



**Worcestershire
Health and Care**
NHS Trust

Fit and Proper Persons Policy

**Working together
for outstanding care**

Guideline / Policy on a Page – Summary of Key Points

- The Trust complies with Health & Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the Regulated Activity Regulations”), specifically Regulation 5 relating to being a Fit and Proper Person (FPP)
- This policy sets out the process which is undertaken both on recruitment and annually, in order that the Trust can demonstrate compliance with the Fit and Proper Person Regulation.
- The Trust will maintain evidence of compliance with the Fit and Proper Person Regulation on personal files.

Fit and Proper Persons Policy

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Unique Identifier	To be set by Web and Systems Development Team
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Document Author	Gill Harrad, Company Secretary
Target Audience	All Board Members
Responsible Group	Trust Board
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Accessibility

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- Face to face interpreting;
- Instant telephone interpreting;
- Document translation; and
- British Sign Language interpreting.

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Training and Development

Worcestershire Health and Care NHS Trust recognises the importance of ensuring that its workforce has every opportunity to access relevant training. The Trust is committed to the provision of training and development opportunities that are in support of service needs and meet responsibilities for the provision of mandatory and statutory training.

All staff employed by the Trust are required to attend the mandatory and statutory training that is relevant to their role and to ensure they meet their own continuous professional development.

Co-production of Health and Care – Statement of Intent

The Trust expects that all healthcare professionals will provide clinical care in line with best practice. In offering and delivering that care, healthcare professionals are expected to respect the individual needs, views and wishes of the patients they care for, and recognise and work with the essential knowledge that patients bring. It is expected that they will work in partnership with patients, agreeing a plan of care that utilises the abilities and resources of patients and that builds upon these strengths. It is important that patients are offered information on the treatment options being proposed in a way that suits their individual needs, and that the health care professional acts as a facilitator to empower patients to make decisions and choices that are right for themselves. It is also important that the healthcare professional recognises and utilises the resources available through colleagues and other organisations that can support patient health.

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1. Introduction

This policy outlines the Trust's commitment to ensuring that all persons appointed as directors satisfy the requirements (set out in the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014 ("the Regulated Activity Regulations"), specifically Regulation 20 relating to being a Fit and Proper Person (FPP). The Trust has a responsibility to ensure these requirements are met and the Care Quality Commission's role is to monitor and assess how well this responsibility is discharged.

There is an expectation on senior leaders to set the tone and culture of the organisation, which leads to staff adopting a caring and compassionate attitude and adds weight to the importance of the objectives of the FPPR.

2. Scope

The Trust confirms that the following roles fall within the scope of the relevant provisions of the Regulated Activity Regulations:

- Trust Chairman
- All Non-Executive and Associate Non-Executive Directors
- Chief Executive
- Deputy Chief Executive/ Director of Finance
- Director of Strategy and Partnerships
- Chief Operating Officer
- Director of Nursing and Quality
- Medical Director
- Company Secretary

Any individual falls under the requirements of the Regulated Activity Regulations regardless of whether they undertake the above roles via a temporary, secondment or interim basis. The individual does not have to be an employee of the Trust to fall within the scope of this policy. Any Board member who is undertaking any Board role will be subject to this policy even if they are not identified in the above list.

3. General Principles

Under the Requirements, the Trust must not appoint to a post under the scope of the Regulated Activity Regulations without first satisfying itself that the individual:

- Is of good character
- Has the necessary qualifications, competence, skills and experience
- Has the appropriate level of physical and mental fitness
- Has not been party to any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity

- Has not been investigated by the Police, NHS Counter Fraud Authority or any other investigatory body resulting in a current or past conviction, suspension or dismissal from their employment
- Is not deemed unfit under the Regulated Activity Regulations' provisions
- Can provide the personal information as set out in the Regulations which must be available to be supplied to the Care Quality Commission ("CQC") when required.

These requirements must be held at the point of commencing the role and on an ongoing basis.

The Care Quality Commission's definition of "good character" is wider than not having any criminal convictions but rather a judgement to be made as to whether a person's character is such that they can be relied upon to do the right thing under all circumstances. The Trust will use its discretion in reaching a decision regarding character. The Trust does not have any discretion to employ an individual if they cannot demonstrate that they are a fit and proper person under the Regulated Activities Regulations and such individual is automatically prevented from holding any of the positions listed under paragraph 2.

In the event that an individual ceases to be a fit and proper person, the individual may be summarily dismissed and the Trust will notify the individual's (if they are a member of a regulated profession) and the Trust's regulator. Further information in relation to what constitutes a fit and proper person under the Regulated Activity Regulations can be found in Appendix A.

The self-declaration form which all directors and director-equivalents will be required to fill out is at Appendix B.

4. Roles and Responsibilities

Trust Chairman

- To take overall responsibility and accountability for ensuring all those required to confirm that they meet the requirements of the Regulated Activities Regulations do so at appointment and as an ongoing requirement

Those within the scope of FPPR

- To hold and maintain suitability for the role they are undertaking.
- To respond to any requests of evidence of their ongoing suitability.
- To disclose any issues which may call into question their suitability for the role they are undertaking

HR Services

- To undertake all recruitment checks (as outlined in Appendix B) for employees and ensure the results are recorded and evidenced within an individual's file.
- To ensure that all employees subject to this policy maintain the right to work, appropriate professional registration and clearance from the Disclosure and Barring Service.

Company Secretary

- To discuss and agree with NHS Improvement which appointment checks (as outlined in Appendix B) for Non-Executive Directors are undertaken by the Trust and which are undertaken by NHS Improvement and ensure the results are recorded and evidenced within an individual's file.
- To undertake an annual check of bankruptcy and Director Disqualification register on all individuals within the scope of the policy
- To receive an annual declaration of fitness from all individuals within the scope of the policy

5. Compliance at the point of recruitment

The Trust has in place robust processes with regard to the appointment of directors, these processes include the following:

- Confirming the status of specific qualifications as outlined within the relevant job descriptions / person specifications
- Identity checks
- Qualification and registration checks
- Right to work checks
- Disclosure and Barring Service (DBS) checks
- References (covering at least three years of employment, one of which must be from the current/most recent employer)
- Search of insolvency and bankruptcy register
- Review of full employment history seeking explanation of any gaps in employment
- Health questionnaire and Occupational Health clearance
- Values based recruitment – values tested through interview process
- A self-declaration from the individual (see Appendix B)
- An explicit clause within the contract of employment/Service Level Agreement to ensure the individuals accepts the requirements of the Regulated Activity Regulations at the point they commence with the Trust

All of the above will be recorded and held on the individuals personal file. For Non-Executive Directors and Associate Non-Executive Directors some of the evidence may be held by NHS Improvement.

6. Assessment of continued compliance:

The Trust is responsible for ensuring the continued compliance of those persons to whom the Regulated Activities Regulations apply. It is intended this requirement will be fulfilled through a number of processes including:

- The completion of an annual self-declaration by all directors
- Introduction of annual checks for credit, bankruptcy and professional registration (if appropriate).
- Requirement for regular health checks, including mental health if there is any reason to believe that health status has changed
- Formal appraisal processes.
- Maintenance of the register of declared interests

7. Policy Review

- This policy will be reviewed on a three yearly basis or more frequently if changes are made to the Fit and Proper person requirements.

8. Fraud, Bribery and Corruption

Unfortunately fraud, bribery and corruption, as well as theft, does occur throughout the NHS. All employees have a duty to ensure that public funds are protected. If an employee suspects that there has been a potential act of fraud, bribery or corruption, or has seen any suspicious acts or events, they must report the matter to the Trust's Anti- Fraud Team (contact details can be found on the Trust's public website and/or intranet) or report the matter to the NHS Fraud and Corruption Reporting Line on 0800 028 4060. Alternatively reports can be made through the online reporting tool at <https://reportfraud.cfa.nhs.uk/>. Advice is also available from the Director of Finance and the Trust's Anti-Fraud Team.

APPENDIX A

FIT AND PROPER PERSON

1. Fitness to carry out the role of Director (or Director-equivalent post) in the Worcestershire Health and Care NHS Trust (the Trust) is determined by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“**the Regulated Activities Regulations**”).
2. By signing the declaration in Appendix B, you are confirming that you do not fall within the definition of an “unfit person” or any other criteria set out below, and that you are not aware of any pending proceedings or matters which may call such a declaration into question.
3. It is a condition of employment that those holding Director (or equivalent) posts in the Trust provide confirmation in writing, on appointment and thereafter on demand, of their fitness to hold such posts. Your post has been designated as being such a post.
4. Chairs and Non-Executive Directors are also required to meet the fit and proper persons test for Directors.
5. The Trust shall not appoint, or permit to continue as a Director, any person who is an unfit person.
6. The Trust will ensure that its contracts of employment with its Directors contain a provision permitting summary termination in the event of a Director being, or becoming, an unfit person. The Trust will enforce that provision promptly upon discovering any Director to be an unfit person.

Regulated Activities Regulations

7. “Regulated activities” covers the provision of:
 - Personal Care
 - Accommodation for persons who require nursing or personal care
 - Accommodation for persons who require treatment for substance misuse
 - Treatment of disease, disorder or injury
 - Assessment or medical treatment for persons detained under the Mental Health 1983 Act
 - Surgical procedures
 - Diagnostic and screening procedures
 - Management of supply of blood and blood derived products etc
 - Transport services, triage and medical advice provided remotely

- Maternity and midwifery services
- Termination of pregnancies
- Services in slimming clinics
- Nursing care
- Family planning services

8. Regulation 5 of the Regulated Activities Regulations states that the Trust must not appoint or have in place an individual as a Director, or performing the functions of or equivalent or similar to the functions of, such a Director, if they do not satisfy all the requirements set out in paragraph 3 of that Regulation. The CQC document 'Regulation 5: Fit and Proper Persons: directors – Information for NHS Bodies, March 2015' as amended from time to time provides further guidance on the requirement.
9. The requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are that:
- (a) the individual is of good character;
 - (b) the individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed;
 - (c) the 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;
 - (d) the individual has not been responsible for, 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; and
 - (e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

“Serious misconduct” includes assault, fraud and theft.

“Mismanagement” includes mismanaging funds and/or not adhering to recognised practice, guidance or processes regarding care quality.

“Privy to” means evidence that could lead the Trust to conclude that the individual was aware of some serious misconduct or mismanagement but did not take appropriate action to address it.

10. The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities Regulations are:

- (a) 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;
 - (b) 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;
 - (c) 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;
 - (d) the person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
 - (e) 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;
 - (f) the person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.
11. In assessing good character, the matters to be considered must include those listed in Part 2 of Schedule 4 to the Regulated Activities Regulations which are:
- (a) Whether the person 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.
 - (b) Whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.

**APPENDIX B
PRE-EMPLOYMENT & ANNUAL DECLARATION - FIT AND PROPER PERSON**



**Worcestershire
Health and Care**
NHS Trust

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www.hacw.nhs.uk

Date

Private and Confidential

Name
Job Title

Dear

Fundamental Standards of Care Regulations

I am writing to you in respect of the obligation on the Trust to only employ fit and proper persons who are of good character for Board level appointments. As you will know the Fundamental Standards of Care Regulations identify the criteria for fit and proper persons for Board level appointments. If you have any reason to believe that by your conduct you may be an unfit person or not of good character, within the definition of the above mentioned Regulations, as may be in existence from time to time you are required to immediately notify the Chairman in writing of the details immediately and in any event within 7 days. In addition to the declaration relating to being a fit and proper person, I enclose herewith a form to declare any interests that you have that may have any bearing on your current role with the Trust. If you are in any doubt as to whether you ought to declare any interest kindly contact me.

The guidance issued by the CQC relating to being a fit and proper person is wider than just whether there is a criminal conviction, requiring a judgment as to whether the individual can be relied upon to do the right thing in the circumstances.

The Trust cannot employ, or continue to employ, a director unless they can demonstrate they are:

- a) Of good character,
- b) The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed,
- c) The 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,
- d) The individual has not 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, and
- e) None of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

In assessing whether a person is of good character and/or unfit person test is defined as:

Unfit person test

1. an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged;
2. 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;
3. a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
4. made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
5. 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;
6. 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;

The test of good character is:

7. Whether the person has been convicted in the UK of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence.
8. Whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.

I shall be obliged if you will kindly confirm that there are no circumstances or matters relating to yourself that may lead the Trust to conclude that you are either an unfit person or not of good character. If the situation changes and they do or may apply to you, you are required to notify Chairman in writing as a matter of urgency and in any event within 7 days of the condition applying. The Trust would then be required to consider whether you are able to continue as a Non-Executive Director.

Finally, I shall be obliged if you would also confirm that you are not subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986?

If you are in any doubt as to your position as a fit and proper person of good character kindly contact me immediately. I shall be obliged if you would kindly let me have a response as soon as possible.

Yours sincerely

Gill Harrad
Company Secretary

Enc Declaration of Interests form

I confirm that I have received information in respect of the Fundamental Standards of Care Regulations and the definitions of an unfit person and test of good character. I confirm that I am not aware of any reason that may suggest I am an unfit person or not of good character.

I confirm that I am not subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.

I declare that since the last Fit and Proper declaration, I have not been investigated by the Policy, NHS Counter Fraud Authority or any other investigatory body resulting in a current or past conviction, suspension or dismissal from employment.

I am aware that if my situation changes and any matters occur which may impact on my fitness or character as defined in the Regulations, that I must notify the Chairman immediately in writing and in any event within 7 days.

Signed Dated

DECLARATION OF INTERESTS

I, being a Non-Executive/Executive Director of Worcestershire Health & Care NHS Trust, hereby declare that the following is a full list of my interests outside the Trust.

Please enter 'none' if applicable.

1.	
2.	
3.	
4.	
5.	
6.	

Signed:

Name: **Title:**

Date:

APPENDIX C Due Diligence

EST Checklist – Director level Appointments

Post Title		Rec Co-ordinator	
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Appointee	
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Recruiting Manager	
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New Starter Form Received					
Conditional Offer Letter Sent	<table border="1"> <tr> <td>Probationary (Yes/No)</td> <td>Date</td> </tr> <tr> <td>Email Sent</td> <td>Date</td> </tr> </table>	Probationary (Yes/No)	Date	Email Sent	Date
Probationary (Yes/No)	Date				
Email Sent	Date				

ESR	Conditional	Info Entered	Unconditional	Unsuccessful Cleared	Post Closed

References Sent	Date	C	P	A	Date Received
1.					
2.					
3.					
4.					

Fit and Proper Checks	Date of search	Outcome
Search of Insolvency and bankruptcy register		
Search of disqualified directors register		

Pre-Employment Meeting Date:	
Documents Witnessed	

RA Agent/Smartcard	NHS Pensions Questionnaire Received	Uniform Request Submitted	NHSP Auto Reg Consent Rec'd/Scanned	Declaration of Other Employment

Workplace Health Questionnaire	Date Submitted	Date Received

DBS Clearance	Children	Adults	Date Submitted	Date Received	Update Service

Start Date Requested			
Induction Date		Joining Instructions sent	
Unconditional Offer Letter Sent	Probationary (Yes/No)	Date	

EST Checklist - Workforce

IAT Initiated (where applicable)	
New Employee hired & assignment details added	
DBS Website Match Field Checked	
Aggregate Service Entered	
Annual Leave Element Created	
IAT Full Data Set Copy performed CSD dates adjusted (where applicable)	
Annual leave override (where applicable) calculated and input	
ESR/Self Service User Created	
Fixed Term Contracts Terminated	
Personal File created and sent to manager or supervisor	
Receipt confirmed	
Start date	
Start confirmed/Induction attendance confirmed	

New Starter form scanned and sent to payroll cc HR

ID on hire field completed

Notice Period logged

Smartcard associated to record

January 2018