

Northumberland, Tyne and Wear NHS Foundation Trust

Board of Directors Meeting

Meeting Date: 29 November 2017

Title and Author of Paper:

Care Quality Commission's Fit and Proper Person Test – Update Paper

Lead: Caroline Wild, Deputy Director, Communications and Corporate Relations
(Board Secretary)

Paper for Debate: Decision or Information: Information

Key Points to Note:

This paper provides an update to the Board regarding the ongoing work and Trust's position in relation to the CQC's Fit and Proper Person Test.

Risks Highlighted to Board :

The Fit and Proper Persons Test is a requirement of the Care Quality Commission

Does this affect any Board Assurance Framework/Corporate Risks?

No

Equal Opportunities, Legal and Other Implications: None

Outcome Required: The Board is asked to note the Trusts current position in relation to compliance with the CQC Fit and Proper Person Test

Link to Policies and Strategies: Trust Fit and Proper Persons Procedure

Northumberland, Tyne and Wear NHS Foundation Trust

Board of Directors' Meeting, 29th November 2017

Fit and Proper Person Test update

The Care Quality Commission (CQC) Regulation 5: Fit and proper person directors' test came into effect on 1 April 2015. The regulation was a direct response to failings at Winterbourne View Hospital and the Francis Enquiry report.

To meet the regulation, all NHS providers are required to provide evidence that appropriate systems and processes are in place to ensure that both new and existing directors are and continue to be 'fit' as defined by the CQC. This requires a process to ensure that individuals working at board level meet the criteria as set out in appendix 1.

The NTW Fit and Proper Person Test procedure was approved by the Board on the 25 November 2015. It was further agreed that the 'Test' would apply to all Board members and the 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. This list has been reviewed in the light of organisational changes over the last 12 months and are:

- Directors of NTW Solutions
- Director of Informatics
- Chief Pharmacist
- Joint Directors of Research and Innovation
- Group Nurse Director, Safer Care (Director of Infection Prevention and Control)
- Director of Allied Health professionals and Psychological Services
- Director of Audit One
- Deputy Director, Communications and Corporate Relations (Board Secretary)
- Deputy Director, NTW Academy

The board is asked to note the current position:

- The Insolvency and Bankruptcy Register England and Wales (IIR) search was conducted most recently on 4 September 2017 – no issues arising.
- Additional insolvency restrictions search was conducted on 4 September 2017 – no issues arising.
- Companies House database of disqualified directors search was conducted on 4 September 2017 – no issues arising.
- All persons subject to the test will be asked to sign the annual declaration.
- Review of NTW process to assess NTW Fit and Proper Person Directors. This has been reviewed and it is confirmed to be in line with the toolkit.
- On appointment, newly appointed Directors are subject to the provisions of the test.

This process enables the Trust to demonstrate reasonable checks have been undertaken as required by CQC regulation 5: Fit and Proper Persons Test Directors.

The Board is asked to:

- Note the Trusts current position in relation to compliance with the CQC Fit and Proper Person Test

Caroline Wild

Deputy Director of Communications and Corporate Relations (Board Secretary)

Appendix 1

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.