

Meeting / Committee:	Board of Directors	Meeting Date:	24 February 2015
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This paper is for:	Action/Decision	Assurance x	Information
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Title:	Annual declaration against Fit and Proper Person Test.
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Purpose:	The purpose of this report is to assure the board that all executive and non-executive directors have made an annual declaration in line with the fit and proper person test that was introduced by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
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Summary:	<p>The updated act places a duty on NHS providers not to appoint a person, or allow an individual to continue to be an executive director or equivalent, or non-executive director, under a number of given circumstances.</p> <p>At the December 2014 Board of Directors the arrangements discharge this duty was agreed. This included self declaration on appointment as a voting member of the board and then individuals making annual declarations in line with the fit and proper persons test.</p>
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Prepared By:	Caroline Parnell Director of Communication & Engagement	Presented By:	Caroline Parnell
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Recommendation:	<p>The board is asked to note that:</p> <ul style="list-style-type: none"> • Newly appointment members of the board have made the required declaration as part of the appointment process • Other voting members of the board have signed the annual declaration.
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Implications	Legal X	Financial	Clinical	Strategic	Risk & Assurance
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ANNUAL DECLARATION AGAINST FIT AND PROPER PERSON TEST

1. Introduction

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2014 Regulations) came into force on 27 November 2014, bringing a new statutory responsibility for NHS providers to ensure director level appointments meet the 'fit and proper person test', which has been recently integrated into the Care Quality Commission' (CQC) registration requirements, and falls within their regulatory and inspection approach.

NHS providers now have an explicit duty not to appoint a person, or allow a person to continue to be an executive director or equivalent, or a non-executive director, under given circumstances.

This means the trust must not appoint a person unless they are:

- of good character
- have the necessary qualifications, skills and experience
- are able to perform the work that they are employed for after reasonable adjustments are made
- can supply information as set out in schedule 3 of the regulations.

Paragraph 5 (4) of the regulations states that in assessing whether a person is of good character, the matters considered must include those listed in Part 2 of Schedule 4, which refers to 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 UK, would constitute an offence, and
- been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

The CQC's definition of good character is not the objective test of having no criminal convictions, but instead rests upon a judgement as to whether the person's character is such that they can be relied upon to do the right thing under all circumstances. This implies discretion for boards in reaching a decision and allows for the fact that people can and do change over time.

However the regulations list categories of persons who are prevented from holding the office and for whom there is no discretion. This includes that the person:

- is an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged
- 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
- 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(40)
- has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
- 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;
- 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
- has 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 discharging any functions relating to any office or employment with a service provider.

It is the responsibility of the chair of the trust to discharge the requirement placed on the provider, to ensure that all directors meet the fitness test and do not meet any of the 'unfit' criteria.

2. Trust arrangements

The Director of Workforce has reviewed the trust's current arrangements in line with the new duty and believes that the organisation already behaves in a way that meets the majority of the responsibilities.

At the Board of Directors meeting in December 2014 it was agreed that to fully comply with the regulations all board appointments should make a specific pre-employment declaration, and each board member should also make an individual declaration annual that they meet the Fit and Proper Person test.

All actions we have in place to comply with the test will be detailed in the trust's recruitment policy, which is currently being updated and is expected to be ratified in February 2015.

3. Recent actions

In line with the decision made at the December 2014 meeting the newly appointed Transformation Director, Medical Director and Director of Quality have all completed the required pre-employment declaration.

Other voting members of the board have also completed individual annual declarations that they meet the Fit and Proper Person Test and copies have been placed on their personal files.

4. Recommendations

The board is asked to note that:

- Newly appointment members of the board have made the required declaration as part of the appointment process
- Other voting members of the board have signed the annual declaration.