



MEETING TITLE Trust Board in Public		MEETING DATE 27/03/2018	
TITLE of PAPER		Fit and Proper Persons Policy	PAPER REF 4.3
STRATEGIC OBJECTIVE(S)		Develop and retain a highly skilled, engaged and motivated workforce Provide a safe and caring service which demonstrates an efficient use of resources	
PURPOSE OF THE PAPER		This paper requests approval to the Fit and Proper Persons Policy. This has been updated following receipt of new CQC guidance relating to Fit and Proper Persons.	
For Approval		<input checked="" type="checkbox"/>	For Assurance
For Decision		<input type="checkbox"/>	Discussion/Information
AUTHOR / LEAD	Suzanne Hartshorne, Deputy Director of Workforce	ACCOUNTABLE DIRECTOR	Christine Brereton, Director of Workforce & OD
DISCUSSED AT / INFORMED BY – include date(s) as appropriate (free text – i.e. please provide an audit trail of the development(s)/proposal(s) subject of this paper): Trust Executive Group: 24 th March 2015 Trust Executive Group: 18 th September 2017 Policy Progression Group: 5 th October 2017 Joint Steering Group: 26 th October 2017 Trust Board 28 th November 2017			
PREVIOUSLY AGREED AT:		Committee/Group: Board of Directors Not Applicable	Date: 28/11/2017
RECOMMENDATION(S)		It is recommended that the Trust Board 1. Note the contents of the paper 2. Approve amendments to the Fit and Proper Person Policy. 3. Approve amendments to the Fit and Proper Person Policy.	
RISK ASSESSMENT			Yes
Corporate Risk Register and/or Board Assurance Framework amended <i>If 'Yes' – expand in Section 4. / attached paper</i>			<input type="checkbox"/>
Resource Implications (Financial, Workforce, other - specify) <i>If 'Yes' – expand in Section 2. / attached paper</i>			<input type="checkbox"/>
Legal implications/Regulatory requirements <i>If 'Yes' – expand in Section 2. / attached paper</i>			<input checked="" type="checkbox"/>
Diversity and Inclusion Implications <i>If 'Yes' – please attach to the back of this paper</i>			<input type="checkbox"/>
ASSURANCE/COMPLIANCE			
Care Quality Commission Choose a DOMAIN(s)		Choose an item. 5: Well led	
NHSI Single Oversight Framework Choose a THEME(s)		6. Leadership & Improvement Capability (Well-Led)	

Private & Confidential Fit and Proper Persons Test

1. PURPOSE/AIM

- 1.1 The Fit and Proper Persons Policy was agreed at the Trust Board in November 2017. However, the CQC revised their guidance on Fit and Proper Persons in January 2018. The policy has been updated in light of this guidance.

2. BACKGROUND/CONTEXT

- 2.1 On 27 November 2014, NHS provider organisations were required to meet regulatory requirements, in particular to ensure that new director level appointments meet the 'fit and proper persons test' which were integrated into the CQC registration requirements. These requirements fall within the CQC regulatory and inspection approach and are reviewed under the 'well-led' domain.
- 2.2 The aim of this regulation is to ensure all board level appointments of NHS Trusts, who are responsible for the overall quality and safety of patient care, are individuals who are fit and proper to carry out this responsibility.
- 2.3 The regulation applies to Executive and Non-Executive Directors, including permanent, interim and associate positions, irrespective of voting rights including senior managers falling within the definition of VSM [directors].
- 2.4 A Trust Policy for Fit and Proper Persons was agreed in November 2017.

3. UPDATED POLICY FOR FIT AND PROPER PERSONS

- 3.1 In January 2018, the CQC updated their guidance on the Fit and Proper Person Test.
- 3.2 The update from the CQC gives guidance and definitions on serious mismanagement and misconduct. The guidance helpfully gives examples of when the Trust could determine that the Fit and Proper Person responsibilities of a Director could have been breached.
- 3.3 The Policy, agreed in November 2017, has been updated, with Appendix E, to include the guidance. The new Appendix has been referenced throughout the existing document. The remainder of the document remains unchanged.

4. RECOMMENDATIONS

It is recommended that the Trust Executive Group:

1. Note the contents of the paper
2. Note the updated CQC guidance
3. Approve amendments to the Fit and Proper Person Policy.

5. APPENDICES

Fit and Proper Persons Policy



**FIT AND PROPER PERSONS POLICY & PROCEDURE
 (Regulation 5: Director Appointments)**

Document name	Fit and Proper Persons Policy and Procedure
Version	2.0
Responsible Committee	Trust Management Group
Responsible Director	Director of Workforce & OD
Document Owner (title)	Deputy Director of Workforce & OD
Document Lead (title)	Recruitment Manager
Approved By	Trust Board
Date Approved	
Review Date	3 years from the date of approval
Equality Impact Assessed (EIA)	Yes (Screening)
Protective Marking	Not Protectively Marked

DOCUMENT CONTROL INFORMATION

Version	Date	Author	Status (A/D)	Description of Change
1.0	05/05/17	Nichola Timmons	D	New Policy
2.0	21/09/17	Nichola Timmons/ Suzanne Hartshorne	D	Additions following PPG/JSG
	28/11/17	Suzanne Hartshorne	A	Amendments following Trust Board
	27/3/18	Suzanne Hartshorne	D	Updated following CQC guidance
A = Approved D = Draft				
Document Author = Suzanne Hartshorne, Deputy Director of Workforce				
This document is controlled. If you would like to suggest amendments to this document please contact the document author.				

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1. Introduction

- 1.1 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5: Fit and Proper Persons (Directors) places a duty on NHS organisations to ensure that those who hold, or are due to hold, a director position within the Trust are 'fit and proper' to carry out the role of overseeing the quality and safety of care.
- 1.2 The regulation applies to all Very Senior Managers (VSMs), the Trust Chairman and Non-Executive Directors [referred to hereinafter as directors]. The regulations apply regardless of contract status, whether the post is an associate position and irrespective of voting rights.

For the full regulation visit: <http://www.cqc.org.uk/content/regulation-5-fit-and-proper-persons-directors#full-regulation>

- 1.3 This document outlines the Trust's commitment to ensuring that all persons appointed as directors satisfy the requirements of the regulation. The individual does not have to be an employee of the Trust to fall within the scope of this policy.

2. General Principles

- 2.1 Under the regulations, the Trust must satisfy itself that individuals who hold, or are due to hold a director position:
 - are of good character (See **Appendix E**)
 - have the necessary qualifications, competence, skills and experience (including being registered with the appropriate professional regulator)
 - have the appropriate level of physical and mental fitness, subject to reasonable adjustments
 - have 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
 - none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.
- 2.2 These requirements must be held at the point of commencing the role and on an ongoing basis.
- 2.3 In the event an individual ceases to be a fit and proper person, the individual may be dismissed and the Trust will notify the Trust's regulators. See **Appendix E** for examples and definitions of misconduct and mismanagement.
- 2.4 Prior to the commencement of employment, all employment checks, as set out in this document must be considered to be of a satisfactory standard and be complete unless a risk assessment is signed by the Chairman/Chief Executive/Director of Workforce.

3. Responsibilities

3.1 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. The Chairman may delegate this responsibility to the Director of Workforce, but will ultimately remain accountable.

To ensure that an annual appraisal and objective setting process takes place each year and that evidence of compliance is submitted to RTSC and the Board annually.

3.2 Those within the scope of the Fit and Proper Person Regulations (all directors)

- To hold and maintain suitability for the role they are undertaking. See [Appendix E](#) for examples of misconduct or mismanagement.
- To respond to any requests of evidence of their ongoing suitability i.e. annual re-checks.
- To disclose any issues which may call into question their suitability for the role they are undertaking
- Participate in annual appraisal and objective setting processes as directed.
- To make a declaration of any interests to the Trust Secretary so that these can be added to the Register of Interests and submitted to the Board at least annually.

3.3 Human Resources

- To ensure that all pre and post-employment checks are undertaken in line with the regulation and NHS Employment Check standards for all directors and ensure the results are recorded and evidenced within an individual's file.
- To undertake an annual refresh of suitability for all directors on request from the Trust Secretary.
- To ensure that all checks are complete prior to the commencement of employment

3.4 Trust Secretary

- To act as the liaison officer between NHS Improvement and the Trust in respect of the appointment process for the Chairman and Non-Executive Directors (including Associate Non-Executive Directors).
- To oversee all appointment checks for Directors and ensure the results are recorded and evidenced within an individual's file. Where checks have not been undertaken by NHS Improvement, require assurance that these checks are undertaken by Human Resources.
- To undertake an annual refresh of suitability (as outlined in Appendix B) for all Directors. This includes requesting that an annual declaration of suitability is completed by all directors annually. This should be requested in November of each year in order that the assurance of compliance can be given to the Board of Directors [the Board] each February.
- To submit annually to the Board, with the Annual Register of Interests, an assurance of the compliance with the Fit and Proper Persons Regulations.
- To ensure that the Register of Interests is maintained and that arrangements are in place for all directors to make declarations when required.

3.5 Procurement

To ensure all agencies/candidate providers understand their responsibilities and comply with the requirements of this policy. This should be evidenced through suitable contract documentation to ensure the position is clear

3.6 Agency Providers

To ensure the necessary checks that are outlined in this policy have been undertaken for any interim staff supplied to the Trust and make those checks available as and when requested.

4. Procedure for recruitment

- 4.1 The job description should refer to the requirement to comply with the Fit and Proper Persons requirement. This should also be included within the advert and person specification.
- 4.2 Where specific qualifications are required for a role, these must be clearly defined in the person specification and the Trust must verify the validity of qualifications as part of the pre-employment checks.
- 4.3 The recruitment process should include a values-based assessment, as this will help form the assessment as to whether candidates are of good character.
- 4.4 The interview process should include some specific questions designed to test the compliance with the key components of the Regulation.
- 4.5 'Good character' and fitness to practice should also be assessed through the pre-employment checks process in line with NHS standards. Some of these checks are undertaken by NHS Improvement and some checks by the Trust. These are set out below:

NHS Improvement

- A company Director search – for any self-employed candidates etc
- Disqualified Director search
- Insolvency/Bankruptcy search
- Background checks
- Regulator checks where applicable
- Qualification checks - where applicable i.e. financial qualifications where a financial qualification is required
- 3 references for each newly appointed Non-executive
- Fit and proper person declaration form to be completed by the non-executive

Trust

- Proof of identity i.e. driving licence or passport
- DBS check (if required for the role as set out below)
 - Chief Executive (as the Accountable Officer)
 - Medical Director
 - Nurse Executive Lead
 - Director of Operations – Whosoever is in role (given their accountability to the board for front line staff delivering patient care).
 - Director of Planned and Urgent Care – whosoever is in role (given their accountability to the board for front line staff delivering patient care).

- Director of Workforce & OD – accountability for staff recruitment policy
 - Director of Finance

 - Occupational Health clearance
 - Detailed references to cover as a minimum the preceding 3 years, one of which must be from the most recent employer (if not gained by NHS Improvement)
 - A full employment history (with satisfactory explanation for any employment gaps)
 - A Self-declaration confirming compliance with the Regulation
 - Right to work checks
 - Model Declaration A / B (Self-declaration)
 - Google search
 - *Secondary employment check
 - *Driving licence check (via Licence Bureau)
- *Additional pre-employment checks undertaken by YAS as part of normal recruitment check process*

The Trust will ensure that the checks are undertaken by NHS Improvement and ensure that a complete record is kept the individual's personal file.

Appendix A details the assurance checks which need to be undertaken to satisfy the Fit and Proper Persons Test, and **Appendix B** is a check list to be used during the appointment process. The assurance checks will be logged centrally by the Human Resources Team upon receipt of the completed checklist and required documentary evidence.

- 4.6 Candidates must complete a self-declaration to confirm their compliance with the Regulation prior to commencing employment, and on an ongoing basis as required thereafter (**Appendix C**)

- 4.7 Appointment letters and the terms and conditions of employment for new directors should state that continuing employment is conditional upon the individual remaining compliant with the requirements of the Fit and Proper Persons Test.

- 4.8 The new director induction should include the need for continued compliance with the Fit and Proper Persons Test.

5. Assessing compliance during appointment

- 5.1 On-going compliance with the Regulation for all directors should be annually assessed, this is facilitated through:
 - The completion of an annual self-declaration
 - Annual checks on insolvency, bankruptcy, director qualification and registration with professional bodies (where qualifications are required for the role)
 - The annual appraisal process, which should assess performance and competence, ultimately contributing towards an ongoing assessment of character.

Appendix D is a check list to be used during the annual assessment process. The annual assurance checks will be logged centrally by the Human Resources Team upon receipt of the completed checklist and required documentary evidence.

- 5.2 For non-executive directors seeking re-appointment compliance with the Regulation must be assessed.

6. Addressing non-compliance

- 6.1 The Trust will investigate in a timely manner any concerns regarding the fitness or the ability of a director to carry out their duties. An investigation will be conducted in line with Trust policy. See **Appendix E** for examples of misconduct or mismanagement.
- 6.2 The Trust has a duty to inform others, as appropriate, about concerns/findings relating to a person's fitness; for example, NHS Improvement, professional regulators, CQC and other relevant bodies, and support any related enquiries/investigations carried out by others.

7. Board Assurance

- 7.1 The Remuneration and Terms of Service Committee, depending on the type of appointment, will receive a report to confirm implementation of the Fit and Proper Persons Regulations for existing post holders.
- 7.2 The Committee will also receive reports regarding new appointments and the annual checking process. The Chairman is the accountable officer for ensuring compliance for new starters. A summary of compliance will appear in the Trust's annual report.

8. Process for Review and Revision

- 8.1 This policy will be reviewed in three years' time unless legislative or other changes necessitate an earlier review.

9. Monitoring Compliance and Effectiveness

- 9.1 The Human Resources department will conduct annual audits to ensure compliance with the standards as set out in this policy.
- 9.2 Compliance with this policy will be monitored on an annual basis by the Trust Secretary through the Remuneration and Terms of Service Committee.

10. Associated Documentation

- 10.1 This policy can be located via the staff library (policies) on the Trust's intranet, from any Human Resource representative, line manager or staff side representative.

This policy should be read in conjunction with the following Trust policies, procedures and guidance:

- Recruitment and Selection Policy
- Effective Recruitment and Selection – Management Guidance
- Disclosure and Barring Service (DBS) Policy
- Probationary Policy / Probationary Policy Management Guidance
- Professional Registration and Membership Policy
- Secondary Employment Policy

Fit and Proper Person Tests Assurance Checks

Assurance Check	Requirement	Stage of the process	Comments
Application / CV Check	Full employment history together with satisfactory written explanation of any gaps in employment	Shortlisting	Application / CV to be reviewed to identify: <ul style="list-style-type: none"> • any unexplained gaps in employment • any regulated activity • any work with children or vulnerable adults • any services held in health or social care • qualitative assessment of specific skills, knowledge, experience and qualifications required
	Has the qualification, competence, skills and experience necessary for the role		
Self-declaration form	<p>Self-declaration form to be completed at application stage.</p> <p>If a self-declaration form is not submitted with the application form then it will be chased during pre-employment checks.</p>	Shortlisting / Pre-employment checks	Self-declaration to be reviewed to ensure: <ul style="list-style-type: none"> • No disqualification apply • No conflicts of interest • Nothing in personal or professional life that might cause embarrassment • Nothing that could impact on suitability for the role
Interview / Assessment process	Has the qualifications, competence, skills and experience necessary for the role	Assessment	Assessment of the leadership behaviours required to carry out the role. Interview notes to be retained as evidence.
Evidence of Identify	Certified copies of original documents to be taken including photographic evidence (i.e. passport and/or driving licence). This should be used to confirm the identity of the person who was interviewed.	Assessment / Pre-employment checks	Appointment conditional to evidence of identity being provided.
Evidence of Right to Work	Certified copies of original Right to Work documentation	Assessment / Pre-employment checks	Appointment conditional to evidence of right to work being provided.
Evidence of Qualifications	Certified copies of original certificates which evidence professional qualifications as specified (e.g. financial qualification)	Assessment / Pre-employment checks	Appointment conditional to evidence of right to work being provided.

Assurance Check	Requirement	Stage of the process	Comments
Evidence of professional registration	A check of the relevant regulatory body where professional registration is a requirement of the role.	Assessment / Pre-employment checks	Appointment conditional to evidence of professional registration, where applicable.
HPAN	A check of the health professional alert notice register where this is relevant to the role.	Pre-employment checks	Check undertaken as part of pre-employment checks.
DBS	A DBS check will be undertaken where the role meets the requirement for a DBS disclosure.	Pre-employment checks	Appointment conditional to satisfactory DBS, where applicable.
Model Declaration A / B	Self-declaration form to be completed during pre-employment check stage. This allows the candidate the opportunity to declare any relevant cautions or convictions, investigations and/or formal action taken by a regulatory body.	Pre-employment checks	Appointment conditional to receipt of satisfactory self-declaration. Model Declaration A = for positions eligible for a standard or enhanced DBS. Model Declaration B = for positions that are not eligible for a standard or enhanced DBS.
Occupational Health	Able by reason of their health, after reasonable adjustments, of performing the duties of the role.	Pre-employment checks	Appointment conditional to satisfactory Occupational Health Clearance. Reasonable adjustments to be considered as required.
References	As a minimum references must cover the preceding 3 years employment history. The references will relate, where appropriate, to the most recent regulated activity and include the most recent employer/role.	Pre-employment checks	Appointment conditional to the receipt of satisfactory references.
Search of insolvency and bankruptcy register	Search candidates' names / DOB against: <ul style="list-style-type: none"> • Insolvency register • Bankruptcy register 	Pre-employment checks	Appointment conditional to a satisfactory check of the insolvency and bankruptcy register. A screen print of the relevant screens should be retained to evidence that the check has been undertaken.
Search of disqualified directors register	Search candidates' names / DOB against: <ul style="list-style-type: none"> • Disqualified directors register 	Pre-employment checks	Appointment conditional to a satisfactory check of the disqualified directors register. A screen print of the relevant screens should be retained to evidence that the check has been undertaken.

Assurance Check	Requirement	Stage of the process	Comments
Google search	Search for the candidate's name on google.	Pre-employment checks	Appointment conditional to a satisfactory check of the Google search engine. A screen print of the relevant screens should be retained to evidence that the check has been undertaken.
*Secondary employment	Secondary employment form to be completed	Pre-employment checks	Secondary employment form to be reviewed to ensure there is no conflict of interest.
*Driving Licence Check – Licence Bureau (if claiming mileage)	Driving Licence Check form to be completed to enable a driving licence check to be undertaken via the Licence Bureau	Pre-employment checks	Employment subject to a satisfactory driver licence check.

**Additional pre-employment checks undertaken by YAS as part of normal recruitment check process*



Fit and Proper Person Test Assurance Checklist (New Appointment)

Candidate Name: _____

Position appointed to: _____

Description	Date check undertaken (A copy of any original documents should be taken, signed and dated to verify originals seen)	Evidence/copy retained for personal file Y/N
Job Description and Person Specification	N/A	
Application Form / CV (Detailing full employment history)	N/A	
Written explanation of any gaps in employment	N/A	
Self-Declaration Form		
Interview Notes	N/A	
Evidence of identity		
Evidence of Right to Work		
Evidence of Qualifications		
Professional Registration Checked (if applicable)		
HPAN – Alert Register (if applicable)		
DBS (if relevant)		
Model Declaration A / B (as applicable)		
Occupational Health		
References		
Search of insolvency and bankruptcy register www.gov.uk/search-bankruptcy-insolvency-register		
Search of disqualified directors register www.insolvencydirect.bis.gov.uk/IESdatabase/viewdirectorssummary-new.asp		
Google Search		
Secondary Employment Form		
Driving Licence Check – Licence Bureau (if claiming mileage)		
Unconditional Offer Letter	N/A	
Terms and Conditions of Employment	N/A	

Evidence of the above pre-employment checks must be forwarded to the recruitment team to ensure that these are placed on the individual's recruitment files, which will become the personal file.



FIT & PROPER FIT TEST (DIRECTOR) PRE-EMPLOYMENT & ANNUAL SELF-DECLARATION

Director positions (or Director-Equivalent posts) at Yorkshire Ambulance Service NHS Trust are subject to Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the Regulations”); in particular the requirement that board level appointment must be “fit and proper persons”. Board level appointments include the Trust Chairman, Executive and Non-Executive directors and other senior managers falling with the definition of Very Senior Manager (VSM) (including permanent, interim and associate positions) irrespective of voting rights howsoever contracted, procured, hired or otherwise engaged by the Trust. These posts are referred to as ‘directors’.

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 a director, if they do not satisfy all the requirements set out in paragraph 3 of the Regulation to be a fit person. In addition they must not meet any of the ‘unfit’ criteria as specified in Part 1 of Schedule 4 of the Regulations.

The Trust shall not appoint, or permit to continue as a director, any person who is an unfit person.

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; http://www.cqc.org.uk/sites/default/files/20150327_fppr_provider_guidance.pdf

It is a condition of employment that those holding director positions within the Trust provide confirmation in writing, on appointment and thereafter as required, of their fitness to hold such a position.

The Trust will ensure that its contracts of employment with its directors contain a provision which clearly permits summary dismissal 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.

The definitions of being a “**fit and proper person**” under the requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are:

- a) that you are of good character;
- b) that you have the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which you are employed;
- c) you are able by reason of your health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the position for which you are appointed or the work for which you are employed;
- d) you have 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 you.

The definitions of an “**unfit person**” as specified in Part 1 of Schedule 4 of the Regulations are:

- a) you are an uncharged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged;

- b) you are the subject of bankruptcy or a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;
- c) you are 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);
- d) you have made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- e) you are 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) you are 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.

Declaration

I confirm that I comply with the requirements of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, in that:

- I meet the definitions of a fit and proper person as detailed above.
- I do not fall within the definitions of an “unfit person” as defined above.
- I am not aware of any pending proceedings or matters which may call such a declaration into question.
- I will notify the Trust immediately if I no longer satisfy the criteria to be a “fit and proper person” or grounds under which I would be ineligible to continue in post come to my attention.

Name:

Position:

Signed:

Date:



**Fit and Proper Person Test Assurance Checklist
 (Annual Assessment)**

Candidate Name: _____

Position appointed to: _____

Description	Date check undertaken	Evidence/copy retained for personal file Y/N	Signed
Self-Declaration Form			
Professional Registration Checked (if applicable)			
HPAN – Alert Register (if applicable)			
Search of insolvency and bankruptcy register www.gov.uk/search-bankruptcy-insolvency-register			
Search of disqualified directors register www.insolvencydirect.bis.gov.uk/IESdatabase/viewdirectorssummary-new.asp			
Google Search			
Annual appraisal			
Annual Objective Setting			
DBS re-check (Every 3 years - if applicable)			

Evidence of the above assurance checks must be forwarded to the Trust's Human Resources Department along with this check list to ensure these are placed on the individual's personal file.

Appendix E: Serious Mismanagement or misconduct

1 What is misconduct?

"Misconduct" means conduct that breaches a legal or contractual obligation imposed on the director. It could mean acting in breach of an employment contract, breaching relevant regulatory requirements (such as mandatory health and safety rules), breaching the criminal law or engaging in activities that are morally reprehensible or likely to undermine public trust and confidence.

2 What is mismanagement?

"Mismanagement" means being involved in the management of an organisation or part of an organisation in such a way that the quality of decision making and actions of the managers falls below any reasonable standard of competent management.

The following are examples of behaviour that may amount to mismanagement:

- Transmitting to a public authority, or any other person, inaccurate information without taking reasonably competent steps to ensure it was correct.
- Failing to interpret data in an appropriate way.
- Suppressing reports where the findings may be compromising for the organisation.
- Failing to have an effective system in place to protect staff who have raised concerns.
- Failing to learn from incidents, complaints and when things go wrong.
- Failing to model and promote standards of behaviour expected of those in public life, including protecting personal reputation, or the interests of another individual, over the interests of people who use a service, staff or the public.
- Failing to implement quality, safety and/or process improvements in a timely way, where there are recommendations or where the need is obvious.

3 When proven misconduct or mismanagement should be assessed as "serious"

Providers will have to reach their own decision as to whether any facts that are alleged reach the threshold of being "serious misconduct or mismanagement".

Serious: Important, grave, having (potentially) important especially undesired consequences, giving cause for concern of significant, degree, amount, worthy of consideration.

Source: The Shorter Oxford English Dictionary

Misconduct differs from mismanagement, in that a single incident of misconduct may be so serious that it amounts to serious misconduct, whether the provider also concludes that this was incompatible with continued employment or not. However, any serious misconduct renders a director unfit within the terms of the fit and proper person requirement.

However, an isolated incident is unlikely to constitute serious mismanagement unless it is so serious that it calls into question the confidence of the organisation and the public in the individual concerned.

Serious mismanagement is likely to consist of a course of conduct over time. Any assessment of its seriousness needs to consider the impact of the mismanagement on the quality and safety of care for people who use the service, the safety and well-being of staff, and the effect on the viability of the provider.

Not all misconduct or mismanagement in which a director has had some involvement will reach the threshold of "serious". Where there is evidence of misconduct or mismanagement that is not judged to be "serious", the provisions of Regulation 5(3)(d) do not apply. However, it will be for the provider (as the employer) to determine the most appropriate response, in order to ensure that performance is managed and the quality and safety of services is assured.

A provider could consider isolated incidences of the following types of behaviour to amount to misconduct or mismanagement that does not reach the required threshold of seriousness:

- intermittent poor attendance
- minor breaches of security
- minor misuse of an employer's assets
- failure to follow agreed policies or processes when undertaking management functions where the failures had limited repercussions or limited effects, or were for a benevolent or justifiable purpose.

The following are examples of misconduct and mismanagement that providers would be expected to conclude amounted to serious misconduct or mismanagement, unless there are exceptional circumstances that make it unreasonable to determine that there is serious misconduct or mismanagement:

- fraud or theft
- any criminal offence other than minor motoring offences
- assault
- sexual harassment of staff
- bullying
- victimisation of staff who raise legitimate concerns
- any conduct that can be characterised as dishonesty, including:
- deliberately transmitting information to a public authority or to any other person, which is known to be false
- submitting or providing false references or inaccurate or misleading information on a CV
- disregard for appropriate standards of governance, including resistance to accountability and the undermining of due process
- failure to make full and timely reports to the board of significant issues or incidents, including clinical or financial issues
- repeated or ongoing tolerance of poor practice, or failure to promote good practice, leading to departure from recognised standards, policies, or accepted practices
- continued failure to develop and manage business, financial, or clinical plans.

As part of reaching an assessment as to whether any actions or omissions of the director amount to "serious misconduct or mismanagement", providers should consider whether an individual director played a central or peripheral role in any wider misconduct or mismanagement. The more central the role of the director, the more likely it is that the conduct of the director should be assessed to be serious misconduct or mismanagement. The provider should also consider whether there are any mitigating factors that could be relied on to downgrade conduct that should otherwise be assessed to be serious misconduct or mismanagement so that the conduct did not meet that threshold of seriousness.

4. Factors to consider around concerns regarding serious misconduct or mismanagement

Please note the following points:

- The relevant matters can arise either in the director's current role, in a former role within the provider's organisation, when the director carried out any role where he or she was concerned with a service that is regulated by CQC or which, if provided outside the UK, would be a regulated activity if the activity was carried out within the UK.
- Allegations about a director's conduct while engaged in any other type of business or non-business activity is not relevant for Regulation 5(3)(d), but it is likely to be relevant to the director's good character (Regulation 5(3)(a)) and/or his or her competence, skills and experience (Regulation 5(3)(b)).

- A director’s conduct comes within Regulation 5(3)(d) if he or she has been “responsible for” serious misconduct or mismanagement – namely that he or she was one of the decision-makers that led to the serious misconduct or mismanagement.
- A director’s conduct comes within Regulation 5(3)(d) if he or she has “contributed to” serious misconduct or mismanagement – namely where the director was not one of the lead decision-makers that led to the serious misconduct or mismanagement but where, by action or omission, the director took some significant step or steps to assist the lead decision-makers who were responsible for that misconduct or mismanagement.
- A director’s conduct comes within Regulation 5(3)(d) if he or she has “facilitated” any serious misconduct or mismanagement – namely that he or she took steps or failed to take steps that he or she ought to have taken that enabled those primarily responsible for the misconduct or mismanagement to carry out the acts or omissions that constituted the serious misconduct or mismanagement.
- A director’s conduct also comes within Regulation 5(3)(d) if he or she has been “privity to” serious misconduct or mismanagement, in that the director was aware that misconduct or mismanagement was happening in an organisation and failed to respond to that knowledge by acting in an appropriate manner. An appropriate response to serious misconduct or mismanagement will depend on the circumstances and the internal governance arrangements of the organisation in which the director worked, but it could include:
 - drawing the serious misconduct or mismanagement to the attention of an appropriate senior member of staff
 - making a formal complaint
 - drawing the serious misconduct or mismanagement to the attention of a suitable person outside the provider’s organisation.
- Providers would be entitled to conclude a director had been “privity to” serious misconduct or mismanagement if the director knew sufficient details of that misconduct or mismanagement (or the circumstances were such that it was reasonable to conclude that the director ought to have known of that mismanagement or misconduct) to require appropriate action by the individual and failed to take any appropriate action in a timely manner.

5 Good character

There is no statutory guidance as to how ‘good character’ in Regulation 5(3)(a) of the 2014 Regulations should be interpreted. However, the following are some of the features that are normally associated with ‘good character’:

- honesty
- trustworthiness
- integrity
- openness (also referred to as transparency)
- ability to comply with the law.

To consider that a director is of ‘good character’, the registered provider should be able to regard the director as a person in whom the provider, CQC, people using services and the wider public can have confidence, and who will comply with the law.

6 Factors for providers to take into account when assessing ‘good character’

Providers must have regard to the following matters specified in part 2 of schedule 4 to the 2014 Regulations when assessing whether a director is of good character:

- convictions of any offence in the UK
- convictions of any offence abroad that constitutes an offence in the UK; and
- whether any regulator or professional body has made the decision to erase, remove or strike off the director from their register.

- Other things to look for in assessing good character

When making decisions about character, providers would also be expected to consider:

- the prior employment history of the director, including the reasons for leaving
- whether the director has ever been the subject of any investigations or proceedings by a professional or regulatory body
- whether the director has ever breached any of the Nolan Principles of Public Life
- whether the director has ever breached any of the duties imposed on directors under the Companies Act
- the extent to which the director has been open and honest with the provider
- any other information that may be relevant, such as disciplinary action taken by an employer.