

FIT AND PROPER PERSONS' POLICY AND PROCEDURE
For Compliance with the Fit and Proper Persons' Requirements (FPPR)
CORP 120

Who should read this SOP:	Planned Care CBU	Urgent Care CBU	Specialist Services CBU	Corporate
All trust Staff	✓	✓	✓	✓



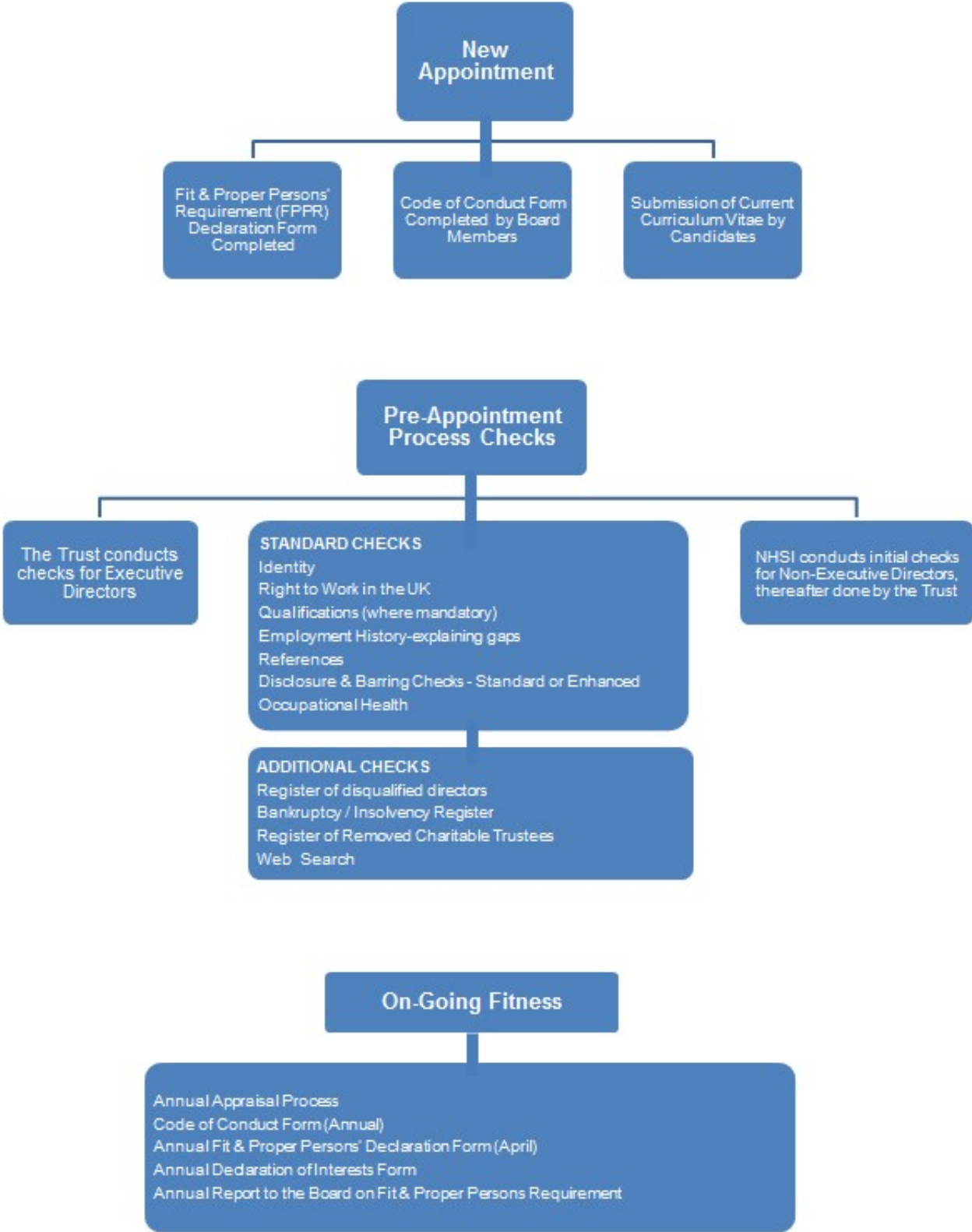
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Explanation of terms used in this policy

Terminology	Explanation
Fit and Proper Persons' Regulations	A piece of regulation to ensure that people who have director level responsibility for the quality and safety of care and for meeting the fundamental standards are fit and proper to carry out this role
Fit and Proper Person's test	This is a test which aims to prevent corrupt or untrustworthy individuals serving on the boards of organisations including public sector ones.
Disclosure and Barring Service (DBS)	The DBS helps employers to make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Record Bureau check (CRB). A search against an individual's name may be standard or enhanced depending on the individual's responsibility and contact with vulnerable groups.
Disqualified directors	The <i>Company Directors' Disqualification Act 1986 (section 7)</i> allows for a court to make a disqualification order against a director in relation to fraud or wrongful behaviour
Removed Charity Trustees	The Charity Commission for England and Wales' Register lists the names of individuals who have been removed from a Charity as a trustee and lists the reasons for such removal, usually due to undesirable behaviour
Code of Conduct	A prescribed set of rules relating to behaviour to be read and signed by directors and senior managers in organisations especially public sector ones
Nolan Principles in public life	These were defined by the Committee for Standards of Public Life chaired by Lord Nolan. These principles were published in its first report in 1995. The seven (7) principles are: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership
Bankruptcy / Insolvency Register	Registers of individuals who have been declared bankrupt or insolvent. These registers are available for public viewing.
Sequestration	The seizure of property for creditors or the state
Regulated activity	Activities which involve working with or coming in contact with vulnerable people like children, elderly or those requiring personal care.

Flowchart for Fit & Proper Persons' Policy



INTRODUCTION

Regulation 5 of the Fit and Proper Persons' Regulations has been introduced as a direct response to the failings at Winterbourne View Hospital and the Francis Inquiry Report into Mid Staffordshire NHS Foundation Trust, out of which it was recommended that a statutory fit and proper person's requirement be imposed on health service bodies. This policy outlines the application of this test for new board and senior managers' appointments and existing post holders.

In addition, where the Trust engages an interim at a senior level equivalent to the posts above, the process for *Fit and Proper Persons' Requirements (FPPR)* will apply if they are employed or registered as an external worker. Where an interim is sourced by an agency the recruitment agency will be made aware of the FPPR procedure and must confirm that they have undertaken the necessary checks. Executive search companies will also be required to confirm compliance with the FPPR and provide relevant evidence for inspection by the Trust.

It is ultimately the Chair's responsibility to discharge the requirement placed on the Trust to ensure that all Directors meet the *Fit and Proper Persons' Requirements* and do not meet any of the unfit criteria.

In NHS Trusts NHS Improvement (NHSI) is responsible for the recruitment of Non-Executive Directors (NEDs), therefore, NHSI conducts the initial FPPR checks upon the appointment of Non-Executive Directors and retain this information centrally. The Trust conducts checks for Executive Directors and will ensure that both NEDs and Executive Directors remain fit and proper.

PURPOSE

This policy sets out how the Trust will comply with its regulatory requirements to ensure that all Directors are fit and proper persons to carry out their roles as set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

SCOPE

This policy and procedure applies to all board appointments i.e. executive and non-executive directors and those senior managers which are formally recognised as part of the Trust's Executive Team and Senior Management Team. This includes permanent, interim and associate positions. This will also apply to direct reports who act up for a director for an extensive period.

LINKS TO OTHER KEY POLICIES AND PROCEDURES

This policy and procedure should be read in conjunction with the following Trust's policies:

- Standards of Business Conduct and Managing Conflicts of Interest
- Anti-Fraud, Bribery & Corruption
- Code of Conduct for Board Members

Meeting the REQUIREMENTS OF THE REGULATIONS

The introduction of the *Fit and Proper Person's Requirements (FPPR)* places the ultimate responsibility of the Chair to discharge the requirement placed on the Trust, to ensure that all relevant post holders meet the fitness test and do not meet any of the 'unfit' criteria. Further

detail is provided in the *Care Quality Commission (CQC) Guidance for NHS Bodies: Fit and Proper Persons: Directors, November, 2014*.

http://www.cqc.org.uk/sites/default/files/20141120_doc_fppf_final_nhs_provider_guidance_v1-0.pdf

The Trust will make every reasonable effort to assure itself about existing post holders and new applicants and to make specified information about board directors available to CQC on request. Individuals who fall into the categories above must satisfy the Chair they:

- Are of good character
- Hold the required qualifications and have the competence, skills and experience required for the relevant office for which they're employed
- Are able, by reason of their physical and mental health after any required reasonable adjustments if required, capable of properly performing their work.
- Can supply relevant information as required by *Schedule 3 of the Act*, i.e. documentation to support the FPPR.
- Not have been responsible for or privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on regulated activity (or providing a service elsewhere which if provided in England would be a regulated activity)

In accordance with *Schedule 4 part 1* of the act a person is deemed "unfit" if:

- The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
- The person is 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.
- The person is a person to whom a moratorium period under a debt relief order applies under Part v11A (debt relief orders) of the *Insolvency Act 1986*.
- The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
- The person is 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.
- The person is 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.
- In accordance with part 2 of the Act a person will fail the good character test if they;
- Has 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.
- Has been erased, removed, struck off a register of professionals maintained by a regulator of health care or social work professionals

IMPLEMENTATION OF FPPR FOR EXISTING STAFF AND ON-GOING FITNESS

Implementation

All post holders identified above are obliged to complete a FPPR declaration (**Appendix 1**).

This declaration will be retained on the individual's personal file by the Associate Director of Human Resources & Organisational Development for executive appointments and those senior managers which are formally recognised as part of the Trust Executive Group or the Chairman for non-executive appointments.

The process for assurance includes a check of personal files to ensure there is a complete employment history and where there are any gaps or omissions the post holder will be asked to provide a written explanation for this. Where the Trust has no record of mandatory qualifications or mandatory professional registration the individual will be asked to produce the original for inspection and verification.

The Chairman will be notified of any issues of non-compliance and is the responsible officer for making an informed decision regarding the course of action to be followed. Current post holders that cannot satisfy the declaration questions will not necessarily be barred from continuation of employment/office as it will depend on the relevance of the information provided in respect of the nature of the position, and the particular circumstances. The Trust will address this in the most appropriate, relevant and proportionate way on a case by case basis.

On-going fitness

The annual appraisal process will provide an opportunity to discuss continued "fitness", competence and how the post holder role displays the Trust values and behaviour standard including the leadership behaviour expected. The CEO will be responsible for appraising the Executive Directors, whilst the Chairman will be responsible for appraising the Non-Executive Directors. The CEO will be appraised by the Chairman. The Chairman will be appraised by NHSI. A new self-declaration will be completed at each appraisal.

Every April there will be a requirement for post holders to complete a further form of declaration confirming that they continue to be a fit and proper person. Confirmation of compliance will be published in the Trust's Annual Report.

Individuals will be required to make the Trust aware as soon as practicable of any incident or circumstances which may mean they are no longer to be regarded as a fit and proper person, and provide details of the issue, so that this can be considered by the Trust using the Fit and Proper Persons Requirement Disclosure Form Existing post holders (Appendix 1).

Concerns about an individual's continued FPPR compliance status.

Where matters are raised that cause concerns relating to an individual being fit and proper to carry out their role the Chairman will address this in the most appropriate, relevant and proportionate way on a case by case basis. Where it is necessary to investigate or take action the Trust's current processes will apply using the Trust's capability process (managing performance or sickness absence), Disciplinary procedure or afforded a similar process to this if

the potential discontinuation could be due to 'some other substantial reason'. There may be occasions where the Trust would contact NHS Improvement for advice or to discuss a case directly.

The Trust reserves the right to suspend a Director or restrict them from duties on full pay / emoluments (as applicable) to allow the Trust to investigate the matters of concern. Suspension or restriction from duties will be for no longer than necessary to protect the interests of patients of the Trust and/or where there is a risk that the Director's presence would impede the gathering of evidence in the investigation.

Should there be sufficient evidence to support the allegation(s), then the Trust may terminate the appointment of the Director with immediate effect, in line with the Trust's Disciplinary policy. Where an individual who is registered with a professional regulator (GMC, NMC etc.) no longer meets the fit and proper person's requirement the Trust will inform the regulator, and also take action to ensure the position is held by a person meeting the requirements. Directors may personally be accused and found guilty by a court of serious misconduct in respect of a range of already prescribed behaviours set out in legislation. Professional regulators may remove an individual from a register for breaches of codes of conduct.

PROCESS FOR NEW APPOINTMENTS

The Trust's comprehensive pre-employment checking processes for both executive and non-executive appointments and are determined by the NHS employment standards and include the following. Although the NHSI undertakes some of the following checks for non-executive directors, the Trust will undertake all the checks as required under Regulation 5 of the Fit and Proper Persons' Regulations for both executive and non-executive appointments:

1. Proof of identity
2. DBS check where relevant to the post (the Trust considers all Executive/Non-Executive Directors and those Senior Managers which are formally recognised as part of the Trust Executive Group.
3. Occupational Health Clearance as relevant to the role
4. Evidence of the right to work in the UK
5. A check of employment history and two references one of whom must be the most recent employer. Specifically, this includes validating a minimum of three years continuous employment including details of any gaps in service. The number of references may differ for each applicant, depending on how many episodes of employment they may have had in the last three years prior to making their application.
6. Qualifications/registration applicable to role

In addition the following registers will be checked:

- *Disqualified directors*
- *Bankruptcy and insolvency*
- *Removed Charity Trustees*
- *A web search of the individual*

The FPPR requirements introduce the requirement to complete a FPPR Declaration form for new employees, (**Appendix 3**). This forms and summary guidance (**Appendix 4**) will be included with the application pack and form part of the application process for the position.

While the Trust will have regard to information on when convictions, bankruptcies or similar matters are considered 'spent' there is no time limit for considering serious misconduct or responsibility for failure in a previous role.

The Chair of the appointments panel will be responsible for ensuring compliance supported by the relevant recruitment support. A detailed checklist will be completed and will be retained on the post holder's personal file for the purposes of audit.

NHSI is responsible for the appointment and removal of the Chairman and the Non-Executive Directors, drawing on the recommendations of the Board of Directors' Remuneration & Nominations Committee and the Chair respectively. In respect of Executive Directors, this responsibility will be discharged by the Board of Directors' Remuneration & Nominations Committee which is responsible for the appointment and removal of the Executive Directors.

Any executive or non-executive appointment will take into account the Trust's obligations under the Regulations. Where the Trust makes a decision on the suitability of an individual, the reasons will be recorded by the Trust's Director of HR or equivalent.

Where the Trust deems that the individual who is to be appointed is suitable, despite not meeting the characteristics outlined in *Schedule 4, Part 2 of the Regulations (Good Character)*, the reasons will be recorded by the Trust's Company Secretary in the minutes of the relevant meeting: i.e. the Board of Directors' Remuneration and Nominations Committee (in the case of Executive Directors) or NHS Improvement (in the case of the NEDs) (the 'Relevant Meeting') and the information about the decision will be made available. The appointment process will include an evaluation against the Trust's values and any relevant external guidance. External advice will be sought as necessary.

Where specific qualifications are deemed by the Trust as necessary for a role, the Trust will make this clear and will only appoint those individuals that meet the required specification; including any requirements to be registered with a professional Regulator.

The Trust will carry out employment checks (so far as reasonably practicable) on a candidate's qualifications and employment records. The recruitment process will necessarily include a qualitative assessment and values based assessment.

Where the Trust considers that an individual can be appointed to a role based on their qualification, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timescale any such discussions or recommendations will be recorded by the Company Secretary in the minutes of the Relevant Meeting. Any discussion, recommendation or decision must also be recorded in the minutes.

If the Director has a physical or mental health disability wherever possible, reasonable adjustments will be made to enable the individual to carry out the role that they have been appointed to. Any prospective candidate will need to complete the '*Fit and Proper Person Declaration*'. In the event the prospective candidate identifies any physical or mental health concerns (and subject to further information being obtained from the candidate, if necessary) their appointment will be subject to clearance by Occupational Health as part of the pre-appointment process. Any discussion or decision as to whether a candidate is appointable on

grounds of health will be recorded by the Trust's Company Secretary in the minutes of the Relevant Meeting.

BOARD ASSURANCE

The Board of Director's Remuneration and Nominations Committee will receive a report to confirm implementation of the FPPR for existing post holders. The Trust's statutory and assurance committees will also receive reports regarding new appointments and the annual FPPR checking process. The Chairman is the responsible officer for ensuring compliance for new starters. A summary of compliance will appear in the Trust's *Annual Report*.

REFERENCES

The following documents are helpful in providing a greater understanding of the policy

- Committee for Standards of Public Life (Nolan Principles)
- The Insolvency Act
- The Bankruptcy Act
- The NHS and Social Care Act 2006 (as amended 2012)
- The Data Protection Act 1998
- The Freedom of Information Act 2000

Roles and Responsibilities for this Policy

Title	Role	Responsibilities
Trust Chairman		Overall responsibility to ensure that there is compliance with the policy including appointment of the Chief Executive and other Executive Directors. NHSI is responsible for pre-employment checks for Non-Executive Directors (NEDs). Ongoing checks for fitness for NEDs and Executive Directors will be undertaken by the Trust
Chief Executive		To ensure that the policy is applied with regards to executive directors
Associate Director of Human Resources		To support the Chairman by ensuring all the Regulation 5 checks are undertaken prior to appointees commencing their role
Company Secretary		To support the Chairman by undertaking searches of relevant registers to ascertain a potential board member's fit and proper status and to ensure that all directors (NEDs and Executives) are annually declared fit and proper
Executive Directors		To support the Chairman by ensuring that direct reports engaging in regulated activities are fit and proper by undertaking the relevant checks

Training

Which aspect(s) of this policy will require staff training?	Which staff groups require this training?	Is this training covered in the Trust's Mandatory and Risk Management Training Needs Analysis document?	If no, how will the training be delivered?	Who will deliver the training?	How often will staff require training	Who will ensure NHS Improvement that staff have had this training
Checks and searches	Human Resources	No	On a face to face session	Company Secretary	Annually	Company Secretary

EQUALITY ANALYSIS ASSESSMENT

Southport & Ormskirk Hospital NHS Trust is committed to ensuring that the way we provide services and the way we recruit and treat staff reflects individual needs, promotes equality and does not discriminate unfairly against any particular individual or group. The Equality Impact Assessment for this policy has been completed and is readily available on the Intranet. If you require this policy in a different format e.g. larger print, Braille, different languages or audio tape, please contact the Corporate Governance Team.

DATA PROTECTION AND FREEDOM OF INFORMATION

This statement reflects legal requirements incorporated within the Data Protection Act and Freedom of Information Act that apply to staff who work within the public sector. All staff members have a responsibility to ensure that they do not disclose information about the Trust's activities in respect of service users in its care to unauthorised individuals. This responsibility applies whether you are currently employed or after your employment ends and in certain aspects of your personal life e.g. use of social networking sites etc. The Trust seeks to ensure a high level of transparency in all its business activities but reserves the right not to disclose information where relevant legislation applies.

MONITORING HOW this policy is working in practice

Monitoring this policy is working in practice? (measurable policy objectives)	Ensure process for new appointments are robustly undertaken	Undertake checks of existing staff	Ensure that relevant staff maintain on-going fitness and proper persons' requirements
Where described in the policy?	Section 7	Section 6	Section 6
How will they be monitored? (method & sample size)	Undertake random checks of personal files	Undertake checks of all personal files for relevant staff	Undertake checks of all personal files for relevant Fit & Proper Persons' Declaration Form to be completed and signed along with Directors' Code of Conduct
Who will monitor?	Internal Audit and Company Secretary	Company Secretary	Company Secretary
How Frequently?	Annually	Annually	Annually or more frequently if required
Group/Committee that will receive and review results	Audit Committee/Board	Audit Committee/Board	Audit Committee/Board
Group/Committee to ensure actions are completed	Audit Committee/ Board	Audit Committee/ Board	Audit Committee/ Board
Evidence this has happened	Report of findings in personal files of designated staff: * identity *DBS check *Occupational Health clearance *Evidence of right to work in UK *Employment history *Qualification & Registration checks *Disqualified directors check	As above	Completed and signed FPPT Form Completed Code of Conduct Form

	<ul style="list-style-type: none">*Bankruptcy and insolvency check*Removed Charity Trustee Check*Web search of individual		
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APPENDICES

Appendices for the Fit and Proper Persons Policy and Procedure	
Appendix 1	Fit and Proper Persons Requirement Personal Disclosure Form for an Existing Post Holder (Implementation, Annual Review or Ad-hoc Declaration).
Appendix 2	Recruitment and Selection Processes to meet Fit and Proper Persons Regulations (FPPR) for a New Appointment.
Appendix 3	Fit and Proper Persons Requirement Personal Disclosure Form for Applicants.
Appendix 4	Fit and Proper Persons Requirement, Important information for Applicants.
Appendix 5	Fit and Proper Persons Requirement, New Applicants' Employment Checklist.
Appendix 6	Supplementary information to support reference request, Fit and Proper Persons Requirement.

Appendix 1 Fit and Proper Persons Requirement Personal Disclosure Form for an Existing Post Holder



**Fit and Proper Persons Requirement Personal Disclosure Form
For an Existing Post Holder**

(Implementation, Annual Review or Ad-hoc Declaration)

STRICTLY CONFIDENTIAL

First Names	
Surname	
If you are known under any other name please state	
Position Held	

Please respond to the following questions. You can type your responses and the box will expand if necessary. You can add an 'X' in the relevant answer box or delete the one that does not apply. If you choose to complete by hand please continue on a separate sheet if there is insufficient space detailing the number of the relevant question/s. A hard copy of the signed form will be required.

1. Are you currently or have you been the subject of action by the police? Action includes, but is not restricted to: investigation, summons, arrest, bound over, caution, reprimand, warning, driving offences, charge conviction or imprisonment which are not deemed 'protected' under the amendment to the Exceptions order 1975*, issued by a Court or Court-Martial in the United Kingdom or in any other country?

NO

YES

If **YES**, please include here details of the order binding you over and/or the nature of the offence, the penalty, sentence or order of the Court, and the date and place of the Court hearing:

You are not required to tell us about parking offences or spent driving offences

Please note that you do not need to tell us about convictions, cautions, warnings or reprimands which are deemed 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. You can read guidance and the criteria for the filtering of these convictions and cautions from the Disclosure and Barring Service website at: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

2. Have you been charged with any offence in the United Kingdom or in any other country that has not yet been disposed of?

NO

YES

If **YES**, please include here details of the nature of the offence with which you are charged, date on which you were charged, and details of any on-going proceedings by a prosecuting body:

You are reminded that you have a continued responsibility to inform us immediately if you are charged with any new offence, criminal conviction or fitness to practise proceedings in the United Kingdom or in any other country.

You do not need to tell us if you are charged with a parking offence.

3. Are you aware of any current NHS Counter Fraud and Security Management Service (CFSMS) investigation following allegations made against you?

NO

YES

If **YES**, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by the NHS CFSMS.

4. Have you been investigated by the Police, NHS CFSMS or any other Investigatory Body resulting in a current or past conviction or dismissal from your employment or volunteering position?

NO

YES

If **YES**, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by the Investigatory Body:

Investigatory bodies include: Local Authorities, Customs and Excise, Immigration, Passport Agency, Inland Revenue, Department of Trade and Industry, Department of Work and Pensions, Security Agencies, Financial Service Authority. This list is not exhaustive and you must declare any investigation conducted by an Investigatory Body.

5. Have you ever been dismissed by reason of misconduct from any employment, volunteering, office or other position previously held by you?

NO

YES

If **YES**, please include details of the employment, office or position held, the date that you were dismissed and the nature of allegations of misconduct made against you:

6. Have you ever been disqualified from the practice of a profession, or required to practice subject to specified limitations following fitness to practice proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?

NO

YES

If **YES**, please include details of the nature of the disqualification, limitation or restriction, the date, and the name and address of the licensing or regulatory body concerned:

7. Are you currently or have you ever been the subject of any investigation or fitness to practice proceedings by any licensing or regulatory body in the United Kingdom or in any other country?

NO

YES

If **YES**, please include details of the reason given for the investigation and/or proceedings undertaken, the date, details of any limitation or restriction to which you are currently subject, and the name and address of the licensing or regulatory body concerned:

8. Are you subject to any other prohibition, limitation, or restriction?

NO

YES

If **YES**, please include details:

9. Have you been responsible for, been privy to, or 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?

NO

YES

If **YES**, please include details:

10. Do you consider that there is any reason why you are not able to carry out your role by reason of health (physical or mental health)? (See note below).

NO

YES

Note: It is important to stress that the FPPR requirements regarding ability to properly perform tasks intrinsic to the office or post does not mean that people who have a long-term condition, a disability or mental illness cannot be in such a position. It would be required of the Trust to, wherever possible, make reasonable adjustments to enable an individual to carry out the role. If you wish to discuss any aspect of your response, in confidence with an Occupational Health Physician, we can make arrangements for you to do so.

If **YES**, please include details:

11. Are there any other matters that may be relevant to your position which might cause your reliability or suitability to be called into question?

NO

YES

If **YES**, please include details:

Declaration

Important: The Data Protection Act 1998 requires us to advise you that we will be processing your personal data. Processing includes: holding, obtaining, recording, using, sharing and deleting information. The Data Protection Act 1998 defines 'sensitive personal data' as racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health, sexual life, criminal offences, criminal convictions, criminal proceedings, disposal or sentence.

The information that you provide in this Declaration Form will be processed in accordance with the Data Protection Act 1998. It will be used for the purpose of determining your suitability for the senior position you hold. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud.

This declaration will be kept securely and in confidence. Access to this information will be restricted to designated persons within the Trust who are authorised to view it as a necessary part of their work.

In signing the declaration on this form, you are explicitly consenting for the data you provide to be processed in the manner described above.

I consent to the information provided in this declaration form being used by the Trust for the purpose of checking that I satisfy the requirements of the FPPR for the position I hold.

I confirm that the information I have provided in this declaration form is correct and complete. In addition to completing an annual FPPR questionnaire I also understand that

it is a requirement that I make the Trust aware as soon as practicable of any incident or circumstances which may impact on my position and provide details of the issue to the Chair or Associate Director of Human Resources so that this can be considered by the Trust.

I understand and accept that if I knowingly withhold information, or provide false or misleading information, this may result in an investigation in accordance with relevant Trust processes and could lead to the termination of the appointment.

Signature	
Full Name	
Date	

PLEASE COMPLETE, SIGN AND FORWARD A HARD COPY OF THE DECLARATION FORM IN AN ENVELOPE MARKED 'CONFIDENTIAL' FOR THE ATTENTION OF THE CHAIRMAN OR COMPANY SECRETARY.

Appendix 2 Recruitment and Selection Processes to meet Fit and Proper Persons Regulations (FPPR) for a New Appointment



Recruitment and Selection Processes to meet Fit and Proper Persons Regulations (FPPR) for a New Appointment

The aim of the FPPR is to ensure that all board level appointments of NHS institutions carrying on a regulated activity are responsible for the overall quality and safety of that care and for making sure that care meets the existing regulations and effective requirement of the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014. FPPR Regulation 5 is about ensuring that those individuals in senior appointments are fit and proper to carry out this important role.

FPPR Declaration requirements

The Trust will ensure that full compliance with the FPPR. Candidates will be required to complete a FPPR Declaration form along with a supporting up to date CV for the position. A copy of the guidance notes for candidates and the Declaration form is attached at Appendix (to be amended as relevant for each process).

If an agency or executive search organisation is supporting the Trust with the appointment, the agency/executive search company will be required to ensure that the Declaration form is completed by all candidates.

If the shortlisting panel considers a candidate that has declared a matter that appears to be in breach of the FPPR is a strong candidate worthy of further consideration it will be responsibility of the Chair of the shortlisting panel to discuss with the Chairman and the Director of Human Resources and Organisational Development before making a final shortlist decision. The Chairman and Director of Human Resources & Organisational Development will consider the matter and there may be occasions where it is considered necessary to consult with Monitor before deciding to exclude or include a candidate to the next stage of the process.

FPPR pre-appointment processes

The following checks are undertaken for all appointments to the Trust:

- Identity check.
- Right to work in the UK.
- Qualification checks (where essential/mandatory).
- Comprehensive employment history with any gaps in employment explained in writing.
- Reference checks to include confirmation of period of employment with the referee organisation, reasons for leaving their post.

- DBS checks (standard or enhanced appropriate to role).
- Occupational Health Declaration form.

Additionally for posts that require the FPPR test the following must be in place:

- Fit & Proper Person's Declaration form assessed as meeting the requirements.
- Checks on the 'barred' list, by using the register of disqualified directors, the bankruptcy/ insolvency register and the register of removed charities trustees' sites.
- The Trust will also carry out a web search of the individual.

**Appendix 3 Fit and Proper Persons Requirement Personal Disclosure Form
For Applicants**



**Fit and Proper Persons Requirement Personal Disclosure Form
For Applicants**

(This form will form part of the application process for all posts that are considered to meet the FPPR)

STRICTLY CONFIDENTIAL

First Names	
Surname	
If you are known under any other name please state	

Position Applied for	
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Please respond to the following questions. You can type your responses and the box will expand if necessary. You can add an 'X' in the relevant answer box or delete the one that does not apply. If you choose to complete by hand please continue on a separate sheet if there is insufficient space detailing the number of the relevant question/s. A hard copy of the signed form will be required.

1. Are you currently or have you been the subject of action by the police?? Action includes, but is not restricted to: investigation, summons, arrest, bound over, caution, reprimand, warning, driving offences, charge conviction or imprisonment which are not deemed 'protected' under the amendment to the Exceptions order 1975*, issued by a Court or Court-Martial in the United Kingdom or in any other country?

- NO
YES

If **YES**, please include here details of the order binding you over and/or the nature of the offence, the penalty, sentence of order of the Court, and the date and place of the Court hearing:

You are not required to tell us about parking offences or spent driving offences.

*Please note that you do not need to tell us about convictions, cautions, warnings or reprimands which are deemed 'protected' under the Rehabilitation of Offenders Act 1974 (Exceptions) Order

1975 as amended by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. You can read guidance and the criteria for the filtering of these convictions and cautions from the Disclosure and Barring Service website at: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

2. Have you been charged with any offence in the United Kingdom or in any other country that has not yet been disposed of?

NO

YES

If **YES**, please include here details of the nature of the offence with which you are charged, date on which you were charged, and details of any on-going proceedings by a prosecuting body: You are reminded that you have a continued responsibility to inform us immediately if you are charged with any new offence, criminal conviction or fitness to practise proceedings in the United Kingdom or in any other country.

You do not need to tell us if you are charged with a parking offence.

3. Are you aware of any current NHS Counter Fraud and Security Management Service (CFSMS) investigation following allegations made against you?

NO

YES

If **YES**, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by the NHS CFSMS.

4. Have you been investigated by the Police, NHS CFSMS or any other Investigatory Body resulting in a current or past conviction or dismissal from your employment or volunteering position?

NO

YES

If **YES**, please include details of the nature of the allegations made against you, and if known to you, any action to be taken against you by the Investigatory Body:

Investigatory bodies include: Local Authorities, Customs and Excise, Immigration, Passport Agency, Inland Revenue, Department of Trade and Industry, Department of Work and Pensions, Security Agencies, Financial Service Authority. This list is not exhaustive and you must declare any investigation conducted by an Investigatory Body.

5. Have you ever been dismissed by reason of misconduct from any employment, volunteering, office or other position previously held by you?

NO

YES

If **YES**, please include details of the employment, office or position held, the date that you were dismissed and the nature of allegations of misconduct made against you:

6. Have you ever been disqualified from the practice of a profession, or required to practice subject to specified limitations following fitness to practice proceedings, by a regulatory or licensing body in the United Kingdom or in any other country?

NO

YES

If **YES**, please include details of the nature of the disqualification, limitation or restriction, the date, and the name and address of the licensing or regulatory body concerned:

7. Are you currently or have you ever been the subject of any investigation or fitness to practice proceedings by any licensing or regulatory body in the United Kingdom or in any other country?

NO

YES

If **YES**, please include details of the reason given for the investigation and/or proceedings undertaken, the date, details of any limitation or restriction to which you are currently subject, and the name and address of the licensing or regulatory body concerned:

8. Are you subject to any other prohibition, limitation, or restriction?

NO

YES

If **YES**, please include details:

9. Have you been responsible for, been privy to, or 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?

NO

YES

If **YES**, please include details:

10. Are there any other matters that may be relevant to your position which might cause your reliability or suitability to be called into question?

NO

YES

If **YES**, please include details:

Declaration

Important: The Data Protection Act 1998 requires us to advise you that we will be processing your personal data. Processing includes: holding, obtaining, recording, using, sharing and deleting information. The Data Protection Act 1998 defines 'sensitive personal data' as racial or ethnic origin, political opinions, religious or other beliefs, trade union membership, physical or mental health, sexual life, criminal offences, criminal convictions, criminal proceedings, disposal or sentence.

The information that you provide in this Declaration Form will be processed in accordance with the Data Protection Act 1998. It will be used for the purpose of determining your suitability for the senior position you hold. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud.

This declaration will be kept securely and in confidence. Access to this information will be restricted to designated persons within the Trust who are authorised to view it as a necessary part of their work.

In signing the declaration on this form, you are explicitly consenting for the data you provide to be processed in the manner described above.

I consent to the information provided in this declaration form being used by the Trust for the purpose of checking that I satisfy the requirements of the FPPR for the position applied for.

I understand and accept that if I knowingly withhold information, or provide false or misleading information, this may result in an investigation in accordance with relevant Trust processes and could lead to the termination of the appointment.

Signature	
Full Name	
Date	

Appendix 4 Fit and Proper Persons Requirement Important information for Applicants



Fit and Proper Persons Requirement Important information for Applicants

1. Background to Regulation 5: Fit and Proper Persons, Directors

The aim of this regulation is to ensure that all board level appointments of NHS foundation trusts and special health authorities carrying on a regulated activity are responsible for the overall quality and safety of that care, and for making sure that care meets the existing regulations and effective requirement of the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014. Regulation 5 is about ensuring that those individuals in senior appointments are fit and proper to carry out this important role

The regulation was introduced as a direct response to the failings at Winterbourne View Hospital and the Francis Inquiry report into Mid Staffordshire NHS Foundation Trust, which recommended that a statutory fit and proper person's requirement be imposed on health service bodies.

2. Applying the FPPR

Where the Trust engages an interim at a senior level equivalent to the posts above the same process will apply where they are employed or registered as associates with the Trust's Bank. Where an interim is sourced by an agency the recruiting agency will be made aware of the FPPR process and must confirm that they have undertaken the necessary checks.

3. Applicants Requirement to Complete a FPPR Declaration Form

The position for which you are applying is considered as a post that requires the FPPR test to be applied. At the application stage applicants are required to complete the Fit and Proper Persons Requirement (FPPR) Procedure (new applicants) self-declaration form and attach this to their application for the position.

This is required to ensure the Trust is able to properly discharge its requirement that all those in post holders detailed in paragraph 2 above meet the fitness test and that a post holder does not meet the 'unfit' criteria as outlined below:

The regulations require that post holders must:

- Be of good character.
- Have the qualifications, competence, skills, and experience necessary for the relevant office for the position of work for which they are employed be able by reason of their health, after reasonable adjustments are made, of properly.
- Be able to perform tasks which are intrinsic to the office or position to which they are appointed or to the work for which they are employed.
- Not be prohibited from holding office (e.g. directors' disqualification order).
- Not have 'been responsible for or privy to, contributed to or facilitated any serious.

- Misconduct or mismanagement (whether unlawful or not) in the course of carrying on regulated activity (or providing a service elsewhere which if provided in England would be a regulated activity).

A person is deemed unfit to hold senior office if they:

- Are an un-discharged bankrupt.
- Are subject to bankruptcy restrictions.
- Are prohibited from holding an office or position under relevant legislation (for example the Companies Act or Charities Act).

In assessing character the matters to be considered include whether the person:

- Has been convicted of any offence.
- Has been erased, removed, struck off a register of professionals maintained by a regulator of health care or social work professionals.
- Is on any 'barred' list, by using the register of disqualified directors, the bankruptcy /insolvency register and the register of removed charities trustees.

More detailed information about the fitness requirements to help you respond to the questions can be found on CQC Guidance for NHS Bodies (Nov. 14).

http://www.cqc.org.uk/sites/default/files/20141120_doc_fppf_final_nhs_provider_guidance_v1-0.pdf

4. Trust pre-appointment processes

The following checks are undertaken for all appointments to the Trust:

- Identity check.
- Right to work in the UK.
- Qualification checks (where essential/mandatory).
- Comprehensive employment history with any gaps in employment explained in writing.
- Reference checks to include confirmation of period of employment with the referee organisation, reasons for leaving their post.
- DBS checks (standard or enhanced appropriate to role).

Additionally for posts that require the FPPR test the following must be in place:

- Occupational health clearance.
- Fit & Proper Person's Declaration form assessed as meeting the requirements.
- Checks against the register of disqualified directors, the bankruptcy /insolvency register and the register of removed charities trustees.
- A web search of the individual.

An appointment cannot commence until full compliance with the checks detailed above, and is conditional upon the same.

Appendix 5 Fit and Proper Persons Requirement New Applicants' Employment Checklist



Fit and Proper Persons Requirement New Applicants' Employment Checklist

(This checklist must be completed for all applicants for the positions included in the Trust's FPPR Policy and Procedure)

If an executive search company is engaged, it is standard practice to accept CVs at the initial stages. Where the Trust engages an interim at a senior level (equivalent to ED or Director status) the Trust, or if relevant, the agency recruiting the interim must be made aware of the requirement and standards that have to be met and will need to provide documentary evidence of compliance.

Name Position Date.....

Identification Checks	Yes	No	Comments
Verification of ID as per the right to work checklist NHS employment standards Confirmation of any restrictions on right to work in UK – if applicable Verification of Identification and Right to Work Checklist Confirm documents seen and that copies have been taken and verified			
Employment History			
Confirmation of a full employment history			
Any gaps in employment or study have been clearly documented and written explanations provided			

Detail any further information below			
Qualification Checks			
Original certificates verified for mandatory qualifications Confirm copies taken and verified			
Criminal Record Checks			
Standard DBS Disclosure received prior to employee commencing work Confirm e-DBS undertaken and date received			
Enhanced DBS in place for those staff working in a 'regulated activity' with children or vulnerable adults. This will also include the children and adults barred list Confirm e-DBS undertaken and date received			
Professional Registration			
Evidence of Professional registration checked at initial appointment (<i>e.g. nursing midwifery, medical</i>) State the professional body and details of registration			
References			
Reference from current employer and a further relevant reference.			
Occupational Health Checks			
Completed Health Declaration Form received			
OH referral completed if appropriate			
Immunisation/Infection Screening Questionnaire in			

place for all those in clinical roles			
Fit and Proper Persons Checks			
<p>Declaration form received and confirmation of no cause for concern.</p> <p>If there is any cause for concern confirm outcome after discussion with the Chairman and/or the Director of Human Resources & Organisational Development.</p> <p>Confirm check against the 'barred' list by using the register of disqualified directors, the bankruptcy / insolvency register and the register of removed charities trustees:</p> <ul style="list-style-type: none"> o Disqualified directors http://wck2.companieshouse.gov.uk/dirsec o Bankruptcy and insolvency https://www.insolvencydirect.bis.gov.uk/eiir/ o Removed Charity Trustees http://apps.charitycommission.gov.uk <p>Confirm any relevant web search results</p>			
	Date	Tick to Confirm	Name and Signature
<p>Recruitment Adviser confirmation all the above is in place</p> <p>Final Approval by Chair of Panel</p> <p>All pre-employment checks completed and proceed to final offer of employment</p> <p>Chairman's Report to the appropriate Remuneration & Nominations Committee</p>			

Chairman's Signature	
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Full Name	
Date	

Appendix 6 Supplementary Information to Support Reference Requests for the Fit and Proper Persons Requirement



Supplementary Information to Support Reference Requests for the Fit and Proper Persons Requirement

The *Health and Social Care Act 2008 (Regulated Activities)*, Regulations 14, sets out fundamental standards of care. Regulation 5 introduces specific criteria against which the applicant for this post must be assessed.

- Is of good character.
- Hold the required qualifications and have the competence, skills and experience required for the relevant office for which they're employed.
- Is able, by reason of their physical and mental health, after any required reasonable adjustments if required, capable of properly performing their work.
- Can supply relevant information as required by schedule 3 of the Act.
- Not have been responsible for or privy to, contributed to, or facilitated any serious
- Misconduct or mismanagement (whether unlawful or not) in the course of carrying on regulated activity (or providing a service elsewhere which if provided in England would be a regulated activity).

In accordance with schedule 4 part 1 of the act a person is deemed "unfit" if:

- The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
- The person is 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.
- The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.
- The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
- The person is 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.
- The person is 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.

In accordance with part 2 of the Act a person will fail the good character test 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.

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

Considering the above requirements do you have any concerns relating to individuals suitability for Employment.

YES/NO

Based on your knowledge of the individual do you believe that they are compliant with the Fit and Proper Person Requirements as outlined above.

YES/NO

If you have answered yes to either question please specify detail.

Signature	
Full Name	
Date	

Policy Implementation Plan

Policy Title	Fit and Proper Persons' Regulation Policy
Is this New or revision of an existing policy	New
Name and role of Policy Lead	Audley Charles, Interim Company Secretary
Give a Brief Overview of the Policy	
<p>The policy sets out the requirements needed to ensure that relevant staff undergo the relevant checks as set out in <i>Regulation 5</i> of the Fit and Proper Persons' Regulation. It sets out the process for checks for new appointments, checks for existing staff and activities to ensure continued fitness. The policy also sets out the training and monitoring process.</p>	
What are the main changes in practice that should be seen from the policy?	
More robust checks of <i>Regulation 5</i> requirements and reporting of same during the year	
Who is affected directly or indirectly by this policy?	
The Board of Directors, the Trust's senior management Team and all staff involved in regulated activities.	
Implications	
Will staff require specific training to implement this policy and if yes, which staff groups will need training?	
Explain the issues?	Explain how this has been resolved
Human Resources staff and Board of Directors	Annual training by the Company Secretary
Are other resources required to enable the implementation of the policy e.g. increased staffing, new documentation?	
Explain the issues?	Explain how this has been resolved
NO	N/A
Have the financial impacts of any changes been established?	
Explain the issues?	Explain how this has been resolved
N/A	N/A
Any other considerations	
Explain the issues?	Explain how this has been resolved
NO	N/A

Approval of Implementation Plan
Enter Name and Title of Policy Lead whose portfolio this policy will come under:

Signature: Audley Charles

Date Approved 10 January 2018.

Title of Policy	Fit and Proper Persons' Regulation
Unique Identifier for this policy is	CORP 118
State if policy is New or Revised	New
Previous Policy Title where applicable	N/A
Policy Category Clinical, HR, H&S, Infection Control, Finance etc.	Corporate
Executive Director	Company Secretary
Policy Lead/Author	Company Secretary
Committee/Group responsible for the approval of this policy	Board of Directors
Month/year consultation process completed	December 2017
Month/year policy approved	January 2018
Month/year policy ratified and issued	January 2018
Next review date	January 2020
Implementation Plan completed	Yes
Equality Impact Assessment completed	Yes
Previous version(s) archived	Yes 04.05.18
Disclosure status	Full
Key words for this policy	Fit and Proper Persons, Disclosure Baring Service, Regulated activities

For more information on the consultation process, implementation plan, equality impact assessment, or archiving arrangements, please contact Corporate Integrated Governance.

Review and Amendment History

Version	Date	Details of Change
1.0.0	December 2017	Policy made more robust by adding more details of Regulation 5 requirements, added sections of requirements for new appointments, on-going fitness and annual checks and declarations. The policy has been strengthened by adding a number of templates in the appendices for good practice. Training of key staff and monitoring of the policy has also been added. A flow diagram illustrating the process has also been added
1.1.0	May 2018	Minor amendment as requested by the CQC
1.2.0	May 2019	Minor amendment in Implementation section Removed regulation 3 and add regulation 5