

Procedure

Fit and Proper Persons Test

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1. Scope

This procedure is applicable to executive and non-executive Director roles and any other Board level posts within the organisation.

Other very senior roles where the role holder performs the functions of or similar to a Director, may also need to meet the requirements of this procedure.

2. Purpose

This procedure details the process to be followed to ensure a formal assessment is made of the suitability of all persons holding executive or non-executive roles.

The requirement for the fit and proper persons test is set out in Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The purpose of the test is to make sure those individuals who have authority in organisations that deliver care, are responsible for the overall quality and safety of that care, and as such can be held accountable if standards of care do not meet legal requirements, are fit to hold the role and undertake the duties.

The requirements of the Act are that the following must be satisfied:

- 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 the work for which they are employed.
- The individual is able by reason of their health, after reasonable adjustments are made, to properly perform 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, 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 Schedule 4 apply to the individual.

The Act also lists categories of persons who are prohibited from holding office on the grounds of unfitness. Those grounds are:

- 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.
- The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restriction order or an order to like effect made in Scotland or Northern Ireland.
- The person is a person whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.
- 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 Group Act 2006, 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 for carrying out the regulated activity, by or under any enactment.
- The person is 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 discharging any functions relating to any office or employment with a service provider.

3. Responsibilities

It is the responsibility of the HR Department to monitor the effectiveness of this policy.

It is the responsibility of the Board to ensure that this policy is implemented.

It is the responsibility of all users of this procedure to report any improvement suggestions to the HR Department.

4. Definitions

Executive Directors: Those members of the Board of Directors responsible for the day-to-day management of the organisation. They are usually employees of the organisation.

Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulations containing definitions of the services and activities that organisations must be registered to provide. They also contain details of the standards that people registered to provide and manage services will have to observe.

Non-Executive Directors: Those members of the Board of Directors not involved in the day-to-day running of the organisation. Typically, their role is to challenge and help develop strategy. They are not employees of the organisation.

5. Fit and Proper Persons Test Procedure

5.1 New Appointments

5.1.1 All new appointments, including those for executive and non-executive Director roles, must be processed as per the **Recruitment Policy**. This policy lists a number of pre-employment checks that must be carried out.

5.1.2 Where it is determined that a Fit and Proper Persons Test is required, as part of the recruitment process the individual shall be asked to complete a **Fit and Proper Persons Declaration**.

5.1.3 The HR Department shall conduct a search of the Bankruptcy and Insolvency Register online at:

<https://www.gov.uk/search-bankruptcy-insolvency-register>

5.1.4 The HR Department shall conduct a search of the Disqualified Directors Register online at:

<https://www.gov.uk/search-the-register-of-disqualified-company-directors>

5.1.5 The HR Department shall conduct a search of the Disqualified Charity Trustee Register online at:

<https://apps.charitycommission.gov.uk/trusteeregister/search.aspx>

5.1.6 The HR Department shall conduct a search of the Employment Tribunal Judgements online at:

<https://www.gov.uk/employment-tribunal-decisions>

5.1.7 Offers of employment and Statement of Main Terms of Employment documents must state that continuing employment is conditional upon the individual remaining compliant with the requirements of the Fit and Proper Persons Test.

5.1.8 Completed **Fit and Proper Persons Declarations** shall be retained in the personnel file.

5.2 Existing Directors

5.2.1 To comply with the requirements of the Act, a Fit and Proper Persons Test must be carried out annually for all executive and non-executive Directors.

5.2.2 On the anniversary of the date the initial test was undertaken, the individual must complete a **Fit and Proper Persons Declaration**.

5.2.3 The HR Department shall conduct a search of the Bankruptcy and Insolvency Register online at: <https://www.gov.uk/search-bankruptcy-insolvency-register>

5.2.4 The HR Department shall conduct a search of the Disqualified Directors Register online at: <https://www.gov.uk/search-the-register-of-disqualified-company-directors>

5.2.5 The HR Department shall conduct a search of the Disqualified Charity Trustee Register online at: <https://apps.charitycommission.gov.uk/trusteeregister/search.aspx>

5.2.6 The HR Department shall conduct a search of the Employment Tribunal Judgements online at: <https://www.gov.uk/employment-tribunal-decisions>

5.2.7 Completed **Fit and Proper Persons Declarations** shall be retained in the personnel file.

5.3 Non-Compliance

5.3.1 The organisation must investigate in a timely manner any concerns regarding the fitness or ability of a Director to carry out their duties.

5.3.2 The investigation shall be conducted by the remaining Board members with support from the HR Department.

5.3.3 If a Director is found to be in breach of this policy, the organisation shall take any actions necessary in accordance with HR policies.

5.3.4 The organisation shall inform other appropriate bodies about any concerns or the findings of any investigation to an individual's fitness. These may include, but are not limited to, professional regulators and the Care Quality Commission (CQC).