

Fit and Proper Persons Policy

Issue Date	Review Date	Version
November 2019	December 2024	1

Purpose

The policy provides a framework for ensuring the Trust meets its statutory obligations under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, with regards to fit and proper persons.

Who should read this document?

This Policy applies to all executive and non-executive directors of the Board (permanent or interim), irrespective of their voting rights. It also applies to individuals who are acting up into Board level positions.

Key Messages

University Hospitals Plymouth NHS Trust, has an obligation to ensure that only individuals fit for their role are employed. Following the introduction of regulatory standards in the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* (the "Regulations") (as amended) the Trust must ensure that all director level appointments meet the 'Fit and Proper Persons Test'.

The aim of this Policy is to:

- Define the minimum standards for determining the fitness and propriety of individuals on appointment and on an ongoing basis to serve in their respective positions within the Trust;
- Define the individuals and/or roles to which this Policy applies;
- Outline the evidence required to demonstrate compliance with the regulations; and to
- Describe the procedures in relation to the Policy.

Core accountabilities

Owner	Director of People
Review	Trust Board
Ratification	Trust Board
Dissemination (Raising Awareness)	Director of People
Compliance	Trust Chair

Links to other policies and procedures

CQC - Regulation 5: Fit and Proper Persons: Directors
 Performance & Conduct Policy
 Criminal Records Disclosure SOP
 Raising Concerns Policy
 Recruitment and Selection Policy & SOP

Version History

1	November 2019	Trust Board
---	---------------	-------------

The Trust is committed to creating a fully inclusive and accessible service. Making equality and diversity an integral part of the business will enable us to enhance the services we deliver and better meet the needs of patients and staff. We will treat people with dignity and respect, promote equality and diversity and eliminate all forms of discrimination, regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity.

**An electronic version of this document is available on Trust Documents.
Larger text, Braille and Audio versions can be made available upon
request.**

Contents

Section	Description	Page
1	Introduction	4
2	Purpose	4
3	Definitions	4
4	Duties	4
5	Fit and Proper Persons Criteria	5
6	Trust Process	7
7	Overall Responsibility for the Document	10
8	Consultation and Ratification	10
9	Dissemination and Implementation	10
10	Monitoring Compliance and Effectiveness	10
11	References and Associated Documentation	10
Appendix 1	Dissemination Plan and Review Checklist	
Appendix 2	Equality Impact Assessment	
Appendix 3	Checklist for Executive Directors and Non-Executive Directors appointments	
Appendix 4	Checklist for Executive Directors and Non-Executive Directors annual ongoing compliance	
Appendix 5	Fit and Proper Person Self Declaration Form	

1 Introduction

As a health service provider, University Hospitals Plymouth NHS Trust (the “Trust”) has an obligation to ensure that only individuals fit for their role are employed. Following the introduction of regulatory standards in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the “Regulations”) (as amended) the Trust must ensure that all director level appointments meet the ‘Fit and Proper Persons Test’.

2 Purpose

The policy provides a framework for ensuring the Trust meets its statutory obligations under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, with regards to fit and proper persons.

This Policy applies to all executive and non-executive directors of the Board (permanent or interim), irrespective of their voting rights. It also applies to individuals who are acting up into Board level positions.

3 Definitions

Please refer to the definitions as set out within sections 4 and 5 of the policy below.

4 Duties

It is the responsibility of the **Trust Board Chair** to discharge the requirement placed on the Trust, to ensure that all directors satisfy the requirements of the Fit and Proper Persons Test, both on appointment and on an ongoing basis, and to provide an annual report to the Board.

The **Director of People** is responsible for:

- ensuring consistent application of the policy during the appointment process and ensuring that all appropriate documentation is completed, retained and available to the Care Quality Commission for inspection on request;
- maintaining the records of completed Fit and Proper Person declarations and managing the annual declaration process to ensure assurance of the ongoing fitness of directors;
- ensuring all Board directors complete an annual Fit and Proper Persons declaration;
- undertaking an annual review of compliance on behalf of the Chairman, including the preparation of an annual assurance report for the Board.

Individuals covered by the scope of this policy are responsible for:

- signing the self-declaration (Appendix 5) to confirm that they are a fit a proper person, both on appointment and on an annual basis;
- providing evidence of their qualifications, experience and identity documents on appointment or on request to confirm the competencies relevant to their position;
- identifying any issues which may affect their ability to meet the statutory requirements on appointment and bringing these issues on an ongoing basis and without delay to the Director of People or the Trust Board Chair.

Staff are responsible for raising any issues of concern via the appropriate Trust policies and procedures, for example through the Freedom to Speak Up Guardians or Raising Concerns Policy.

Where **third party providers** are contracted for the purpose of the search and selection of directors, either interim or substantive, those third party providers will be required to:

- state in the candidate brief that the post is subject to the Fit and Proper Persons Requirement (FPPR);
- ask candidates at an early stage whether there are any factors which would impact on their ability to sign the Trust's FPPR self-declaration;
- undertake referencing on behalf of the Trust in line with the Trust's policy and the NHS Employers requirements;
- undertake qualifications checks on the successful candidate.

5 Fit and Proper Persons Criteria

Fit and Proper Persons

5.1 Regulation 5 of the Regulations sets out the criteria a director or equivalent must meet, specifically:

- must be of good character;
- must have the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed;
- must be 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;
- must not have 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;
- none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

5.2 To meet the requirements of Regulation 5, the Trust must be able to demonstrate that appropriate systems and processes are in place to ensure that all new directors and existing directors are, and continue to be, fit and that no appointments meet any of the unfitness criteria set out in Schedule 4 of the Regulations.

Fitness

5.3 A person will be deemed 'unfit' if they:

- are an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged;
- are 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;
- are a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- have made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- are 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; or
- are prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment.

Good Character

5.4 A person will not be of good character if they:

- have 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; and/or
- have been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

According to NHS Employers and NHS Confederation guidance, the CQC's definition of good character is not the objective test of having no criminal convictions, but instead rests upon a judgement as to whether the person's character is such that they can be relied upon to do the right thing under all circumstances. This implies discretion for the Board in reaching a decision and allows for the fact that people can and do change over time.

Determining Misconduct and Mismanagement

5.5 Determining whether there has been serious misconduct or mismanagement is a matter for the Trust. The Trust recognises that context is paramount. When considering mismanagement and misconduct, the Trust needs to consider these in relation to the services the Trust provides, the role of the individual, and the possible impact on the Trust or confidence in its ability to carry out its mandate and fulfil its duties in the public interest.

Mismanagement

5.6 Mismanagement means being involved in the management of an organisation or part of an organisation in such a way that the quality of decision making and actions of managers falls below any reasonable standard of competent management. The following are a non-exhaustive list of examples of behaviour that may amount to mismanagement:

- transmitting to a public authority, or any other person, inaccurate information without taking reasonably competent steps to ensure it was correct;
- failing to interpret data in an appropriate way;
- suppressing reports where the findings may be compromising for the organisation;
- failing to have an effective system in place to protect staff who have raised concerns;
- failing to learn from incidents, complaints and when things go wrong;
- failing to model and promote standards of behaviour expected of those in public life, including protecting personal reputation, or the interests of another individual, over the interests of people who use a service, staff or the public;
- failing to implement quality, safety and/or process improvements in a timely way, where there are recommendations or where the need is obvious.

Misconduct

5.7 The following non-exhaustive list of examples are likely to amount to serious misconduct:

- fraud or theft

- any criminal offence other than minor motoring offences
- assault
- sexual harassment of staff
- bullying
- victimisation of staff who raise legitimate concerns
- any conduct that can be characterised as dishonesty, including:
 - deliberately transmitting information to a public authority or to any other person, which is known to be false
 - submitting or providing false references or inaccurate or misleading information on a CV
- disregard for appropriate standards of governance, including resistance to accountability and the undermining of due process
- failure to make full and timely reports to the board of significant issues or incidents, including clinical or financial issues
- repeated or ongoing tolerance of poor practice, or failure to promote good practice, leading to departure from recognised standards, policies, or accepted practices
- continued failure to develop and manage business, financial, or clinical plans

Further guidance on factors to consider around concerns regarding serious misconduct or mismanagement is available in Regulation 5: Fit and Proper Persons: Directors – Guidance for providers and CQC inspectors.

6 Trust Process

The Trust has established the following arrangements to ensure that it has a robust approach to complying with the 'fit and proper persons' requirements. These arrangements will apply to all Board Executives, including Non-Executive Directors appointed by NHSE/I and Associate Non-Executive Directors appointed by the Trust. The Trust will demonstrate that it is satisfied with the post holder's competence, skills and experience necessary for the post, through the annual appraisal process and any necessary development activity.

Pre-Appointment

6.1 The Trust expects its directors and senior leaders to set the tone and culture of the organisation. Therefore, it is important that in making appointments, the Board takes into account the values of the Trust and the extent to which candidates provide a good fit with those values. Values-based interviews, or values-based questions in other interviews, will be used.

6.2 Where the Trust deems specific qualifications necessary for the role, this should be made clear from the outset of the recruitment process and any candidate appointed must be able to demonstrate that they hold such qualifications.

6.3 When appointing to director level (or equivalent), the Trust will make every effort to ensure that all available information is sought to confirm the individual meets all of the requirements of the "Fit and Proper Persons Test".

6.4 All appointments to applicable posts will be conditional on the following satisfactory checks:

- Standard employment checks as per the Trust's Recruitment and Selection Procedure and NHS Employers Check Standards.

- For a person who will be acting in a role that falls within the definition of a “regulated activity” as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended) this will also include an enhanced Disclosure and Barring Service (DBS) check.
- Additional checks upon which appointment/employment will be conditional include:
 - search of insolvency and bankruptcy register;
 - search of Companies House register to ensure that no Board member is disqualified as a director;
 - search of the Charity Commission’s Register of Removed Trustees;
 - satisfactory completion of the ‘Fit and Proper Person Self-Declaration Form’ contained in Appendix 5.

6.5 A detailed checklist will be completed and retained on the director’s personal file along with copies of the relevant documentation. When necessary this will be made available to the CQC for the purpose of audit and inspection.

6.6 The Trust will have regard to information on when convictions, bankruptcies or similar matters are considered ‘spent’. However, there is no time limit for considering serious misconduct or mismanagement in a previous role.

6.7 An individual may only be determined as suitable despite not meeting the characteristics outlined in Schedule 4, Part 2 (the ‘good character’ test) following report and recommendation at the Trust Board. Decisions and the reasons for decisions must be recorded in the minutes at all stages, with external advice sought as necessary.

6.8 Where a prospective candidate is deemed not to meet the fit and proper person test under this Policy, the Director of People will notify the candidate of this as soon as is reasonably practicable.

6.9 A failure, refusal or partial compliance by a candidate to comply with any of the procedures or checks set out in this policy will immediately disqualify that person from the proposed appointment.

Ongoing Assurance

6.10 The fitness of directors will be reviewed on an annual basis so that the Trust Chair is assured that all directors remain fit and proper for their roles. All checks will be overseen by the Director of People. An annual appraisal process will also be carried out.

6.11 Relevant directors will be required to complete and sign an annual self-declaration (contained in Appendix 5), which will be retained on their personal file.

6.12 Following the annual review, the Director of People will draft an assurance report to the Board on behalf of the Chairman.

Upon Identification or Notification of a Concern or Issue

6.13 If it becomes apparent that circumstances exist, or have arisen, whereby an individual may not be considered to meet all the requirements of a fit and proper person, the Director of People shall inform the Trust Chair (or a Senior Independent Director if the person in question is the Trust Chair) who will address this in the most appropriate, relevant and proportionate way on a case by case basis.

6.14 In some circumstances, it may be appropriate for the Trust Chair (or Senior Independent Director) to commission an initial fact finding exercise.

6.15 Following the initial fact finding exercise, if it is clearly and demonstrably unsubstantiated, a record of the concern, along with the action taken and outcome will be made and kept on file. No further action should be taken. If following the initial fact finding exercise the concern is felt to be substantiated the Trust shall commission a formal investigation.

6.16 Where an individual's fitness to carry out their role is being investigated, appropriate measures will be considered to minimise any risk to service users, staff or the Trust. This may include restriction from duties or suspension on full pay to allow the Trust to investigate the matters of concern. Any suspension or restriction from duties will be for no longer than necessary to protect the interests of service users or the Trust and/or where there is a risk that the director's presence would impede the gathering of evidence in the investigation.

6.17 Should there be sufficient evidence to support a conclusion that the individual does not or no longer satisfies the fit and proper persons criteria, then the Trust shall take such action that is necessary and proportionate to ensure that the office or position in question is held by an individual who meets that requirement.

6.18 As such, the Trust may terminate the appointment of the director. In considering the termination of a director's employment, the Trust shall act reasonably and shall afford the director a right to present arguments as to why their employment should not be terminated, to call witnesses or present other evidence and to be accompanied by a colleague or trade union representative. Where applicable, the director shall be afforded a right of appeal.

6.19 Where appropriate, the Trust must also inform other organisations about concerns or findings relating to an individual's fitness, for example, professional regulators, the CQC and other relevant bodies, and support any related enquiries or investigations carried out by others.

7 Overall Responsibility for the Document

The Director of People has overall responsibility for this document.

8 Consultation and Ratification

The Director of People is responsible for the consultation and ratification via the Trust Board of this policy.

9 Dissemination and Implementation

Following approval and ratification, this policy will be published in the Trust's formal documents library and all staff will be notified through the Trust's normal notification process, currently the 'Vital Signs' electronic newsletter.

Document control arrangements will be in accordance with The Development and Management of Formal Documents.

10 Monitoring Compliance and Effectiveness

The Director of People will monitor compliance with this policy through its application as part of the appointment process of new directors and managing the annual declaration process to ensure assurance of the ongoing fitness of directors. The Director of People will undertake an annual review of compliance on behalf of the Trust Chair, including the preparation of an annual assurance report for the Trust Board.

11 References and Associated Documentation

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

Regulation 5: Fit and proper persons: Directors and Regulation 20: Duty of Candour (Care Quality Commission).

NHS Employers Employment Check Standards.

Insolvency Act 1986.

Safeguarding Vulnerable Groups Act 2006.

Fit and Proper Persons Regulations in the NHS – What do providers need to know? (NHS Providers).

Fit and Proper Persons Requirement for Directors (NHS Employers).

Oxford University Hospitals NHS Foundation Trust FPP Policy.

Dissemination Plan			
Document Title	Fit and Proper Persons Policy		
Date Finalised	November 2019		
Previous Documents			
Action to retrieve old copies	N/A		
Dissemination Plan			
Recipient(s)	When	How	Responsibility
All Trust staff	December 2019	Vital Signs	Information Governance Team

Review Checklist		
Title	Is the title clear and unambiguous?	YES
	Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?	YES
	Does the style & format comply?	YES
Rationale	Are reasons for development of the document stated?	YES
Development Process	Is the method described in brief?	YES
	Are people involved in the development identified?	YES
	Has a reasonable attempt has been made to ensure relevant expertise has been used?	YES
	Is there evidence of consultation with stakeholders and users?	YES
Content	Is the objective of the document clear?	YES
	Is the target population clear and unambiguous?	YES
	Are the intended outcomes described?	YES
	Are the statements clear and unambiguous?	YES
Evidence Base	Is the type of evidence to support the document identified explicitly?	YES
	Are key references cited and in full?	YES
	Are supporting documents referenced?	YES
Approval	Does the document identify which committee/group will review it?	YES
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	N/A
	Does the document identify which Executive Director will ratify it?	YES
Dissemination & Implementation	Is there an outline/plan to identify how this will be done?	YES
	Does the plan include the necessary training/support to ensure compliance?	YES
Document Control	Does the document identify where it will be held?	YES
	Have archiving arrangements for superseded documents been addressed?	N/A
Monitoring Compliance & Effectiveness	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	YES
	Is there a plan to review or audit compliance with the document?	YES
Review Date	Is the review date identified?	YES
	Is the frequency of review identified? If so is it acceptable?	YES
Overall Responsibility	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	YES

Core Information	
Date	November 2019
Title	Fit and Proper Persons Policy
What are the aims, objectives & projected outcomes?	The policy provides a framework for ensuring the Trust meets its statutory obligations under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, with regards to fit and proper persons.
Scope of the assessment	
Collecting data	
Race	Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the criteria a director or equivalent must meet and mandates that all directors satisfy these criteria. The criteria are applied consistently regardless of protected characteristics and consequently have a neutral impact.
Religion	Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the criteria a director or equivalent must meet and mandates that all directors satisfy these criteria. The criteria are applied consistently regardless of protected characteristics and consequently have a neutral impact.
Disability	The Regulations specify the requirement that an 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. Referrals will be made to OHWB on application and as applicable so that the Trust can make reasonable adjustments.
Sex	Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the criteria a director or equivalent must meet and mandates that all directors satisfy these criteria. The criteria are applied consistently regardless of protected characteristics and consequently have a neutral impact.
Gender Identity	Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the criteria a director or equivalent must meet and mandates that all directors satisfy these criteria. The criteria are applied consistently regardless of protected characteristics and consequently have a neutral impact.
Sexual Orientation	Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the criteria a director or equivalent must meet and mandates that all directors satisfy these criteria. The criteria are applied consistently regardless of protected characteristics and consequently have a neutral impact.
Age	Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out the criteria a director or equivalent must meet and mandates that all directors satisfy these criteria. The criteria are applied consistently regardless of protected characteristics and consequently have a neutral impact.
Socio-Economic	There is currently no data collected to show whether there will be an impact in this area.

Human Rights	Staff have the right to representation where appropriate in formal processes associated with the application of this policy.
What are the overall trends/patterns in the above data?	No trends or patterns identified at this stage. However, workforce data will be monitored and any trends or patterns will be identified and appropriate actions will be put in place.

Involving and consulting stakeholders				
Internal involvement and consultation	Senior HR Team, Director of People, Trust Board.			
External involvement and consultation	Reference to Regulation 5: Fit and proper persons: Directors and Regulation 20: Duty of Candour (Care Quality Commission). Reference to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.			
Impact Assessment				
Overall assessment and analysis of the evidence	There could potentially be an impact on people with a disability. However, those who are disabled in any way will be supported through the process and reasonable adjustments put in place as appropriate.			
Action Plan				
Action	Owner	Risks	Completion Date	Progress update
Specific issues and data gaps that may need to be addressed through consultation or further research				