



**Moorfields  
Eye Hospital**  
NHS Foundation Trust



Agenda item 11  
Fit and proper person's report  
Board of directors 2 May 2019

<b>Report title</b>	Fit and proper persons compliance report
<b>Report from</b>	Sandi Drewett, director of workforce & OD
<b>Prepared by</b>	Helen Essex, company secretary
<b>Previously discussed at</b>	
<b>Link to strategic objectives</b>	We will attract, retain and develop great people

<p><b>Executive summary</b></p> <p>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 requires all trusts to ensure that all executive and non-executive director posts (or anyone performing similar or equivalent functions) are filled by people that meet the requirements of the Fit and Proper Person Regulations (FPPR). The definition of directors includes those in permanent, interim or associate roles, irrespective of their voting rights.</p> <p>The regulations place a duty on trusts to ensure that their directors are compliant with the FPPR and this report provides assurance to the board on this matter.</p> <p>Following the annual declarations of interest review, all Board members have confirmed that they remain fit and proper to undertake their role. Due diligence checks have been undertaken and personal files reviewed by the company secretary and director of workforce &amp; OD.</p> <p>A summary of action taken in the past year, learning from the annual review and further expected guidance is included for reference.</p>							
<p><b>Quality implications</b></p> <p>There is an expectation on senior leaders to set the tone and culture of the organisation, which has a direct impact on the quality of staff and patient experience.</p>							
<p><b>Financial implications</b></p> <p>There are no direct financial implications arising from this paper.</p>							
<p><b>Risk implications</b></p> <p>Application and review of the requirement minimises the opportunity for individuals to act in a manner that may be detrimental to patients, staff or the organisation as a whole whilst in a position of power and influence.</p>							
<p><b>Action required/recommendation.</b></p> <p>The board is asked to receive the report and take assurance from it.</p>							
<b>For assurance</b>	✓	<b>For decision</b>		<b>For discussion</b>		<b>To note</b>	

## 1. Background

Under the requirements, the trust must not appoint to a post under the scope of the Regulated Activity Regulations without first satisfying itself that the individual:

- Is of good character
- Has the necessary qualifications, competence, skills and experience
- Has the appropriate level of physical and mental fitness
- Has not been party to any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity
- Is not deemed unfit under the Regulated Activities Regulations provisions
- Can provide the personal information as set out in the regulations which must be available to be supplied to the CQC when required.

These requirements must be held at the point of commencing the role and on an ongoing basis.

The CQC's definition of 'good character' is not the objective test of having no criminal convictions but rather a judgement to be made as to whether a person's character is such that they can be relied upon to do the right thing under all circumstances. The Trust will use its discretion in reaching a decision regarding character.

In the event that an individual ceases to be a fit and proper person, the individual may be summarily dismissed and the Trust will notify the individual and the trust's regulator.

The roles and responsibilities of individuals in relation to these guidelines are as follows:

- **Trust Chair** – to take overall responsibility and accountability for ensuring all those required to confirm that they meet the requirements of the Regulated Activity Regulations do so at appointment and as an ongoing requirement
- **Those within the scope of FPPR** – to hold and maintain suitability for the role they are undertaking, to respond to any requests for evidence of their ongoing suitability, to disclose any issues which may call into question their suitability for the role they are undertaking
- **HR Department** – to undertake all recruitment checks for employees and ensure the results are recorded and evidenced within an individual's file.
- **Company secretary** – to undertake all appointment checks for non-executive directors and ensure the results are recorded and evidenced within an individual's file. To undertake an annual refresh of suitability for all board members.
- **Agency providers** – to ensure the necessary checks have been outlined in this policy and make those checks available as and when required.

### Compliance at the point of recruitment

The trust has in place robust processes with regard to the appointment of directors. These processes include the following:

- Confirming the status of the specific qualifications as outlined within the relevant JD/Person Spec
- Identity checks
- Qualification and registration checks
- Right to work checks
- DBS checks
- References covering at least three years of employment, one of which must be from the most current/recent employer
- Search of insolvency/bankruptcy register and disqualified directors register

- Review of full employment history seeking an explanation of any gaps in employment
- Health questionnaire and occupational health clearance
- A search of the individual through internet search engines to note any information in the public domain which the trust should be made aware of
- A self-declaration from the individual
- An explicit clause within the contract of employment to ensure the individuals accept the requirements of the Regulated Activity Regulations at the point they commence with the trust

### **Assessment of continued compliance**

The trust is responsible for ensuring the continued compliance of those persons to whom the Regulated Activity Regulations apply. This requirement is fulfilled through a number of processes including:

- The completion of an annual self-declaration by all directors
- Annual checks for credit, bankruptcy, disqualification and regulation
- Formal appraisal processes
- Maintenance of the register of declared interests

Continued compliance is the responsibility of the company secretary with the exception of the formal appraisal process which is the responsibility of the line manager.

Significant work was undertaken in 2018 to ensure that all individuals' personal files were complete and that all requirements were met.

## **2. Annual review**

The due diligence process has been undertaken in line with previous years as follows:

- Each Director signs a declaration covering the specific aspects of the FPPR on an annual basis;
- New appointees to the Board of Directors have been through this process prior to appointment (this year, new appointees are the joint director of education, the director of estates, capital and major projects, the director of workforce & OD, the medical director and the chief financial officer).
- The trust has implemented a new Declarations of Interest and Hospitality Policy;
- Annual appraisals are in place. The chief executive appraises the executive directors; the senior independent director appraises the chair; the chair appraises the non-executive directors; the relevant director appraises anyone who acts as a director or board member but does not report directly to the chief executive.
- All performance reviews have been completed, with the outcome for the chair and non-executive directors reported and confirmed to the remuneration and nominations committee of the membership council on 6 December 2018, and the membership council on 17 January 2019.
- All director contracts include the necessary FPPR statement.
- Each personal file has been checked by the company secretary and director of workforce and OD.
- Disqualified Directors and insolvency checks are undertaken and evidenced, as well as professional registration checks.

## **3. This year's learning**

The trust has found that there can be complications arising from appointments made jointly across UCL and Moorfields and there is a need to collaborate with other departments to obtain the required information. Procedures need to be made more robust to allow this process to run smoothly.

This will include the incorporation of the Follett principles, which relate to the joint appointments of clinical academics. These recommendations encourage a safe, accountable working environment and reinforce the principle that a clinical academic role is a shared role with multiple employers, and not an arrangement where services are supplied by one employer to another.

#### **4. Further guidance**

In July 2018, Tom Kark QC was commissioned to review the scope, operation and purpose of the Fit and Proper Person Test (FPPT). The review looked in particular at how effective the FPPT is in preventing unsuitable staff from being redeployed or re-employed in the NHS and follows the Kirkup report into Liverpool Community Health Trust in February 2018.

The Kark Review identified a range of problems with the FPPT and made the following recommendations:

1. All directors should meet specified standards of competence to sit on the board of any health providing organisation
2. A central database should be created, holding relevant information about qualifications and history about each director (including NEDs)
3. Full, honest and accurate mandatory employment references should be required from any relevant employer where an employee is moving from a post covered by Regulation 5 to a post covered by Regulation 5
4. The FPPT should be extended to all commissioners and other appropriate ALBs
5. An organisation should be set up with the power to suspend and disbar directors who are found to have committed serious misconduct
6. Further work is done to examine how the test works in the context of the provision of social care.

Recommendations 1 and 2 were accepted by the Secretary of State for Health and Social Care upon publication of the report. The chair of NHSI has been asked by the Health Secretary to consider the remaining recommendations and how they can be implemented.

The review team made it clear that it is important to distinguish the treatment of those directors whose competence is poor and who could, with support and/or training, become competent, from those who have been involved in serious misconduct.

It was also pointed out that none of the recommendations should remove from the trust board the overarching responsibility for good corporate governance and the overall responsibility of trust boards to protect staff and patients.