

Council of Governors' meeting 11th March 2015

Fit and Proper Persons Test for Directors

Introduction

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 make important changes to health and social care standards which are regulated by the Care Quality Commission. They represent one of the ways in which the Government is responding to the Francis Inquiry. An overview of these regulations was included in the Chief Executive's Report to the January 2015 Council of Governors' meeting.

One of these Regulations relates to Fit and Proper Persons.

The purpose of this paper is to seek the Council's support in respect of specific aspects of the implementation of the new Fit and Proper Persons Test.

Requirements under the Fit and Proper Persons Regulation

The purpose of the Fit and Proper Persons Regulation is to require Trusts to take proper steps to ensure their Directors (and equivalent) are fit and proper for the role. The test applies to both Executive and Non-Executive Directors and individuals performing the functions of, or functions equivalent or similar to the functions of a Director. It does not apply to Governors.

The Regulations provide that health service bodies must not appoint or have in place an individual as a Director or equivalent unless:

- The individual is of good character
- The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or work for which they are employed
- 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
- 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
- None of the grounds of unfitness specified in Part 1 of Schedule 4 of the NHS Act 2006 applied to the individual: bankruptcy; on a barred list, legal impediment.

Proposals

To ensure compliance with the requirements of the Fit and Proper Persons Test, amendments are recommended in respect of the following:

1. Foundation Trust Constitution: The tracked changes in relation to Board of Directors – Disqualification para 27 as attached. To simplify this section, as advised by Hempsons (the Trust's legal advisors), reference to the Fit and Proper Persons requirements contained in the NHS Provider Licence and the Health & Social Care Act 2008 regulations is made in the Constitution, rather than detailing each condition. The same approach has been taken in respect of Council of Governors – Disqualification and Removal para 14 although, to re-emphasise, there is no change in the disqualification criteria for Governors.
2. Amendment to the Non-Executive Director appointment letter highlighting the need that NEDs comply with the new Fit and Proper Persons Regulations and that non-compliance will be grounds for termination of appointment.
3. Amendment to the Council of Governors' Nominations & Remuneration Committee Terms of Reference which will state that the Committee will act in accordance with the Fit and Proper Persons requirements.

Recommendation

The Council of Governors is asked to consider and endorse the above proposals.

Paul Martin, Deputy Director, Corporate Affairs
27th February 2015