

To:	Trust Board
From:	Trust Secretary
Date:	29 March 2018

Title:	Fit and Proper Person Regulation Compliance Annual Assurance Report						
Author/Responsible Director: Trust Secretary/ Chair							
Purpose of the Report: To assure the Board on behalf of the Chair that the Trust can meet its responsibility for ensuring the continued “fitness” of those persons to whom the Fit and Proper Person requirements apply.							
The Report is provided to the Board for:							
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Resource Implications (eg Financial, HR)
Assurance Implications
Patient and Public Involvement (PPI) Implications
Equality Impact
Information exempt from Disclosure
Requirement for further review?

Background

The Care Quality Commission has emphasised the importance of the Fit and Proper Person Requirements in ensuring the accountability of directors of NHS bodies. NHS bodies have a responsibility to ensure the Requirements are met. Under the Requirements, Providers must not appoint an Executive Director or a Non-Executive post unless they are:

- Of good character
- Have the necessary qualifications, skills and experience
- Are able to perform the work they are employed for after reasonable adjustments are made
- Can provide information as set out in the regulations

On the basis of the Care Quality Commission guidance, the Trust adopted measures to assure itself with regard to a number of issues, including:

- Determining who the Requirements apply to;
- Ensuring a robust process for assessing directors' Fit & Proper Person Requirements compliance at recruitment and on an ongoing basis;
- Establishing a process for monitoring and record keeping;

The regulations give the Care Quality Commission powers to assess whether both Executive and Non-Executive Directors are fit to carry out their role and whether providers have in place adequate and appropriate arrangements to ensure directors are fit and proper persons both on recruitment and whilst in post.

When undertaking inspections, the Care Quality Commission will assess compliance as part of the well-led domain. Where compliance cannot be demonstrated this will be addressed as appropriate through the regulatory process.

Standard condition G4 of the Provider Licence requires that an NHS Trust must not appoint or allow an "unfit" person to remain in post without the permission of NHS Improvement.

Trust Process to achieve compliance

The Trust, when approving the Fit & Proper Persons policy in March 2017, agreed the requirements would apply to all Board members (voting and non-voting).

The Trust is responsible for ensuring the continued “fitness” of those persons to whom the Requirements apply, to be fulfilled through a number of processes including:

- The completion of an annual self-declaration by all directors.
- Introduction of annual checks for disqualified directors, insolvency and professional (NMC, GMC) registration.
- Formal appraisal processes.
- Maintenance of the register of declared interests.

Robust processes are in place for the recruitment of Executive Directors, noted below:

- Documented recruitment policies, procedures and guidance.
- Determination of specific qualifications/requirements set out within job descriptions/person specifications.
- Identity checks.
- Qualification and registration checks.
- Right to work checks.
- Disclosure and Barring Service (DBS) checks.
- References.
- Search of insolvency and bankruptcy register.
- Review of full employment history seeking explanation of any gaps in employment.
- Health questionnaire and Occupational Health clearance.
- Interview processes including panel interviews.
- Values based recruitment – values tested through interview process.

Recruitment for Non Executive Directors is through NHS Improvement. However the Trust complete the same FPPR checklist with support and documentation provided by the NHSI Non Executive Recruitment Team.

The Trust Secretary has completed on behalf of the Interim Chair a full file review to confirm that evidence is held to document completion of all relevant checks in line with the policy and to ensure that all Directors have completed a self declaration of their continued compliance. All checks were in place.

DBS applications have been submitted for the Interim Chair and Interim Non Executive Director. Clearance of these is still awaited. The risk attached to this intervening period is considered low as both Directors have existing clearance through their role within Lincolnshire Community Health Service NHS Trust.

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.