

Board of Directors Meeting – 28 February 2017

Agenda item 11/17

Title	Implementation of the Fit and Proper Persons Test (FPPT)
Sponsoring Director	Mary Foulkes, Chief Human Resources Director
Author(s)	Namdi Ngoka, Deputy Director Human Resources
Purpose	This paper provides an update of the implementation of the plans to ensure that the Trust is fully compliant with the Fit and Proper Persons Test requirements (FPPR)
Previously considered at	The Fit and Proper Persons Test Policy has been approved and by Board on 20 th January 2016 and the CMT on the 26 th January 2016.
Executive Summary	
<p>The aim of the Fit and Proper Persons Test regulation is to ensure that all Executive level appointments in all NHS Trusts are responsible for making sure that care meets the existing regulations and the requirements of the Health and Social Care Act (2008) Regulations 2014.</p> <p>Regulation 5, the Fit and Proper Persons Test (FPPT), was introduced as a direct response to the Francis Inquiry report into Mid Staffordshire NHS Foundation Trust which recommended the introduction of a statutory fit and proper person's requirement.</p> <p>While the Trust can demonstrate compliance in this area, there are still missing information from some historical files which has been mitigated by an up to date appraisals but further work is required.</p>	
Related Trust Objective	Excellent Patient Outcomes Excellent Patient Experience Engaged and Valued Staff Financial and Operational Sustainability – Financial, Operational, Estate
Related Risk	Risk 1 – Failure to provide adequate patient safety and quality of care Risk 2 – Poor patient experience Risk 3 – Failure to meet operational performance targets Risk 4 – Trust not being financially sustainable Risk 5 – Inability to recruit and retain staff Risk 6 – Unable to maintain estates and facilities to an adequate standard
Essex Success Regime	The JEG members need to be compliant
Legal implications / regulatory requirements	This report provides assurance that the Trust complies with the Health and Social Care Act (2008) Regulations 2014. Regulation 5, the Fit and Proper Persons Test (FPPT).
Quality impact assessment	The report provides assurance that evidence can be provided to show that we are meeting the public sector equality duty. The Trust strives to demonstrate best practice in all areas of equality for both patients and staff.
Equality impact assessment	The work around equality and inclusion has a positive impact on all of the protected characteristics under the Equality Act 2010.
Recommendations:	
The Board is asked to receive assurance from the report	

1. Introduction

This paper provides an overview of the processes that the Trust will need to undertake in order to implement the Fit and proper persons regulations. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the Regulations”) introduced a ‘fit and proper person requirement’ (FPPR) for Directors and people ‘performing the functions of, or functions equivalent or similar to the functions of, such a director’ (“Directors”).

However it is essential that the Human Resources Department has in place robust procedures to ensure that the Trust complies with the regulations. The processes described will provide assurances that the trust has procedures in place to meet this requirement and that the risks of non-compliance are effectively mitigated.

2. Background

Following a recent review of HR processes in January 2016, it has been identified that the Trust was not fully compliant with the FPPR, as laid down by the Health and Social Care Act 2008. At the time of the review, the Trust was meeting its obligations around recruitment by ensuring that it only employed individuals that are fit for their role by assessing fitness through ensuring that they are of ‘good character’ (references) are physically and mentally fit (occupational Health Checks), have the necessary qualifications, skills and experience for the role and that other checks, including a Disclosure and Barring Service (DBS) check and a full employment history were undertaken. In addition employees in executive and non-executive roles were required to sign a Fit and Proper Persons self-declaration form, providing assurance that they met the requirements of the FPPR. This form was however only signed once at appointment and not regularly reviewed.

In addition this review undertaken in January 2016, identified that there were a number of gaps with regards to some of the Employee File information the Trust held for some Executive and Non-executive staff. Measures were immediately undertaken to address these gaps.

It should be noted, that the purpose of the FPPR is to ensure that appropriate systems and processes are in place to ensure that all new and existing Directors are, and continue to be of good character and that no Director meets any of the unfitness criteria set out in the Regulations.

In summary, the regulations state that organisations must assure themselves that Directors meet the following criteria –

1. Are of good character and having the qualifications, competence, skills and experience which are necessary for the relevant office or position or work for which they are employed;
2. Are 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;
3. 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; and
4. In addition the Director must supply information as set out in Schedule 3 of the Regulations which are:
 - Proof of identify including a recent photograph.
 - Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997, a copy of a criminal record

certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request).

- Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced criminal record certificate issued under section 113B of the Act together with, where applicable, suitability information relating to children or vulnerable adults.
- Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to health or social care, or children or vulnerable adults.
- Where a person has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why employment in that position ended.
- In so far as it is reasonably practicable to obtain, satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed or appointed to perform.
- A full employment history, together with a satisfactory written explanation of any gaps in employment.
- Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity.

5. In addition a Director will be deemed unfit, not of good character and prevented from holding the post and/or office of a Director, if:

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

As mentioned while the Trust already undertook most of the above checks including the signing of a self-declaration form it was identified following the review in January that there still existed a number of gaps in the information held for a number of Executive and Non-executive staff.

In addition it was evident following the review, that the self-declaration form the Trust requested that individuals signed in order to provide FPPR assurance did not go far enough in providing the required assurance as regards Bankruptcy and Insolvency checks for example and checks of disqualified Directors registers. In addition not conducting these checks annually and requesting annual sign of a more robust declaration form, put the Trust at risk of being non-compliant with the regulations.

3. Assurance of on-going compliance

Since January 2016 the following posts have been subject to the FPPT. The main reason(s) for this requirement is as follows:

- The Board and CMT agreed in addition to NEDs and Executive Directors, the following post should be subject to the FPPT
 - Clinical Directors (7)
 - Associate Directors (7)
 - Heads of Nursing (7)
 - Director/Head positions which deputise for the Executive Directors (6)
 - Associate Medical Directors (2)
 - Trust Secretary (1)
- Appointments to new post
 - Associate Medical Directors
 - Trust Secretary
 - Deputy Director of Operations
 - Two Non Executive Directors
 - Two Corporate Deputy Directors

All the files are scanned and kept on a secure drive.

Chairs Audit

- One NED has the qualifications missing

Director of HR & OD Audit

- References missing from 6 files mitigated by an up to date appraisal
- Qualification missing from one long serving NED

It is planned to have the following statement below in contracts of employment and service agreements, job descriptions and adverts for the posts affected by the FPP regulations –

'It is a condition of your continuing employment that you remain a fit and proper person as required by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the guidance issued by Monitor and the Care Quality Commission as amended from time to time'.

4. Next Steps

The following actions are planned by the end of March 2017

- To conduct an annual self declaration audit/full declaration for the JEG members and site leadership team.
- To introduce a consistent policy and check list across the 3 Trusts