

Fit and Proper Directors Policy

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1. Introduction

New [CQC Regulations](#) came into effect for NHS bodies on 27 November 2014 requiring directors to be fit and proper persons ([Regulation 5](#)), and trusts to implement a duty of candour when dealing with complaints ([Regulation 20](#)). These Regulations, and the fundamental standards of care, were revised and brought into force more widely for all care providers, less partnerships, from 1 April 2015.

Regulation 5 establishes a statutory requirement governing the appointing of or having in place individuals as directors, or individuals performing the functions of, or functions equivalent or similar to, the functions of a director ([Regulation 5\(2\)](#)).

Directors must satisfy all the requirements set out in Regulation 5(3) and be declared fit and proper persons. Individuals must be: of good character, have the necessary qualifications, competence, skills and experience for their role, have the appropriate level of physical and mental fitness (after reasonable adjustments have been made), have not been party or privy to any serious misconduct or mismanagement in the course of carrying on a regulated activity, and not be deemed unfit under the Regulation provisions. Providers must also ensure that certain information regarding the individuals is available to the CQC.

2. Purpose

The purpose of the Regulation is to ensure that all board level appointments at NHS bodies carrying on a regulated activity are held responsible for the overall quality and safety of the care provided, for making sure the care meets the existing regulations and effective requirements of the [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#), and that providers and directors can be held to account. Services must be safe, effective, caring, responsive, and well-led.

The aim of this document is to provide the policy and procedures by which Avon and Wiltshire Mental Health Partnership NHS Trust (the Trust) will support its commitment to the fit and proper person requirements, and to ensuring it is not managed or controlled by individuals who present an unacceptable risk either to the Trust or to the people receiving a service: that the Trust's directors are fit and proper to assume responsibility for the overall quality and safety of care delivered.

3. Definitions

3.1 Director

A director is defined by the [CQC](#) as follows:

'Director' includes all board level appointments of NHS foundation trusts, NHS trusts and special health authorities and other bodies carrying on a regulated activity that are responsible for the overall quality and safety of care and for making sure that care meets the requirements of the [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#). It includes executive and non-executive, permanent, interim and associate positions, irrespective of their voting rights.

This definition will apply for the purposes of this policy. The policy covers the application of [Regulation 5](#) to all directors and those performing functions equivalent to directors.

3.2 Good character

The CQC defines good character as "not the objective test of having no criminal convictions but instead resets 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 boards and councils in reaching a decision and allows for the fact that people can and do change over time."

4. Scope

The Care Quality Commission (CQC) has fully integrated the fit and proper person requirements (FPPR) into their regulatory registration and inspection framework. The Trust must demonstrate that it is meeting these requirements in order to continue to deliver regulated services, or to vary its registration with the CQC should it wish to do so.

The FPPR applies to all directors, or those performing functions equivalent to directors, whether executive, non-executive, permanent, interim, or associate directors, and irrespective of directors' voting rights. Although it is for the Trust to determine which individuals fall within its scope, the CQC will take a view on how effectively the Trust has discharged its responsibility. However, the CQC will not undertake the fit and proper persons' test of a director per se, or determine what is serious mismanagement or misconduct.

The CQC will check and monitor the extent to which the Trust meets the requirements:

- At the point of registration.
- During an inspection. Under the 'well-led' question, CQC will confirm that the Trust has undertaken appropriate checks and satisfied itself that on appointment, and subsequently, all new and existing directors meet the requirements.
- On receipt of concerning information regarding directors, where that information may need fit and proper person checks to be performed. This will need to be addressed in line with safeguarding and whistleblowing protocols. The CQC will adopt the following process:
 - Convene a management review meeting led by the Chief Executive or other person to determine whether the information is significant and should be passed to the Trust.
 - Request consent from the director to pass the information to the Trust. If not received the information may still be passed but governed by the General Data Protection Regulation 2018
 - The Trust response will either convince CQC that the due process was followed, or lead to further dialogue, an inspection, or regulatory action.
 - Immediate action will not be taken if it is reasonable to wait for a tribunal decision. Thereafter CQC will assess whether the Trust's judgement is reasonable.

Where there is a serious or systemic failure of a provider:

- The director's name will not be released during the process
- The CQC will determine the most appropriate, relevant and proportionate approach to meeting the requirements on a case-by-case basis.

5. Requirement

The CQC assesses the fitness of health service providers by focusing on the fitness of the nominated individuals. It will consider whether the Trust has taken the appropriate steps to ensure that individuals are:

- of good character;
- have the necessary qualifications, competence, skills and experience for their role;
- have the appropriate level of physical and mental fitness; and
- have not been party to any serious misconduct or mismanagement in the course of carrying on a regulated activity, and are not deemed unfit under the Regulation provisions.

Providers must also ensure that certain information regarding the individuals is available to the CQC.

6. Policy

The Trust fully endorses the importance of ensuring that all directors meet the fit and proper person's requirements under [Regulation 5](#).

The Trust will not permit any individual to hold the post of director who does not meet the standards required to be approved as a fit and proper person, either on appointment or through changing circumstances. Decisions may be made regarding whether an individual meets the FPPT after reflecting on the totality of all evidence available.

The Trust checks and procedures to implement the regulatory requirements are set out at Appendix 3.

Overall responsibility lies with the Company Secretary.

6.1 Regularity of review

The Trust will require all directors to complete an annual declaration confirming that they meet the fit and proper person's requirements under Regulation 5.

The Trust will fully assess and review the fitness of all directors every 3 years based on the risk to Trust business and people using its service.

6.2 Documentation

Documentation verifying the checks conducted for each individual will be retained in accordance with Trust policy throughout their employment with the Trust, and subsequently to be available through archiving. Organisations registered with the Disclosure and Barring Service (DBS) must observe the Code of Practice for Registered Persons and Other Recipients of Disclosure Information, to ensure the information is stored correctly.

The Company Secretary is responsible for making the information required by Regulation 5 or other enactments available for CQC inspection (see Appendix 2). Any such request is to be notified to the Audit and Risk Committee.

6.3 Responses to concerns

Any concerns regarding a director's ability to meet the fit and proper person's requirements must be reported to the Company Secretary directly as soon as they arise. The Company Secretary will follow the Procedure for responding to concerns regarding Fit and Proper status of Directors.

6.4 Compliance

If an individual who holds an office or position no longer meets the requirements, the Trust will take such action as is necessary and proportionate to ensure that the relevant office or position is held by someone who does meet the requirements.

The Trust may suspend individuals on full pay during investigations into whether the requirements are met, or if at any stage the Trust becomes aware of information which may mean an individual is not a fit and proper person. The issues will be addressed on a case by case basis. Where the individual is a health care professional, social worker or professional registered with a health care or social care regulator, the Trust will inform the regulator in question where appropriate.

Interim measures may be required to minimise the risk to people who use the services.

Where the Trust is unable to demonstrate it has taken the appropriate steps to achieve compliance, CQC will decide whether to take regulatory action.

7. Roles and responsibilities

The Trust is responsible for the appointment, management and dismissal of its directors, and for ensuring that the FPPR is met.

The Trust has a responsibility to implement the following on a continuing basis:

- Provide the evidence that appropriate systems and processes are in place to ensure that all new and existing directors are and continue to be fit and proper persons, and do not meet any of the unfitness criteria set out in Schedule 4 part 2 of the regulations.
- Make every reasonable effort to assure itself about the suitability of an individual by all means available.
- Make specified information about board directors available to the CQC.
- Be aware of the various guidelines available, and to have implemented procedures in line with this best practice.
- Inform the regulator where a board member no longer meets the requirement and is registered with a health or social care professional regulator, and take action to ensure the position is held by someone meeting the requirement.

7.1 Trust Chair

It is the overall responsibility of the Chair of the Trust to discharge the FPPR, to ensure all directors meet the fitness test and not the unfit criteria, and to declare to the CQC that the Trust complies with the requirements of Regulation 5.

Implementation of the requirements of this policy is delegated to the Company Secretary.

7.2 Audit and Risk Committee

The Audit and Risk Committee has overall responsibility for approving this policy and subsequent amendments, and will seek assurance that the Trust is compliant with the requirements of this policy.

7.3 Company Secretary

The Company Secretary will:

- keep this policy and its procedural requirements updated in accordance with regulatory guidance and best practice.
- arrange for existing and prospective directors to make the necessary annual declarations, for notifying all directors that they are responsible for informing the Trust if they have reason to believe that they no longer meet the fit and proper person standard.
- ensure the relevant information is retained for each director in accordance with the Regulation 5 requirements and Appendix 2.

7.4 Head of HR

The Head of HR will:

- ensure the relevant pre-employment and continuing employment checks are carried out satisfactorily in accordance with Appendix 2
- have responsibility for updating the contracts of employment and related relevant employment and recruitment policies to reflect the requirements of this policy
- have responsibility for bringing to the attention of the Company Secretary any variations in NHS Employment Check Standards further to the publication of this policy

8. Monitoring or audit

The Company Secretary will report to the Audit and Risk Committee annually on compliance with the requirements of this policy.

9. References

[Regulation 5 Fit and Proper Persons: Directors](#), Guidance for NHS Bodies, Care Quality Commission November 2014.

[Regulation 20 Duty of Candour](#), Guidance for NHS Bodies, Care Quality Commission November 2014.

[Guidance for Providers on Meeting the Regulations, Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014 \(Part 3\) \(as amended\), Care Quality Commission \(Registration\) Regulations 2009 \(Part 4\) \(as amended\), Care Quality Commission February 2015.](#)

[Regulation 5 Fit and Proper Persons: Directors, Information for providers of Adult Social Care, Primary Medical and Dental Care, and independent Healthcare, Care Quality Commission March 2015.](#)

[NHS Employment Check Standards revised July 2013.](#)

10. Related policies

This policy should be read in conjunction with the following related Trust policies.

[Recruitment and Selection Policy](#)

[Criminal Record and Barring Checks Policy](#)

[Practitioner Registration Policy](#)

11. Appendices

- APP 1 - [Fit and Proper Directors process overview](#)
- App 2 - [Fit and Proper Persons Information Retention procedure](#)
- App3 - [Fit and Proper Persons requirement checks procedure](#)
- App4 - [Procedure for responding to concerns regarding Fit and Proper status of Directors](#)

Version History				
Version	Date	Revision description	Editor	Status
1.0	19 May 2016	Approved by Audit and Risk Committee	Company Secretary	Approved
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