

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

**BOARD OF DIRECTORS' MEETING**

**Meeting Date:** 25 November 2015

**Title and Author of Paper:**

Care Quality Commission's Fit and Proper Person Test – Update Paper  
Eric Jarvis, Board Secretary

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

**Key Points to Note:**

This paper is a further update of the Trust's progress in implementing CQC's Fit and Proper Person Test, following on from the update in the Chief Executive's report at the October 2015 Board meeting.

There will be an update at the Board meeting relating to any ongoing work.

**Outcome required:**

The Board is asked to:

- note the position of implementing the Fit and Proper Person Test;
- approve the CQC Fit and Proper Person Test Procedure;
- approve the replacement of Dr Damian Robinson (Director for Infection, Prevention and Control (IPC) and Emergency Planning, Resilience and Response (EPRR)) with Anne Moore (Director of IPC).

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

## **BOARD OF DIRECTORS' MEETING**

### **Care Quality Commission's Fit and Proper Person Test update**

Further to the update paper to the Board on 27 May 2015 and the entry in the Chief Executive's report to the Board on 28 October 2015, this paper is to provide a further update and to request the Board to approve the attached Care Quality Commission's (CQC) Fit and Proper Person Test Procedure.

The draft procedure has been developed by the Board Secretary in conjunction with the Executive Director of Workforce and Organisational Development ensuring consistency with available guidance. It has then been used for checking that appropriate arrangements are in place.

The Board has previously approved that the "Test" should apply to Board members and the five specialist functional leads who by the nature of their roles are responsible for certain issues over and above the responsibilities of their Executive Director line manager. Dr Damian Robinson ceased to be the Director for Infection, Prevention and Control (IPC) and Emergency Planning, Resilience and Response (EPRR) and has been replaced by Anne Moore as Director of IPC. These changes took place on 1 November 2015. The Board will therefore need to consider whether the scope of the Test should include Anne Moore and exclude Dr Damian Robinson, and amend the procedure accordingly.

Please note with regard to all relevant persons:

- As previously stated, the Trust Constitution was amended in September 2015 to strengthen the reference to the Test and to provide more details.
- As previously reported all those persons subject to the Test have signed a declaration form. As the earliest was in early December 2014, all persons have been contacted in November 2015 to sign the declaration again, then annually thereafter.
- As previously reported there was a search of the Insolvency and Bankruptcy Register England and Wales (Individual Insolvency Register and the List of people with additional insolvency restrictions) and the Disqualified Directors Register (i.e. Companies House database of disqualified directors) in July 2015. Another search has taken place in November 2015.
- The toolkit at appendix 3 of the draft guidance was used to assess processes in March 2015. This will be repeated in November 2015.
- There is currently an exercise being undertaken to ensure that the personal files of all relevant persons contain all relevant information pertinent to the Test. This includes appraisal documentation, which because of the timing of appraisals may need strengthening in future to include reference to the Test.

Please note with regard to Executive Directors and the specialist functional leads:

- Several contracts are being revised to include an appropriate entry relating to the Test.

Please note with regard to the Chair and other Non-Executive Directors

- The Council of Governors at its meeting on 12 November 2015 approved updated terms and conditions, which include specific reference to the Test. The Chair and the other NEDs have been contacted to sign the new documents.
- A NEDs' competence framework was developed by the Nominations Committee on 30 October 2015 and passed to the Board for further development and ownership.
- As previously stated the protocol for the appointment of the Chair and NEDs has been reviewed and strengthened. Linked to this for future appointments is to ensure that the NED recruitment information pack includes an entry to explain the consequences for false, inaccurate or incomplete information.

In conclusion, the Trust has made every reasonable effort to assure itself about an individual by all means available, which should allow the Trust Chair 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 he is 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.

**The Board is asked to:**

- **note the position of implementing the Fit and Proper Person Test;**
- **approve the CQC Fit and Proper Person Test Procedure.**
- **approve the replacement of Dr Damian Robinson (Director for Infection, Prevention and Control (IPC) and Emergency Planning, Resilience and Response (EPRR)) with Anne Moore as Director of IPC and Russell Patton as Director of EPRR.**

**Eric Jarvis  
Board Secretary  
17 November 2015**

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

### **The Care Quality Commission's Fit and Proper Person Test Procedure**

#### **1 Introduction**

The Care Quality Commission's (CQC) "Fit and Proper Person Test" (the "Test") was introduced from November 2014. This strengthens arrangements already existing in the Trust's provider licence and the Trust's constitution.

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

The CQC has provided guidance (March 2015) for providers on meeting the regulations.

#### **2 What is the test?**

The regulation has been introduced to ensure that directors are fit to hold their position. Directors must meet certain criteria, including that they are "of good character"; have the qualifications, competence, skills and experience necessary for the relevant position; and are capable of undertaking the relevant position after any reasonable adjustments have been made. They must also not have been responsible for any serious misconduct or mismanagement in the course of carrying on a regulated activity.

**Appendix 1** sets out the criteria that a director must meet along with CQC guidance on issues to be taken into account. It also includes details of the good character and unfit person tests.

Each relevant individual is also required to sign a declaration confirming that he/she does not fit within the definition of an "unfit person" and that there are no other grounds under which he/she would be ineligible to continue in post. In addition he/she undertakes to notify the Trust immediately if he/she no longer satisfies the criteria to be a "fit and proper person" or other grounds under which he/she would be ineligible to continue in post comes to his/her attention. The Trust's declaration form is shown at **appendix 2**.

#### **3 Who does the test apply to within the Trust?**

Taking into account the Act's requirements 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, the Trust regards the Test as applying to members of the Board of Directors and five specialist functional leads, who by the nature of their role are responsible for certain issues over and above the responsibilities of their Executive Director line manager. These individuals are the (i) Chief Pharmacist, (ii) Director of Informatics, (iii) Director of Estates and Facilities, (iv) Director of Research and Development, Innovation and Clinical Effectiveness and (v) Director for Infection, Prevention and Control and Emergency Planning, Resilience and Response.

#### **4 Actions and regular reviews by the Trust**

The Trust is required to make every reasonable effort to assure itself about an individual by all means available.

The Trust Chair is responsible for confirming the fitness of all new directors and existing directors. Relevant officers will support the Trust Chair with this requirement.

All actions listed below shall be regularly reviewed by the Trust at least on an annual basis, including this procedure, and at least at 6 monthly intervals in the first two years of the requirement. The outcomes should be recorded and signed and dated and filed along with supporting evidence. These arrangements are to ensure that the fitness of relevant individuals are regularly reviewed.

As follows:

- The CQC requires the Trust to review its processes and paperwork relating to relevant individuals. For processes relating to Executive Directors and specialist functional leads, this will be led by the Executive Director of Workforce and Organisational Development. For Non-Executive Directors, this will be led by the Board Secretary. The “Toolkit” provided by NHS Providers shall be used as a checklist for the purposes of these reviews. See **appendix 3**.
- The Board Secretary shall lead on ensuring that every relevant individual signs and returns a declaration form on an annual basis. The original signed form shall be filed in an individual’s personal file.
- The Board Secretary shall undertake a quarterly search relating to all relevant individuals of the Insolvency and Bankruptcy Register England and Wales (Individual Insolvency Register and the List of people with additional insolvency restrictions) and the Disqualified Directors Register (i.e. Companies House database of disqualified directors). The search should be carried out in 3 stages as follows:

(1) The Insolvency and Bankruptcy Register England and Wales (IIR)

(<https://www.gov.uk/search-bankruptcy-insovcency-register>) is an amalgamation of the individual insolvency, bankruptcy restrictions and debt relief restrictions registers. The Insolvency Service is required by statute to maintain these registers, keep them up to date and make them available for public inspection.

The IIR contains details of:

- bankruptcies that are current or have ended in the last 3 months
- debt relief orders that are current or have ended in the last 3 months
- current individual voluntary arrangements (IVAs) and Fast-Track voluntary arrangements (FTVAs), including those that have ended in the last 3 months
- current bankruptcy restrictions orders or undertakings (BROs/BRUs) and interim bankruptcy restrictions orders (iBROs)
- current debt relief restrictions orders or undertakings (DRROs/DRRUs) and interim debt relief restrictions orders (iDRROs)

(2) The [list of people with additional insolvency restrictions](#) for the last 3 months.

(3) The Companies House database of disqualified directors per <https://www.gov.uk/company-director-disqualification> Note this is not always up-to-date.

## **5 Action required where a director no longer meets the requirements**

If, either at the time of appointment or later, it becomes apparent that circumstances exist or have arisen whereby a relevant individual may not be considered to meet all the requirements of a fit and proper person, the Trust Chair shall be informed. This may be by the Chief Executive Officer, Executive Director of Workforce and Organisational Development or the Board Secretary depending on the circumstances. If the relevant individual in question is the Trust Chair, then substitute the Senior Independent Director for the Trust Chair the purposes of this process.

The Trust Chair shall, acting reasonably and having regard to guidance issued by the CQC or Monitor, determine whether the relevant individual meets the requirements. The Trust Chair must take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets the requirements. If the Trust Chair determines that the requirements are not met, the relevant individual shall not be appointed, or their tenure of office shall be terminated and that relevant individual shall cease to act in their role. In this case, if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, the regulator in question must be informed.

Should the Trust Chair determine that the relevant individual is or remains a fit and proper person, the Trust Chair shall record the reasoning for the decision and provide information about the decision to those who need to be aware.

The investigation should be carried out in a timely manner and have due regard to the protection of the relevant individual. While the investigation is taking place, appropriate interim measures may be required.

**Health and Social Care Act 2008 (Regulated Activities) Regulations 2014**

**Regulation 5 (3) sets out the criteria that a director must meet, as follows:**

(a) the individual is of good character,

CQC's Guidance for providers on meeting the regulations (March 2015) states that providers must have regard to the following guidance:

- When assessing whether a person is of good character, providers must follow robust processes to make sure that they gather all available information to confirm that the person is of good character, and they must have regard to the matters outlined in Schedule 4, Part 2 of the regulations. It is not possible to outline every character trait that a person should have, but we would expect to see that the processes followed take account of a person's honesty, trustworthiness, reliability and respectfulness.
- If a provider discovers information that suggests a person is not of good character after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.
- Where a provider considers the individual to be suitable, despite existence of information relevant to issues identified in Schedule 4, Part 2, the provider's reasons should be recorded for future reference and made available.

(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,

CQC's Guidance for providers on meeting the regulations (March 2015) states that providers must have regard to the following guidance:

- Where providers consider that a role requires specific qualifications, they must make this clear and should only appoint those candidates who meet the required specification, including any requirements to be registered with a professional regulator.
- Providers must have appropriate processes for assessing and checking that the candidate holds the required qualifications and has the competence, skills and experience required, (which may include appropriate communication and leadership skills and a caring and compassionate nature) to undertake the role. These must be followed in all cases and relevant records kept.
- We expect all providers to be aware of, and follow, the various guidelines that cover value-based recruitment, appraisal and development, and disciplinary action, including dismissal for chief executives, chairs and directors, and to have implemented procedures in line with the best practice. This includes the seven principles of public life (Nolan principles).

- (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,

CQC's Guidance for providers on meeting the regulations (March 2015) states that providers must have regard to the following guidance:

- This aspect of the regulation relates to a person's ability to carry out their role. This does not mean that people who have a long-term condition, a disability or mental illness cannot be appointed. When appointing a person to a role, providers must have processes for considering their physical and mental health in line with the requirements of the role.
- All reasonable steps must be made to make adjustments for people to enable them to carry out their role. These must be in line with requirements to make reasonable adjustments for employees under the Equality Act 2010.

- (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

CQC's Guidance for providers on meeting the regulations (March 2015) states that providers must have regard to the following guidance:

- Providers must have processes in place to assure themselves that a person has not been responsible for, privy to, contributed to, or facilitated any serious misconduct or mismanagement in the carrying on of a regulated activity. This includes investigating any allegation of such and making independent enquiries.
- Providers must not appoint any person who has been responsible for, privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether lawful or not) in the carrying on of a regulated activity.
- A director may be implicated in a breach of a health and safety requirement or another statutory duty or contractual responsibility because of how the entire management team organised and managed its organisation's activities. In this case, providers must establish what role the director played in the breach so that they can judge whether it means they are unfit. If the evidence shows that the breach is attributable to the director's conduct, CQC would expect the provider to find that they are unfit.
- Although providers have information on when convictions, bankruptcies or similar matters are to be considered 'spent' there is no time limit for considering serious misconduct or responsibility for failure in a previous role.



- (e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

CQC's Guidance for providers on meeting the regulations (March 2015) states that providers must have regard to the following guidance:

- A person who will be acting in a role that falls within the definition of a "regulated activity" as defined by the Safeguarding Vulnerable Groups Act 2006 must be subject to a check by the Disclosure and Barring Service (DBS).
- Providers must seek all available information to assure themselves that directors do not meet any of the elements of the unfit person test set out in Schedule 4 Part 1. Robust systems should be in place to assess directors in relation to bankruptcy, sequestration, insolvency and arrangements with creditors. In addition, providers should establish whether the person is on the children's and/or adults safeguarding barred list and whether they are prohibited from holding the office in question under other laws such as the Companies Act or Charities Act.
- If a provider discovers information that suggests an individual is unfit after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.

## **Schedule 4 – Good character and unfit person tests**

### **Part 1 – Unfit person test**

1. 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.
2. The person is 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. 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(b).
4. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
5. 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.
6. 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.

### **Part 2 – Good character**

7. 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
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.

**NORTHUMBERLAND, TYNE AND WEAR NHS FOUNDATION TRUST (“the Trust”)**

**“FIT AND PROPER PERSON” DECLARATION**

1. It is a condition of employment that those holding director and director-equivalent posts 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. Fitness to hold such a post is determined in a number of ways, including (but not exclusively) by the Trust’s provider licence, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2008 (“the Regulated Activities Regulations”) and the Trust’s constitution.
2. By signing the declaration below, 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.

**Provider licence**

3. Condition G4 (2) of Northumberland, Tyne and Wear NHS Foundation Trust’s Provider Licence (“the Licence”) provides that the Licensee shall not appoint as a director any person who is an unfit person, except with the approval in writing of Monitor.
4. Licence Condition G4 (3) requires the Licensee to ensure that its contracts of service with its directors contain a provision permitting summary termination in the event of a director being or becoming an unfit person. The Licence also requires the Licensee to enforce that provision promptly upon discovering any director to be an unfit person, except with the approval in writing of Monitor.
5. An “unfit person” is defined at condition G4 (5) of the Licence as:
  - (a) an individual:
    - (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
    - (ii) who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
    - (iii) who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him; or
    - (iv) who is subject to an unexpired disqualification order made under the Company Directors’ Disqualification Act 1986; or

- (b) a body corporate, or a body corporate with a parent body corporate:
  - (i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of subparagraph (a) of this paragraph, or
  - (ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or
  - (iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or
  - (iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or
  - (v) which passes any resolution for winding up, or
  - (vi) which becomes subject to an order of a Court for winding up.

### **Regulated Activities Regulations**

- 6. 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.
- 7. 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.
- 8. 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.
9. Part 2 of Schedule 4 to the Regulated Activities Regulations expands on good character as follows:
- (g) 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;
  - (h) 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.

### **Trust's constitution**

10. The Trust's constitution places a number of restrictions on an individual's ability to become or continue as a director. A person may not become or continue as a director of the Trust if:
- (a) that person has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - (b) that person has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
  - (c) that person within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her;

- (d) that person within the preceding five years has been convicted in the British Islands of any offence if he was detained under a Court order made pursuant to the Mental Health Act 1983 for a period of not less than three months;
- (e) that person within the preceding five years has been subject to an Anti-Social Behaviour Order made under the Crime and Disorder Act 1998 as amended;
- (f) that person has at any time been subject to the notification requirements of the Sexual Offences Act 2003 or a Sex Offenders Order made under the Crime and Disorder Act 1998 as amended;
- (g) that person is an 'unfit person' as defined in the trust's provider licence (as may be amended from time to time);
- (h) that person fails to fulfil the criteria for membership set out in the Constitution (non-executive directors only);
- (i) that person has been dismissed, otherwise than by reason of redundancy, from any paid employment with a public service body, including the avoidance of doubt, the Trust, thereby making the person ineligible for membership (non-executive directors only);
- (j) that person does not comply with the CQC guidance regarding appointments to senior positions in organisations subject to CQC regulations.

I acknowledge the extracts from the provider licence, Regulated Activities Regulations and the Trust's constitution above. I confirm that I do not fit within the definition of an "unfit person" as listed above and that there are no other grounds under which I would be ineligible to continue in post. I undertake to notify the Trust immediately if I no longer satisfy the criteria to be a "fit and proper person" or other grounds under which I would be ineligible to continue in post come to my attention.

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

Position: \_\_\_\_\_ Date: \_\_\_\_\_

### Appendix 3

	Standard	Assurance	Evidence
1.	<p>Providers should make every effort to ensure that all available information is sought to confirm that the individual is of good character as defined in Schedule 4, Part 2 of the regulations.</p> <p><i>(Sch.4, Part 2: 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. 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></p>	<p>Employment checks are undertaken in accordance with NHS Employers pre-employment check standards and include:</p> <ul style="list-style-type: none"> <li>▪ Two references, one of which must be most recent employer</li> <li>▪ qualification and professional registration checks</li> <li>▪ right to work checks</li> <li>▪ identity checks</li> <li>▪ occupational health clearance</li> <li>▪ DBS checks (where appropriate)</li> </ul> <p>In addition, we also carry out:</p> <ul style="list-style-type: none"> <li>▪ Declarations of fitness by candidates</li> <li>▪ Search of insolvency and bankruptcy register</li> <li>▪ Search of disqualified directors register</li> </ul>	<p>References</p> <p>Other pre-employment checks</p> <p>DBS checks where appropriate</p> <p>Signed declarations from applicants</p> <p>Register search results</p>
2.	<p>If a provider discovers information that suggests an individual is not of good character after they have been appointed to a role, the provider must take appropriate and timely action to investigate and rectify the matter.</p>	<p>Disciplinary policy and procedure provides for such investigations.</p> <p>Revised contracts allow for termination in the event of non-compliance with regulations and other requirements.</p>	<p>Contracts of employment (for EDs and director-equivalents)</p> <p>Terms and conditions of service agreements (for NEDs)</p> <p>Disciplinary policy and procedure</p>
3.	<p>Where a provider deems the individual suitable despite not meeting the characteristics outlined in Schedule 4, Part 2 of these regulations, the reasons should be recorded and information about the decision should be made available to those that need to be aware.</p>	<p>This would be the subject of debate at the ARTE Committee (for EDs and director-equivalents) and at the council of governors (for NEDs). The minutes would record such decisions.</p> <p>The Chair would take advice from internal and external advisors as appropriate.</p>	<p>Minutes of meetings.</p>

	<b>Standard</b>	<b>Assurance</b>	<b>Evidence</b>
4.	Where specific qualifications are deemed by the provider as necessary for a role, the provider must make this clear and should only employ those individuals that meet the required specification, including any requirements to be registered with a professional regulator.	This requirement is included within the job description for relevant posts and is checked as part of the pre-employment checks.	Person specification Recruitment policy and procedure
5.	The provider should have appropriate processes for assessing and checking that the individual holds the required qualifications and has the competence, skills and experience required, (which may include appropriate communication and leaderships skills and a caring and compassionate nature), to undertake the role; these should be followed in all cases and relevant records kept.	Employment checks include a candidate's qualifications and employment references.  The recruitment process also includes qualitative assessment and values-based questions.	Recruitment policy and procedure Values-based questions
6.	The provider may consider that an individual can be appointed to a role based on their qualifications, skills and experience with the expectation that they will develop specific competence to undertake the role within a specified timeframe.	Any such decision would be discussed by the ARTE Committee or council of governors and would be minuted. Actions would be subject to follow-up as part of ongoing review and appraisal.	NED appraisal framework NED competence framework ED appraisals
7.	When appointing relevant individuals the provider has processes for considering a person's physical and mental health in line with the requirements of the role.	All post-holders are subject to clearance by occupational health as part of the pre-employment process.	Occupational health clearance
8.	Wherever possible, reasonable adjustments are made in order that an individual can carry out the role.	This is already included in the Trust's disability policy.	Disability policy

	Standard	Assurance	Evidence
9.	<p>The provider has processes in place to assure itself that the individual has not been at any time responsible for, privy to, contributed to, or facilitated, any serious misconduct or mismanagement in the carrying on of a regulated activity; this includes investigating any allegation of such potential behaviour. Where the individual is professionally qualified, it may include fitness to practise proceedings and professional disciplinary cases.</p> <p><i>("Responsible for, contributed to or facilitated" means that there is evidence that a person has intentionally or through neglect behaved in a manner which would be considered to be or would have led to serious misconduct or mismanagement.</i></p> <p><i>"Privy to" means that there is evidence that a person was aware of serious misconduct or mismanagement but did not take the appropriate action to ensure it was addressed.</i></p> <p><i>"Serious misconduct or mismanagement" means behaviour that would constitute a breach of any legislation/enactment CQC deems relevant to meeting these regulations or their component parts.")</i></p>	<p>This has been incorporated as a specific declaration as part of the pre-employment process.</p> <p>It is also incorporated into a revised reference request template for all director and director-equivalent posts.</p>	<p>NED Recruitment Information pack</p> <p>Pre-employment declaration</p> <p>Reference Request for ED/NED</p>
10.	<p>The provider must not appoint any individual who has been responsible for, privy to, contributed to, or facilitated, any serious misconduct or mismanagement (whether lawful or not) in the carrying on of a regulated activity; this includes investigating any allegation of such potential behaviour. Where the individual is professionally qualified, it may include fitness to practise proceedings and professional disciplinary cases.</p>	<p>This has been incorporated as a specific declaration as part of the pre-employment process.</p> <p>It is also incorporated into a revised reference request template for all director and director-equivalent posts.</p>	<p>NED Recruitment Information pack</p> <p>Reference Request for ED/NED</p>
11.	<p>Only individuals who will be acting in a role that falls within the definition of a "regulated activity" as defined by the Safeguarding Vulnerable Groups Act 2006 will be eligible for a check by the Disclosure and Barring Service (DBS).</p> <p><i>(CQC recognises that it may not always be possible for providers to access a DBS check as an individual may not be eligible.)</i></p>	<p>DBS checks are undertaken only for those posts which fall within the definition of a "regulated activity" or which are otherwise eligible for such a check to be undertaken.</p>	<p>DBS policy</p> <p>DBS checks for eligible post-holders</p>



	<b>Standard</b>	<b>Assurance</b>	<b>Evidence</b>
12.	As part of the recruitment/appointment process, providers should establish whether the individual is on a relevant barring list.	Eligibility for DBS checks will be assessed for each vacancy arising.	DBS policy
13.	The fitness of directors is regularly reviewed by the provider to ensure that they remain fit for the role they are in; the provider should determine how often fitness must be reviewed based on the assessed risk to business delivery and/or the service users posed by the individual and/or role.	Post-holders undertake annual declarations of fitness to continue in post.  Checks of insolvency and bankruptcy register and register of disqualified directors to be undertaken each year as part of the appraisal process. (*)	Annual declaration NED appraisal process ED appraisal process
14.	The provider has arrangements in place to respond to concerns about a person's fitness after they are appointed to a role, identified by itself or others, and these are adhered to.	The disciplinary policy provides these arrangements, and revised contracts (for EDs and director-equivalents) and agreements (for NEDs) incorporate maintenance of fitness as a contractual requirement.	Disciplinary policies ED contracts of employment NED agreements
15.	The provider investigates, in a timely manner, any concerns about a person's fitness or ability to carry out their duties, and where concerns are substantiated, proportionate, timely action is taken; the provider must demonstrate due diligence in all actions.	This will be undertaken if concerns are identified and revised contracts provide for termination if individuals fail to meet necessary standards.	Revised employment contracts for ED and NEDs
16.	Where a person's fitness to carry out their role is being investigated, appropriate interim measures may be required to minimise any risk to service users.	This would be reviewed when concerns are identified.	Disciplinary policy.
17.	The provider informs others as appropriate about concerns/findings relating to a person's fitness; for example, professional regulators, CQC and other relevant bodies, and supports any related enquiries/investigations carried out by others.	This would be completed if any concerns were identified.	Referrals made to other agencies.