the responsibility of the **Chairman and Chief Executive** to ensure that annual appraisal processes for Non-Executive and Executive Directors respectively assess ongoing compliance with the Regulation requirements.
- 2.4 It is the responsibility of the **Council of Governors** to seek assurance that Non-Executive Directors continue to comply with the Regulation prior to any proposed reappointment.
- 2.5 It is the responsibility of each **Board Member** to ensure ongoing compliance with the Regulation and inform the Trust of any circumstances which may impact upon the ability to comply.



3. PROCEDURE FOR RECRUITMENT

- 3.1** The job description must refer to the requirement to comply with the Fit and Proper Persons requirement. This should also be included within the person specification.
- 3.2** 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.
- 3.3** 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'.
- 3.4** The interview process should include some specific questions designed to test compliance with the key components of the Regulation. The following list of questions were approved by the Trust Board, but are not exhaustive:
- Can you give an example of a situation when you saw someone at work stretch or bend the rules beyond what you felt was acceptable?
 - Give me an example of a situation at work where your honesty was tested?
 - Tell me about a time when you had to resolve a difference of opinion with someone. How do you feel you showed respect?
 - What are 3 effective leadership qualities you think are important? How have you demonstrated these qualities in your past/current position?
 - Tell me about a tough decision you made. What steps, thought processes, and considerations did you take to make an objective decision?
 - If you can, tell me about a time when your trustworthiness was challenged. How did you react/respond?
 - Tell me about a time when you were sensitive or compassionate to a patient/member of staff in an emotional or tense situation.
- 3.5** '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;
 - search of insolvency and bankruptcy registers; and
 - search of disqualified directors register.
- 3.6** Candidates must complete a self-assessment / declaration to confirm their compliance with the Regulation prior to commencing employment.



4. ASSESSING COMPLIANCE DURING APPOINTMENT

- 4.1 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 qualifications are required for the role); and
 - The annual appraisal process, which should assess performance and competence, ultimately contributing towards an on-going assessment of character.
- 4.2 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.
- 4.3 All Board Members' employment contracts include specific reference to the contractual need to continue to comply with the Regulation.

5. ADDRESSING NON-COMPLIANCE

- 5.1 The Trust will investigate in a timely manner any concerns regarding a Board Member's fitness to or ability to carry out their duties. An investigation will be conducted in line with the Trust's Employee Risk Policy and Disciplinary Policy.
- 5.2 The Trust has a duty to inform others as appropriate about 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. FURTHER GUIDANCE

- 6.1 Further information on Regulation 5 and the associated CQC requirements can be found at: <http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors>



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: Provider License Condition G4 – Fit and proper persons as Governors and Directors (also applicable to those performing equivalent or similar functions)

1. The Licensee shall ensure that no person who is an unfit person may become or continue as a Governor, except with the approval in writing of Monitor.
2. The Licensee shall not appoint as a Director any person who is an unfit person, except with the approval in writing of Monitor.
3. The Licensee shall ensure that its contracts of service with its Directors contain a provision permitting summary termination in the event of a Director being or becoming an unfit person. The Licensee shall ensure that it enforces that provision promptly upon discovering any Director to be an unfit person, except with the approval in writing of Monitor.
4. If Monitor has given approval in relation to any person in accordance with paragraph 1, 2, or 3 of this condition the Licensee shall notify Monitor promptly in writing of any material change in the role required of or performed by that person.
5. In this Condition an unfit person is:
 - (a) an individual;
 - (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
 - (ii) who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
 - (iii) who within the preceding five years has been convicted in the British Islands of any offence and 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 him; or
 - (iv) who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986; or
 - (b) a body corporate, or a body corporate with a parent body corporate:



- (i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of sub-paragraph (a) of this paragraph, or
- (ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or
- (iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or
- (iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or
- (v) which passes any resolution for winding up, or
- (vi) which becomes subject to an order of a Court for winding up.