

# **Trust Process for Fit & Proper Persons Test**

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**Status: Ratified**

**Document type: Procedure**

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## 1 Purpose

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To describe how the Trust will ensure that it is not managed or controlled by individuals who present an unacceptable risk either to the Trust or to its service users.

## 2 Related documents

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This procedure also refers to:-

- [Fit & Proper Person Test Guidance](#)
- [Recruitment and Selection Procedure](#)
- [Disclosure and Barring Referral Procedure](#)
- [NHS Employment Checks Standards](#)
- [Care Quality Commission - Regulation 5](#)

## 3 Background

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- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 introduced a “fit and proper person’s test” for NHS bodies, effective 27 November 2014. Compliance with the Regulations will be monitored and enforced by the CQC (Regulation 5) as part of the new style inspection regime, using specific key lines of enquiry and prompts for the domains of ‘safe’ and ‘well-led’ to ensure compliance.
- Monitoring compliance may include inspectors checking personnel files, appraisal records and asking questions of relevant staff. Over time, it is the CQC’s intention to collate relevant information in the public domain relevant to decisions on fitness and provide then via a website link.



It is necessary for the Trust to demonstrate that it has appropriate systems and processes in place to ensure that all new appointees to, and holders of, the following posts are, and continue to be, fit and proper persons:

- executive/non-executive directors (permanent & interim); and
- similar positions i.e. other (non-voting) Board attending directors and Executive Management Team members.

- Monitoring compliance may include inspectors checking personnel files, appraisal records and asking questions of relevant staff. Over time, it is the CQC’s intention to collate relevant information in the public domain relevant to decisions on fitness and provide then via a website link.

## 4 Requirements



The Trust must not appoint or have in place an individual to such a role unless:

- The individual is of good character;
- The individual has the qualifications, competence, skills and experience necessary for the relevant office/position for which they are employed
- The individual, by reason of their health (subject to reasonable adjustments) is able to properly perform tasks intrinsic to the office/position;
- The individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (unlawful or not) in the course of carrying out a regulated activity (regulated by the CQC) or which would have been regulated if it had been provided in the UK.



The individual is deemed unfit by:

- Being an undischarged bankrupt or whose estate has had sequestration awarded in respect of it and who has not been discharged;
- Being the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order (or similar in Scotland/Northern Ireland);
- Being subject to a moratorium period under a debt relief order applied under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- Having made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- Being included in the children's barred list or the adult's barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or corresponding list in Scotland/Northern Ireland; and or
- Being prohibited from holding the relevant office or position, or in the case of an individual from carrying out the regulated activity, by or under any enactment, for example, under a directors' disqualification order.

## 5 Trust Process



To ascertain whether an individual is of good character

### 5.1 Pre-appointment checks:

All new appointments to the applicable posts will have the following checks:

- Standard employment checks as per Trust recruitment policy and NHS Employers Check Standards. This requires:

- Proof of identity
- Right to work
- Full employment history
- Two detailed references (one from most recent employer/suitable alternative if previously self-employed)
- Proper check of qualifications and professional registration i.e. original certificates/independent checks with relevant bodies if appropriate
- A full Disclosure and Barring Service (DBS) check prior to appointment
- Appropriate Occupational Health screening
- The following additional checks will be carried out and appointment/employment will be conditional on:
  - Comprehensive previous employment checks including information in the public domain and specific enquiry of former employer (if appropriate);
  - Review of publicly available information collated by the Regulator;
  - Search of Insolvency and Bankruptcy Register
- Search of Disqualified Directors Register
- (Note: For the avoidance of doubt, the re-appointment of the Chairman or a Non-Executive Director shall not be deemed to be a new appointment. Where re-appointments are made, no further checks shall be required when an annual declaration, in accordance with section 5.2, has been completed within the preceding 12 months.)

## 5.2 Declaration

Appointees will also be asked to complete a declaration to include:

- Any past health issues (subject to the relevant provisions of the Equality Act 2010);
- Any criminal investigations;
- Any involvement in serious misconduct or mismanagement (unlawful or not) in the course of carrying out a regulated activity;
- Any undischarged bankruptcy, disqualification, ongoing debt relief orders etc.;
- Any inclusion on the Children's or Adults Barred Lists; and
- Any prohibition from holding the relevant office/position under any law



Should the Trust engage Recruitment Consultants to assist with appointments, it may ask the consultants to carry out all or some of the process, but will require documentary evidence that the checks have been satisfactorily completed.

## 5.3 Process to be followed on an issue or concern being identified

- As set out above, some criteria are “pass/fail”, i.e. the Trust cannot appoint or have in place an individual in a relevant position if they do not satisfy the specific test. Others, particularly the tests of good character and any association with serious misconduct or responsibility for failure in a previous role, require the Trust to make a reasonable assessment as to fitness.
- If, either at the time of appointment or later, it becomes apparent that circumstances exist or

have arisen whereby a person may not be considered to meet all the requirements of a fit and proper person, the Trust Secretary shall inform the Chairman (or, if the person in question is the Chairman, the Senior Independent Director).

- The Chairman (or Senior Independent Director) shall, acting reasonably and having regard to guidance issued by the CQC or NHS Improvement, determine whether the person meets the said requirements. If the Chairman (or, if applicable, the Senior Independent Director) determines that the person does not or may no longer meet the said requirements, that person shall not be appointed, or in the case of a Non-Executive Director, their position shall be considered by the Council of Governors. In the case of an Executive Management Team member the Trust Disciplinary Procedure will be followed to determine what the appropriate sanction, if any, will be.
- In determining whether the Director in question does not or no longer meets the said requirements the Chairman (or, if applicable the Senior Independent Director) may have reference to guidance issued by the CQC (as appropriate).
- Should the Chairman (or, if applicable the Senior Independent Director) determine that the individual is or remains 'a fit or proper person' the Chairman shall record the reasoning for the decision and provide information about the decision to those who need to be aware.

## 6 Implementation

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- It is the ultimate responsibility of the Chairman to discharge the requirement placed on the Trust, to ensure that all directors meet the fitness test and do not meet any of the 'unfit' criteria. The Trust Secretary will ensure that the process outlined above is followed.

## 7 Review

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- This procedure shall be reviewed by the Nomination and Remuneration Committee of the Board of Directors on an annual basis, taking into account the views of members of the Nomination and Remuneration Committee of the Council of Governors.

## 8 Reference

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Fit and Proper Person Test – NHS Employers, NHS Providers – [Fit & Proper Person Test Guidance](#)

Regulation 5: Fit and Proper Persons: Directors – Care Quality Commission – [Care Quality Commission - Regulation 5](#)

## 9 Document control

Date of approval:	19 July 2018	
Next review date:	31 July 2021	
This document replaces:	The TEWV Fit and Proper Persons Test - January 2016	
Lead:	Name	Title
	David Levy	Director of HR&OD
Members of working party:	Name	Title
	N/A	N/A
This document has been agreed and accepted by: (Director)	Name	Title
	Miriam Harte	Trust Chairman
This document was approved by:	Name of committee/group	Date
	Nomination and Remuneration Committee of the Board of Directors	19 July 2018
An equality analysis was completed on this document on:	19 February 2016	

### Change record

Version	Date	Amendment details	Status
1	26 Jan 2016	New document	Withdrawn
1.1	19 July 2018	The Note in 5.1, Reference to NHS Improvement in place of Monitor on page 6	Withdrawn
1.1	07 Feb 2019	Document under review, review date extended to 30 April 2019 to allow review work to be done.	Withdrawn
1.2	28 Aug 2019	Document under review, typographical error corrected in section 5.3 on page 6, review date extended to 30 April 2020 following email consultation	Published
1.2	01 May 2020	Review date extended from 30 April 2020 to new date of 30 October 2020	Published
1.2	24 Dec 2020	Review date extended to 28 Feb 2021	Published
1.2	16 Mar 2021	Review date extended to 30 June 2021	Published
1.2	28 Jun 2021	Review date extended to 31 July 2021	Published