

**NORTHUMBERLAND, TYNE AND WEAR NHS FOUNDATION TRUST**

**BOARD OF DIRECTORS' MEETING**

**Meeting Date:** 27 May 2015

**Title and Author of Paper:**

CQC's Fit and Proper Person Test – Update Paper

Lynne Shaw (Deputy Director of Workforce and Organisational Development)

**Paper for Debate, Decision or Information:** Information

**Key Points to Note:**

This paper updates the Board on:

- The outcome of the Executive Director discussions on who to initially include in the Test.
- Trust actions which were discussed at the November 2014 Board.

**Outcome required:**

The Board of Directors to note the update.

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## **BOARD OF DIRECTORS' MEETING**

### **CQC's Fit and Proper Person Test**

The Board has previously been informed of the introduction of the CQC's Fit and Proper Person Test to be effective from 27 November 2014.

Further information for NHS bodies was published in March 2015 and there has been ongoing advice from Hempsons and Capsticks in respect of the application of this Test which has been discussed on a regular basis at Executive Director's meetings.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 states that the Test applies to a director or an individual performing the functions of, or functions equivalent or similar to the functions of, such a director. Taking all advice into consideration it is proposed that the Test will apply to members of the Board of Directors and should also include other specialist functional leads, notably Chief Pharmacist, Director of Informatics, Director of Estates and Facilities, Director of Research and Development, Innovation and Clinical Effectiveness and Director for Infection, Prevention and Control and Emergency Planning, Resilience and Response.

The guidance expects the Trust to make every reasonable effort to assure itself about an individual by all means available. The Trust Chair will be required to confirm that the fitness of all new directors has been assessed in line with the CQC Regulations and to declare to the CQC in writing that they are satisfied that they are fit and proper individuals for that role. The Trust may be asked to provide the same assurance to the CQC about existing directors, where concerns about them come to the CQC's attention.

### **Update on Actions**

At the November 2014 Board of Directors a number of actions were agreed. There is an update on each of the actions below:

- The Trust Chair has issued a letter to all members of the Board of Directors who the Trust has identified as directors for the purposes of the Test and on the date that the duty becomes effective. The letter includes the requirements and narrative to the effect, "You confirm that you are not subject to any restrictions which would prevent you from holding the office of director of the Trust and you will not do anything which will cause you to be disqualified from acting as a director, including, without limitation, any act or omission which may result in you failing to meet the requirements of paragraph 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (as amended or substituted from time to time) or the conditions of any NHS Provider licence (fit and proper person test)". Declarations have been returned and will be kept on file.
- Letters for other specialist functional leads to be issued as a matter of priority.

- Lisa Crichton-Jones has drafted revised contracts to ensure that they include an appropriate entry relating to the Test. Such contracts or a variation letter is to be issued to those classed as directors for the purpose of the Test.
- Consideration of the Test for Non-Executive Directors' terms and conditions has been undertaken and will be discussed at a future Nominations Committee to strengthen the current entries.

In addition the Board Secretary is currently drawing up a guidance note which sets out the rationale for each postholder who is required to fulfil the requirements of the Fit and Proper Persons Test.

### **Recommendations**

The Board of Directors are asked to approve the contents of this report.

**Lynne Shaw**  
**Deputy Director of Workforce and OD**  
**18 May 2015**