

UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST
BOARD OF DIRECTORS
THURSDAY 29 JANUARY 2015

Title:	Trust Process for ‘Fit & Proper Persons’ Test
Responsible Director:	Director of Corporate Affairs
Contact:	David Burbridge / Sarah Favell Ext: 13655

Purpose:	To set out the process for ensuring compliance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 “fit and proper person’s test”
Confidentiality Level & Reason:	None
Annual Plan Ref:	
Key Issues Summary:	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 as part of the new style inspection regime. It will be 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, Director posts are, and continue to be, fit and proper persons.
Recommendations:	The Board is asked to consider the issues discussed in this paper and, if thought fit, approve the process and actions set out.

Signed: David Burbridge	Date: 21 January 2015
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UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST

BOARD OF DIRECTORS

THURSDAY 29 JANUARY 2015

TRUST PROCESS FOR FIT & PROPER PERSONS TEST

PRESENTED BY DIRECTOR OF CORPORATE AFFAIRS

1. Background

- 1.1 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 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.
- 1.2 It will be 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:
 - 1.2.1 executive/non-executive directors (permanent & interim); and
 - 1.2.2 similar positions (regardless of voting rights) i.e. other Board attending directors.
- 1.3 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 them via a website link.

2. Requirements

- 2.1 The Trust must not appoint or have in place an individual to such a role unless:
 - 2.1.1 the individual is of good character;
 - 2.1.2 the individual has the qualifications, competence, skills and experience necessary for the relevant office/position for which they are employed;
 - 2.1.3 the individual, by reason of their health (subject to reasonable adjustments) is able to properly perform tasks intrinsic to the office/position;
 - 2.1.4 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;

2.1.5 the individual is not deemed unfit by:

- (a) being an undischarged bankrupt or whose estate has had sequestration awarded in respect of it and who has not been discharged;
- (b) being the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order (or similar in Scotland/Northern Ireland);
- (c) being subject to a moratorium period under a debt relief order applied under Part VIIA (debt relief orders) of the Insolvency Act 1986’;
- (d) having made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- (e) 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
- (f) 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.

2.2 To ascertain whether an individual is of good character

3. **Trust Process**

3.1 Pre-appointment checks:

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

- (a) Standard employment checks as per Trust recruitment policy and NHS Employers Check Standards. This requires:
 - (i) Proof of identity
 - (ii) Right to work
 - (iii) Full employment history
 - (iv) Two detailed references (one from most recent employer /suitable alternative if previously self employed)

- (v) Proper check of qualifications and professional registration i.e. original certificates/independent checks with relevant bodies if appropriate
 - (vi) A full Disclosure and Barring Service (DBS) check prior to appointment and, if one has not been carried out on an existing officer/employee within the last 3 years a renewed application, where applicable.
- (b) The following additional checks will be carried out and appointment/employment will be conditional on:
- (i) Checks of the CQC's register;
 - (ii) Comprehensive previous employment checks including information in the public domain and specific enquiry of former employer (if appropriate);
 - (iii) Review of publicly available information collated by the Regulator;
 - (iv) Search of insolvency and bankruptcy register, directors register etc; and
 - (v) Appropriate OH screening.

3.2 Declaration

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

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

3.3 Where the Trust engages 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.

3.4 Ongoing assurance:

- 3.4.1 As a one-off exercise, current relevant office-holders and employees will be asked to complete the declaration referred to above.
- 3.4.2 Thereafter, relevant office-holders and employees will be required to complete an annual declaration.
- 3.4.3 The Trust will review the checks carried out on appointment every three years.
- 3.4.4 With regard to the requirement for the Trust to be satisfied as to post-holders competence, skills and experience necessary for the relevant office/position for which they are employed, the following will be relied on:
 - (a) Documented regular appraisals; and
 - (b) Provision of adequate development opportunities, to include both individual and collective development e.g. courses, seminars, board development sessions.

3.5 Process to be followed on an issue or concern being identified

- 3.5.1 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.
- 3.5.2 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 Director of Corporate Affairs shall inform the Chair (or, if the person in question is the Chair, the Senior Independent Director).
- 3.5.3 The Chair (or Senior Independent Director) shall, acting reasonably and having regard to guidance issued by the CQC or Monitor, determine whether the person meets the said requirements. If the Chair (or, if applicable, the Senior Independent Director) determines that the person does not or no longer meets the said requirements, that person shall not be appointed, or their tenure of office shall be terminated and that person shall cease to act as a Director.
- 3.5.4 In determining whether the Director in question does not or no longer meets the said requirements the Chair (or, if applicable the Senior Independent Director) may have reference to guidance issued by either CQC (as appropriate).
- 3.5.5 Should the Chair (or, if applicable the Senior Independent Director) determine that the individual is or remains 'a fit or proper person' the Chair shall record the reasoning for the decision and provide

information about the decision to those who need to be aware.

4. Implementation

- 4.1 It is the ultimate responsibility of the Chair 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 Director of Corporate Affairs will ensure that the process outlined above is followed.
- 4.2 Appropriate amendments have already been made to the Trust’s Constitution. Contractual documentation concerning directors is being revised to ensure the necessary provisions are included in documentation for new appointments. It is proposed that the amended documentation will be provided to existing office-holders/relevant employees by the end of the financial year.
- 4.3 A declaration has been drafted and will be circulated to all office-holders and relevant employees by 31 January 2015 with completed Declarations to be returned to the Director of Corporate Affairs on or before 21 February 2015. Any matters declared which may affect an individual’s fitness will be discussed with the Chair.
- 4.4 A formal Procedure document regarding the above is being drafted by the Deputy Director of Corporate Affairs, to be approved by the Chair.

5. Recommendation

The Board is asked to consider and, if thought fit, approve the process and actions set out above.

David Burbridge
Director of Corporate Affairs

21 January 2015