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Which Principles of the NHS Constitution Apply? Please list from principles 1-7 which apply 3 Principles		Which Staff Pledges of the NHS Constitution Apply? Please list from staff pledges 1-7 which apply Not applicable Staff Pledges	
Does this document meet the requirements of the Equality Act 2010 in relation to Race, Religion and Belief, Age, Disability, Gender, Sexual Orientation, Gender Identity, Pregnancy & Maternity, Marriage and Civil Partnership, Carers, Human Rights and Social Economic Deprivation discrimination? Yes			
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BEHAVIOURAL STANDARDS FRAMEWORK

To help create a great place to work and a great place to be cared for, it is essential that our Trust policies, procedures and processes support our values and behaviours. This document, when used effectively, can help promote a workplace culture that values the contribution of everyone, shows support for staff as well as patients, recognises and celebrates the diversity of our staff, shows respect for everyone and ensures all our actions contribute to safe care and a safe working environment - all of which are principles of our Behavioural Standards Framework.

Behavioural Standards Framework – Expectations ‘at a glance’

Introduce yourself with #hello my name is... 	Value the contribution of everyone	Share learning with others
Be friendly and welcoming	Team working across all areas	Recognise diversity and celebrate this
Respect shown to everyone	Seek out and act on feedback	Ensure all our actions contribute to safe care and a safe working environment
Put patients at the centre of all we do	Be open and honest	For those who supervise / manage teams: ensure consistency and fairness in your approach
Show support to both staff and patients	Communicate effectively: listen to others and seek clarity when needed	Be proud of the role you do and how this contributes to patient care

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1. SUMMARY

1.1 Statement Of Intent

University Hospitals of Morecambe Bay NHS Foundation Trust is committed to fulfilling its obligations under Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2014 Regulations)¹ and ensuring that its directors are fit and proper persons to carry out this role.

2. PURPOSE

The purpose of this policy is to set out the requirements of Regulation 5 of the 2014 Regulations and describe how the Trust will comply with these.

3. SCOPE

This policy applies to all directors - executive and non-executive, permanent and interim. This includes those directors who were already in post when the 2014 Regulations¹ came into force.

It is the ultimate responsibility of the Chair of the Trust to ensure that all directors meet the fitness test and do not meet any of the unfit criteria.

4. POLICY

4.1 Introduction

From 27 November 2014 the Trust has been required to ensure that director level appointments meet the 'fit and proper persons test' set out in Regulation 5 of the 2014 Regulations (Regulation 5)² and which was integrated into Care Quality Commission's registration, monitoring and inspection requirements.

4.2 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 Regulation 5: Fit and Proper Persons: directors²

A Trust must not appoint a person to a director level post unless :

- they are of good character;
- they have the necessary qualifications, competence, skills and experience;
- they are able by reason of their health, after reasonable adjustments are made, properly to perform their work;
- they have not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement in the course of carrying on a regulated activity; and
- none of the grounds of unfitness specified in Part 1 of Schedule 4 of the 2014 Regulations¹ apply to them

In assessing good character, consideration must be given to:

- Whether the person has been convicted in the United Kingdom of any offence or been

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convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence, and

- 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.

A person must also supply the information set out at Schedule 3 of the 2014 Regulations¹ (see Appendix 1)

The grounds of unfitness specified in Part 1 of Schedule 4 of the 2014 Regulations¹ are :

- The person is an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged;
- 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;
- 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 1986³;
- The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- 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 2006⁴, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
- 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

4.3 Codes of Conduct

The Codes of Conduct for NHS Boards and NHS Managers⁵ set out the key public service values. They state that high standards of corporate and personal conduct, based on the recognition that patients come first, have been a requirement throughout the NHS since its inception. These values are summarised as:

Accountability: Everything done by those who work in the authority must be able to stand the tests of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

Probity: Absolute honesty and integrity should be exercised in dealing with NHS patients, assets, staff, suppliers and customers.

Openness: The health body's activities should be sufficiently public and transparent to promote confidence between the authority and its staff and the public.

All executive director level post should be aware of, and act in accordance with, these values. In addition, staff are expected to:

- act impartially in all their work;
- refuse gifts, benefits, hospitality or sponsorship of any kind that might reasonably be seen to compromise their judgement or integrity; and, to avoid seeking to exert influence to obtain preferential consideration. All such gifts should be returned and hospitality refused.
- declare and register gifts, benefits or sponsorship of any kind, in accordance with time

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limits agreed locally (provided that they are worth at least £25), whether refused or accepted;

- declare and record financial, non-financial or personal interest (e.g. company shares, research grant) in any organisation with which they have to deal, and be prepared to withdraw from those dealings if required, thereby ensuring that their professional judgement is not influenced by such considerations;
- make it a matter of policy that offers of sponsorship that could possibly breach the Code be reported to the Board;
- not misuse their official position or information acquired in the course of their official duties, to further their private interests or those of others;
- ensure professional registration (if applicable) and/or status are not used in the promotion of commercial products or services;
- beware of bias generated through sponsorship, where this might impinge on professional judgement or impartiality;
- neither agree to practice under any conditions which compromise professional independence or judgement, nor impose such conditions on other professionals.

4.4 Roles and Responsibilities

4.4.1 The Role of the Chair of the Trust

It will be the responsibility of the Chair of the Trust to discharge the requirement placed on the Trust to ensure that all directors meet the fitness test and do not meet any of the 'unfit' criteria. This includes systems to ensure only those fit for the role of director are appointed; regularly reviewing the fitness of directors and having arrangements in place to respond to concerns about a person's fitness arising after appointment.

4.4.2 The Role of the Care Quality Commission (CQC)

The CQC will examine how the Trust has discharged its responsibility under Regulation 5². It will test that the Trust understands the requirements of the Regulation and whether the Trust has put in place adequate and appropriate measures to ensure that they are met. It will confirm that the Trust has undertaken appropriate checks and is satisfied that all directors are of good character and not unfit on appointment and subsequently. This may involve checking personnel files.

Where the CQC receives information from a third party regarding an alleged lack of fitness of a director, the CQC will convene a panel to determine whether the information is significant and should be considered by the Trust. It will then be for the Trust to consider whether the director in question remains or is a fit and proper person under the regulations.

The role of the CQC in determining whether information is satisfactory is to form a view on the quality of the evidence and whether it has been taken into account.

The CQC will expect the Trust to take account of core public information sources about providers in making appointments including but not limited to those at Appendix 2.

During inspections the CQC will assess compliance with the test as part of the well-led domain.

Where a Trust cannot demonstrate that it has undertaken the appropriate checks in the appointment of its board members the CQC will decide whether or not to take regulatory

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action, and what action to take on a case by case basis. Where the CQC decides to take regulatory action the Trust may appeal to the First-tier Tribunal and or seek leave for judicial review.

4.4.3 The Role of NHS Improvement

Standard condition G4 of the provider license requires that a foundation trust must not appoint or allow an unfit person to remain in post without NHS Improvement's permission. At present NHS Improvement's definition is the narrower definition set out in the Schedule 7 of the National Health Service Act 2006⁶ as amended by the Health and Social Care Act 2012⁷.

4.4.4 The Role of the Council of Governors

The role of the nominations committee for non-executive director appointments is to interview and otherwise assess the candidates and to recommend suitable candidates for appointment to meetings of the full council. The committee also recommends to the council whether or not to approve the appointment of the chief executive. The council of governors may also remove the chair or non-executive directors from post.

As a minimum the nominations committee and through them the council of governors will need to satisfy themselves that the relevant checks set out in the table in Appendix 3 have been carried out and they will want to satisfy themselves that the board has adequate assurances on the robustness of procedures.

Where a candidate has made a declaration in respect of their character that does not comply with the regulations or in respect of past mismanagement and has offered an explanation of the circumstances, the nominations committee will need to investigate and form a view as to whether the explanation is sufficient to allow the candidate to continue in the appointments process and this must be recorded.

Where the nominations committee decides to recommend such a candidate for appointment, the meeting of the council will need to satisfy itself that the investigation carried out by the nominations committee was robust.

Where a chair or NED declares a change in the status of their character or where such a change becomes known, the council of governors will investigate and determine the case.

Where NHS Improvement or the CQC consider that serious mismanagement has occurred within the Trust or where there has been a serious breach of a licence condition the council of governors may investigate and deal with any cases as required. The processes to be followed will follow that prescribed in the publication 'Your statutory duties A reference guide for NHS foundation trust governors⁸.'

4.4.5 The Role of Executive and Non-Executive, Permanent, Interim Post Holders

To make self-declarations in a form prescribed by the Chair and provide any additional information required to demonstrate compliance with Regulation 5. Specific contractual clauses will be interred in all new contracts for Non-Executive Directors and Executive Directors appointed after 1 April 2015.

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4.5 Pre-Employment Checks

In order to confirm that the individual is of good character, the Trust will make employment checks in accordance with NHS Employment Check Standards⁹ issued by NHS Employers. This will include:

- obtaining two references, one of which must be most recent employer;
- making qualification and professional registration checks;
- making right to work checks;
- making proof of identity checks (including photograph);
- obtaining occupational health clearance;
- making appropriate DBS checks;
- making a search of insolvency and bankruptcy register;
- making a search of disqualified directors register.

and will be documented on the individual's personal file.

A full employment history will be obtained with a satisfactory written explanation of any gaps in employment.

Where specific qualifications are deemed necessary for a role, the Trust will make this clear and will only employ those individuals that hold the required qualifications. The qualifications required will be detailed in the person specification.

Where specific skills and experience are required, (e.g. communication and leaderships skills and a caring and compassionate nature) these will be detailed in the person specification and the recruitment process will include qualitative assessment and values-based questions. Interview notes will be retained as evidence of compliance on the individual's personal file.

The Trust 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. Where this is the case, discussion and recommendations will be recorded and followed-up as part of continuing review and appraisal.

The Trust will assure itself that an 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. Checks will be made of the relevant sources recommended by the CQC (Appendix 2 and as updated). The consequences of false or inaccurate or incomplete information will be included in recruitment packs and relevant information obtained through reference requests.

In respect of enhanced DBS checks with children's and adults' barred list checks, a director would need to be acting in a role that falls within the criteria for an enhanced check and their responsibilities include undertaking a regulated activity that would fall within the scope of the barring list(s) as defined by the Safeguarding Vulnerable Groups Act 2006 and as amended by the Protection of Freedoms Act 2012 (PoFA). At this Trust, this applies to the Medical Director, Executive Chief Nurse and Director of Governance.

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4.6 Post-Employment Checks

The fitness of directors will be regularly reviewed by the Trust to ensure that they remain fit for their role. An assessment of continued fitness will be undertaken each year as part of appraisal process. Checks of insolvency and bankruptcy registers, register of disqualified directors and Charity Commission barred trustees list will be made each year as part of the appraisal process. Contracts will also include a requirement that relevant changes of circumstance must be promptly notified to the Trust by the individual. Although, checks are only made for those directors undertaking a regulated activity, all members of the Board are asked to make a self-declaration every six months.

If the Trust discovers information that suggests an individual is not of good character after they have been appointed to a role, the Trust will take appropriate and timely action to investigate and rectify the matter in line with core HR policies. (See also 4.4.4 above) The Trust will inform other agencies as appropriate about concerns/findings relating to a person's fitness; for example, professional regulators, CQC and other relevant bodies, and support any related enquiries/investigations carried out by others.

4.7 Assurance Framework to Ensure Compliance with the Regulations

Attached at Appendix 3 is an Assurance Framework to ensure compliance with the Regulations

4.8 Equality and Diversity Statement

University Hospitals of Morecambe Bay NHS Foundation Trust is committed to the overarching principles of Equality and Diversity. The Trust is committed towards ensuring all forms of prejudicial, unfair basis and/or actions which result in discriminatory practices are eliminated. The Trust makes this stand based not only on meeting its legislative duties but also a moral stand on ensuring equitable outcomes for all of its staff and patients.

The Trust is continually working towards eradicating all forms of harassment and discrimination, exclusion, victimisation, harassment and bullying to make certain it meets its legal duties by ensuing that:

- *Unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act¹⁰ are eliminated*
- *Equality of opportunity between people from different groups; is advanced and*
- *Good relationships between people from different groups are fostered*

The Trust treats any complaints it receives very seriously and as such any complaint received in respect of this policy or associated policies (in terms of application or adherence) will be investigated by Trust Staff. Within any investigation undertaken, the Trust will ensure that complainant/s, patients, relatives and carers are not discriminated or victimised in any form whatsoever on the grounds of their disability, gender, marital status, sexuality, colour, race, nationality, ethnic origin, religious belief or age. The Trust will ensure that no individual is treated in a detrimental manner as a result of having made a complaint.

The policy will be continually reviewed to ensure that there are no elements within the policy, practice or procedures that are prejudicial on any grounds in the respect of the

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protected equality characteristics mentioned above. Using the guidance produced under the auspices of Equality legislation, this document has also been analysed in respect of Equality and Diversity. The analysis is attached at the end of the policy document.

4.9 Review

4.9.1 Monitoring and Auditing of Policy Effectiveness

Monitoring is essential to ensuring that controls are appropriate and robust enough to prevent or reduce fraud. System controls are reviewed on an on-going basis and identify any weaknesses in processes.

Internal Audit will undertake an annual audit and sample one executive and one non-executive director record to confirm that the necessary checks have been made.

Where deficiencies in control are identified as a result of monitoring these will be reported to the Trust in progress reports and followed up by the Company Secretary.

4.9.2 Dissemination of the Policy

This policy will be disseminated via the intranet and can be found on the Governance section of the Document Library, it is important that staff understand and are aware of the policy. Should any member of staff have any questions in regards to the policy the Company Secretary can be contacted for clarification.

4.9.3 Review of the Policy

In accordance with Trust policy this document will be reviewed annually or more frequent should there be significant changes in legalisation or national guidance from NHS Protect.

5. ATTACHMENTS	
Number	Title
1	Assurance Framework to ensure compliance with the Regulations
2	Equality Impact Analysis Form

6. OTHER RELEVANT / ASSOCIATED DOCUMENTS	
Unique Identifier	Title and web links from the document library
Corp/Pol/112	Freedom to Speak Up – Raising Concerns http://uhmb/cs/tpdl/Documents/CORP-POL-112.docx

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7. SUPPORTING REFERENCES / EVIDENCE BASED DOCUMENTS

References in full

Number	References
1	Great Britain (2008) Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Available online from: http://www.legislation.gov.uk/ukdsi/2014/978011117613/contents (accessed 01.06.16)
2	Care Quality Commission (CGC) (2014) Regulation 5: Fit and proper persons: directors and Regulation 20: Duty of candour. Guidance for NHS bodies (2014) Available online from: http://www.cqc.org.uk/sites/default/files/20141120_doc_fppf_final_nhs_provider_guidance_v1-0.pdf (accessed 01.06.16)
3	Great Britain (1986) Insolvency Act 1986. Available online from: http://www.legislation.gov.uk/ukpga/1986/45/contents (accessed 01.06.16)
4	Great Britain (2006) Safeguarding Vulnerable Groups Act 2006. Available online from: http://www.legislation.gov.uk/ukpga/2006/47/contents (accessed 01.06.16)
5	DoH. (2004) Code of Conduct Code of Accountability in the NHS 2004. Available online from: http://www.nhsbsa.nhs.uk/Documents/Sect_1_-_D_-_Codes_of_Conduct_Acc.pdf (accessed 01.06.16)
6	Great Britain (2006) National Health Service Act 2006. Available online from: http://www.legislation.gov.uk/ukpga/2006/41/contents (accessed 01.06.16)
7	Great Britain (2012) Health and Social Care Act 2012. Available online from: http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted/data.htm (accessed 01.06.16)
8	Monitor (2013) Your statutory duties A reference guide for NHS foundation trust governors. Available from: https://www.gov.uk/government/publications/nhs-foundation-trust-governors-your-legal-obligations (accessed 01.06.16)
9	NHS Employers. NHS Employment Check Standards. Available from: http://www.nhsemployers.org/your-workforce/recruit/employment-checks (accessed 01.06.16)
10	Great Britain (2010) Equality Act 2010: Guidance and Amendment Regulations 2012. Available online from: https://www.gov.uk/equality-act-2010-guidance http://www.legislation.gov.uk/uksi/2012/2992/contents/made (accessed 01.06.16)

Bibliography

	Monitor (2015) Supporting NHS Providers: guidance on transactions for NHS Foundation Trust 2015. Available from: http://tinyurl.com/nw2gvrr (accessed 01.06.16)
	UHMB Code of Conduct for Directors and Employees. Available from the Trust intranet
	Great Britain 2010. Bribery Act 2010 guidance. Available from: https://www.gov.uk/government/publications/bribery-act-2010-guidance (accessed 01.06.16)
	NHS Commissioning Board Authority (NHSCBA/12/2011/2B) Approval of Policies: Declaration of Interest 2011. Available from: http://www.england.nhs.uk/wp-content/uploads/2011/12/Paper-NHSCBA-12-2011-2B-Declaration-of-Interest-Final.pdf (accessed 01.06.16)

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8. DEFINITIONS / GLOSSARY OF TERMS	
Abbreviation or Term	Definition

9. CONSULTATION WITH STAFF AND PATIENTS		
Enter the names and job titles of staff and stakeholders that have contributed to the document		
Name	Job Title	Date Consulted
Ranu Rowan	Legal Services Manager	
David Wilkinson	Director of Workforce &OD	

10. DISTRIBUTION PLAN	
Dissemination lead:	Paul Jones
Previous document already being used?	No
If yes, in what format and where?	Not applicable
Proposed action to retrieve out-of-date copies of the document:	Not applicable
To be disseminated to:	
Document Library	Yes
Proposed actions to communicate the document contents to staff:	Include in the UHMB Weekly News – New documents uploaded to the Document Library

11. TRAINING		
Is training required to be given due to the introduction of this procedural document? *Yes / No Please delete as appropriate		
Action by	Action required	Implementation Date
	Not applicable	

12. AMENDMENT HISTORY				
Version No.	Date of Issue	Page/Selection Changed	Description of Change	Review Date
2	15/06/2016	Sect 4.4.4 and Appendix 3 (item 12)	Added sentence referring process to that in publication 'Your statutory duties: A reference guide for NHS foundation trust governors'	01/04/2019
2.1	04/10/2017	Page 3	BSF page added	01/04/2019
2.2	19/03/2018	Appendix 4	Updated	01/04/2019
2.3	10/04/2019	Page 1	Review Date extended – form 065/2019	01/10/2019

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Appendix 1: SCHEDULE 3: Information Required in Respect of Persons Employed or Appointed for the Purposes of a Regulated Activity

1. Proof of identity including a recent photograph.
2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997(38), a copy of a criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request)(39)
3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children or vulnerable adults.
4. Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to:
 - (a) health or social care, or,
 - (b) children or vulnerable adults.
5. Where a person (P) has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why P's employment in that position ended.
6. In so far as it is reasonably practicable to obtain, satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed or appointed to perform.
7. A full employment history, together with a satisfactory written explanation of any gaps in employment.
8. Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity.
9. For the purposes of this Schedule:
 - (a) 'the appointed day' means the day on which section 30A of the Safeguarding Vulnerable Groups Act 2006 comes into force;
 - (b) 'satisfactory' means satisfactory in the opinion of the Commission;
 - (c) 'suitability information relating to children or vulnerable adults' means the information specified in sections 113BA and 113BB respectively of the Police Act 1997

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Appendix 2: Core public information sources that CQC believe are relevant for Trusts to use as part of their FPPR due diligence (this list is not exhaustive):

- Any provider whose registration had been suspended or cancelled due to failings in care in the last five years or longer if the information is available because of previous registration with CQC predecessor bodies.
- Public inquiry reports about the provider.
- Information where we are notified about any relevant individuals who have been disqualified from a professional regulatory body. This information would be shared with the individual and the provider in accordance with the Data Protection Act.
- Serious case reviews relevant to the provider.
- Homicide investigations for mental health trusts.
- Criminal prosecutions against providers.
- Ombudsmen reports relating to providers.

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Appendix 3: Assurance Framework to ensure Compliance with the Regulations

	Standard	Assurance process	Evidence
	At appointment		
1.	<p>The Trust 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. (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.)</p>	<p>Employment checks in accordance with NHS Employment Check Standards issued by NHS Employers including:</p> <ul style="list-style-type: none"> ▪ two references, one of which must be most recent employer; ▪ qualification and professional registration checks; ▪ right to work checks; ▪ proof of identity checks; ▪ occupational health clearance; ▪ DBS checks (where appropriate); ▪ search of insolvency and bankruptcy register; ▪ search of disqualified directors register. 	<p>References; Outcome of other pre-employment checks; DBS checks where appropriate; Register search results; List of referees and sources of assurance for FOIA purposes.</p>
2.	<p>Where the Trust 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>Report and debate at the nominations committee(s). Report and recommendation at the council of governors (for NEDs) or the board of directors (for EDs) for foundation trusts, reports to the board for NHS trusts. Decisions and reasons for decisions recorded in minutes. External advice sought as necessary.</p>	<p>Record that due process was followed for FOIA purposes.</p>
3.	<p>Where specific qualifications are deemed by the Trust as necessary for a role, the Trust must make this clear and should only employ those individuals that meet the</p>	<p>Requirements included within the job description for all relevant posts. Checked as part of the pre-employment checks and references on qualifications.</p>	<p>Person specification Recruitment policy and procedure</p>

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	required specification, including any requirements to be registered with a professional regulator.		
	Standard	Assurance process	Evidence
4.	The Trust 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. N.B. While this provision most obviously applies to executive director appointments in terms of qualifications, skills and experience will be relevant to NED appointments.	Employment checks include a candidate's qualifications and employment references. Recruitment processes include qualitative assessment and values-based questions. Decisions and reasons for decisions recorded in minutes.	Recruitment policy and procedure Values-based questions Minutes of council of governors. Minutes of board of directors.
5.	In addition to 4, above, the Trust 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.	Discussions and recommendations by the nominations committee(s). Discussion and decision at board of directors or council of governors meeting. Reports, discussion and recommendations recorded in minutes of meetings. Follow-up as part of continuing review and appraisal.	Minutes of committee, board and or council meetings. NED appraisal framework NED competence framework Notes of ED appraisals
6.	When appointing relevant individuals the Trust has processes for considering a person's physical and mental health in line with the requirements of the role, all subject to equalities and employment legislation	Self-declaration subject to clearance by occupational health as part of the pre-employment process.	Occupational health clearance

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	and to due process.		
	Standard	Assurance process	Evidence
7.	Wherever possible, reasonable adjustments are made in order that an individual can carry out the role.	Self-declaration of adjustments required. NHS Employment Check Standards Board/council of governors decision	Minutes of board meeting/council of governors meeting
8.	<p>The Trust 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>(‘Regulated activity’ means activities set out in Schedule 1, Regulated Activities, of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Schedule 1 covers the provision of:</p> <ul style="list-style-type: none"> • personal care; accommodation for persons who require nursing or personal care; accommodation for persons who require treatment for substance misuse; treatment of disease, disorder or injury; assessment or medical treatment for persons detained under the 1983 Act; surgical procedures; diagnostic and screening procedures; management of supply of blood and blood 	<p>Consequences of false or inaccurate or incomplete information included in recruitment packs.</p> <p>Checks set out in 1. Above i.e. Employment checks in accordance with NHS Employers pre-employment check standards including:</p> <ul style="list-style-type: none"> ▪ self-declarations of fitness including explanation of past conduct/character issues where appropriate by candidates; ▪ two references, one of which must be most recent employer; ▪ qualification and professional registration checks; ▪ right to work checks; ▪ proof of identity checks; ▪ occupational health clearance; ▪ DBS checks (where appropriate); ▪ search of insolvency and bankruptcy register; ▪ search of disqualified directors register. <p>Included in reference requests.</p>	NED Recruitment Information pack Reference Request for ED/NED

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	<p>derived products etc.; transport services, triage and medical advice provided remotely; maternity and midwifery services; termination of pregnancies; services in slimming clinics; nursing care; family planning services.</p> <p>‘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.</p> <p>‘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.</p> <p>‘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.”)</p> <p>N.B. This provision applies equally to executives and NEDs.</p>		
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	Standard	Assurance process	Evidence
9.	<p>The Trust 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>N.B. The CQC accepts that providers will use reasonable endeavours in this instance. The existence of a compromise agreement does not indemnify the new employer and providers will need to ensure that their Core HR policies address their approach to compromise agreements.</p>	<p>Consequences of false, inaccurate or incomplete information included in recruitment packs. Core HR policies for appointments and remuneration Checks set out in Section 1 above. Included in reference requests.</p>	<p>NED and ED Recruitment Information packs Core HR policies Reference Request for ED/NED</p>
10.	<p>As part of the recruitment/appointment process, all successful applicants must undergo a DBS check</p>	<p>A DBS checks will be undertaken as a part of the formal offer.</p>	<p>DBS policy</p>
	Continuing provisions		
11.	<p>The fitness of directors is regularly reviewed by the Trust to ensure that they remain fit for the role they are in; the Trust will</p>	<p>Assessment of continued fitness to be undertaken each year as part of appraisal process. Checks of insolvency and bankruptcy register and</p>	<p>Continual to be assessed as part of appraisal process Register checks if necessary</p>

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	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.	register of disqualified directors to be undertaken each year as part of the appraisal process. Board/Council of Governors reviews checks and agrees the outcome.	Board/council minutes record that process has been followed.
	Standard	Assurance process	Evidence
12.	<p>If the Trust discovers information that suggests an individual is not of good character after they have been appointed to a role, the Trust will take appropriate and timely action to investigate and rectify the matter.</p> <p>The Trust 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.</p> <p>Where a chair or NED declares a change in the status of their character or where such a change becomes known, the council of governors will investigate and determine the case.</p>	<p>Core HR policies provides for such investigations. Revised contracts allow for termination in the event of non-compliance with regulations and other requirements.</p> <p>Contracts (for EDs and director-equivalents) and agreements (for NEDs) incorporate maintenance of fitness as a contractual requirement.</p> <p>Nominations Committee of the Council of the Governors and Remuneration Committee of the Board.</p> <p>The processes to be followed should a Non-Executive Director be declared unfit will follow that prescribed in the publication 'Your statutory duties A reference guide for NHS foundation trust governors.'</p>	<p>Core HR polices</p> <p>Contracts of employment (for EDs and director-equivalents)</p> <p>Service agreements or equivalent (for NEDs)</p>
14.	The Trust 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.	<p>Core HR policies include the necessary provisions.</p> <p>Action taken and recorded as required</p>	Core HR policies

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	Standard	Assurance process	Evidence
15.	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.	Core HR policies	Managerial action taken to backfill posts as necessary.
16.	The Trust 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.	Core HR policies	Referrals made to other agencies if necessary.

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Appendix 4: Equality & Diversity Impact Assessment Tool



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Equality Impact Assessment Form

Department/Function	Governance			
Lead Assessor	Paul Jones			
What is being assessed?	Fit and Proper Persons Policy			
Date of assessment	19/03/2018			
What groups have you consulted with? Include details of involvement in the Equality Impact Assessment process.	Equality of Access to Health Group	<input type="checkbox"/>	Staff Side Colleagues	<input type="checkbox"/>
	Service Users	<input type="checkbox"/>	Staff Inclusion Network/s	<input type="checkbox"/>
	Personal Fair Diverse Champions	<input type="checkbox"/>	Other (Inc. external orgs)	<input checked="" type="checkbox"/>
	Please give details:			

1) What is the impact on the following equality groups?

1) What is the impact on the following equality groups?		
Positive:	Negative:	Neutral:
<ul style="list-style-type: none"> ➤ Advance Equality of opportunity ➤ Foster good relations between different groups ➤ Address explicit needs of Equality target groups 	<ul style="list-style-type: none"> ➤ Unlawful discrimination, harassment and victimisation ➤ Failure to address explicit needs of Equality target groups 	<ul style="list-style-type: none"> ➤ It is quite acceptable for the assessment to come out as Neutral Impact. ➤ Be sure you can justify this decision with clear reasons and evidence if you are challenged
Equality Groups	Impact (Positive / Negative / Neutral)	Comments
Race (All ethnic groups)	Neutral	<ul style="list-style-type: none"> ➤ Provide brief description of the positive / negative impact identified benefits to the equality group. ➤ Is any impact identified intended or legal?
Disability (Including physical and mental impairments)	Neutral	
Sex	Neutral	
Gender reassignment	Neutral	
Religion or Belief	Neutral	
Sexual orientation	Neutral	
Age	Neutral	
Marriage and Civil Partnership	Neutral	
Pregnancy and maternity	Neutral	
Other (e.g. caring, human rights)	Neutral	

2) In what ways does any impact identified contribute to or hinder promoting equality and diversity across the organisation?	
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<p>3) If your assessment identifies a negative impact on Equality Groups you must develop an action plan to avoid discrimination and ensure opportunities for promoting equality diversity and inclusion are maximised.</p> <ul style="list-style-type: none"> ➤ This should include where it has been identified that further work will be undertaken to further explore the impact on equality groups ➤ This should be reviewed annually.
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Action Plan Summary

Action	Lead	Timescale

This form will be automatically submitted for review for Policies and Procedures once approved by Policy Group. For all other assessments, please return an electronic copy to EIA.forms@mbht.nhs.uk once completed.



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