

Morecambe Bay



Primary Care Collaborative

Fit and Proper Persons Policy

Document Reference	POL024
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Application/Scope	Morecambe Bay Primary Care Collaborative – Board Directors
Approval Date	17/05/2022
Review Date (N.B: Review dates may alter if any significant changes are made)	17/05/2024
Version	V1.0
Status	Approved



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1. INTRODUCTION

Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (referred to as the 2014 regulations) recommends that a statutory Fit and Proper Person's Requirement (FPPR) be imposed on health service bodies.

This policy outlines the application of this test for new appointments and existing post holders.

2. Scope

This policy and procedure applies to all board appointments Directors and those senior managers which are recognised as part of the Board. This includes permanent, interim and associate positions.

The following posts are subject to the arrangements outlined in this policy:

- a) the Chair of the Board;
- b) PCN Nominated Directors appointed to the Board of Directors
 - i) the Chief Executive,
 - ii) Directors who can vote at the Board of Directors,

3. Purpose

The purpose of this policy is to ensure MBPCC complies with The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 Regulation 5: Fit and Proper Persons Requirement.

The regulations have been integrated into the Care Quality Commission's (CQC's) registration requirements, and falls within the remit of their regulatory inspection approach.

4. Definitions

Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (referred to as the 2014 Regulations) places a duty on NHS providers not to appoint a person, or allow a person to continue to be, a Director or equivalent under given circumstances. This means Directors should not be appointed/continue to hold office unless they:

- a) are of good character
- b) hold the required qualifications and have the competence, skills and experience required for the relevant office for which they are employed
- c) are, by reason of their physical and mental health, after any reasonable adjustments if required, capable of properly performing their work
- d) can supply relevant information as required by schedule 3 of the act, i.e. documentation to support the FPPR
- e) have not been responsible for or privy to, contributed to, or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out regulated activity (or providing a service elsewhere which if provided in England would be a regulated activity).

4.1 Good Character

When assessing a person being 'of good character' NHS providers are required to take account of Schedule 4 of the 2014 Regulations, namely:

- a) 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, and
- b) 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.

The CQC's definition of good character is not the objective test of having no criminal convictions but instead rests upon a judgement as to whether the person's character is such that they can be relied upon to do the right thing under all circumstances.

The CQC names the following as features 'normally associated' with good character that should be taken into account when applying FPPR to an individual

- Honesty
- Trustworthiness
- Integrity
- Openness
- Ability to comply with the law
- A person in whom the public can have confidence in prior employment history, including reason for leaving
- If the individual has been subject to any investigations or proceedings by a professional or regulation body
- Any breaches of the Nolan principles of public life
- Any breaches of the duties imposed on directors under the Companies Act
- The extent to which the director has been open and honest with the Trust
- Any other information which may be relevant, such as disciplinary action taken by an employer.

4.2 Unfit

Under Schedule 4 part 1 of the regulations, Directors are deemed 'unfit' and prevented from holding the office and for whom there is no discretion if:

- a) 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
- b) 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

- c) 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 1986(40)
- d) the person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it
- e) 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 2006
- f) 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.

In January 2018 the CQC issued revised guidance for providers and CQC inspectors in respect of Regulation 5 of the 2014 Regulations. Specifically, the CQC made a minor change to its guidance to make it explicit that they expect providers to undertake an "enhanced Disclosure and Barring Service (DBS) check for directors to check that they are not on the children's and / or safeguarding barred list where they meet the eligibility criteria". However, Executive/Non-Executive Directors are only eligible for such an enhanced DBS check if the role that they take falls within the definition of a "regulated activity" as defined by the Safeguarding Vulnerable Groups Act 2006.

Only those Board members who are required to undertake regulated activities will be required to have an Enhanced DBS check. Where a role does not undertake regulated activity, a standard DBS check will be required. However, all Board members will be required to make a declaration annually that they meet the FPPR.

5. Duties

It is the responsibility of the Chair to discharge the requirement placed on MBPCC, to ensure that all directors satisfy the Fit and Proper Person Requirements, both on appointment and on an ongoing basis, and to provide an annual declaration to the Board.

6.2 The Chief Executive is responsible for:

- a) ensuring consistent application of the policy during the appointment process and ensuring that all appropriate documentation is completed, retained and available to the Care Quality Commission for inspection on request
- b) maintaining the records of completed Fit and Proper Person checks and managing the annual process to ensure assurance of the ongoing fitness of relevant post holders
- c) ensuring all Board members complete an annual Fit and Proper Person declaration
- d) undertaking an annual review of compliance on behalf of the Chair.

6.3 Individuals covered by the scope of this policy are responsible for:

- a) signing the Fit and Proper Person Declaration (Appendix 1) to confirm that they are a fit a proper person, both on appointment and on an annual basis
- b) providing evidence of their qualifications, experience and identity documents on appointment or on request to confirm the competencies relevant to their position

c) identifying any issues which may affect their ability to meet the statutory requirements on appointment and bringing these issues on an ongoing basis and without delay to the Executive Director of HR, Chief Executive or the Chair.

6. Procedure

6.1 New Appointments

Where a post is subject to FPPR, the pre-employment checking processes include the following:

1. Proof of identity
2. Evidence of the right to work in the UK
3. Disclosure and Barring Service (DBS) check (where appropriate to the role)
4. Occupational Health Clearance as relevant to the role
5. Evidence of a values based interview process
6. A check of employment history and two references one of which must be the most recent employer. Specifically, this includes validating a minimum of three years continuous employment including details of any gaps in service.

Additionally, references must question whether the candidate has "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"

7. Proof of qualifications/professional registration applicable to role

In addition, the following registers will be checked:

- a) Disqualified directors
- b) Bankruptcy and insolvency
- c) Removed Charity Trustees
- d) A web search of the individual including Google, social media and news searches.

The Chair will be responsible for ensuring compliance supported by Human Resources. A detailed checklist will be completed at appointment and will be retained on the post holder's personal file for the purposes of audit.

The FPPR requires new employees to complete a Fit and Proper Person's Declaration form (Appendix 1). This form and summary guidance will be included with the application pack and form part of the application process for the position.

Where specific qualifications are deemed by the Board as necessary for a role, MBPCC will make this clear and will only appoint those individuals that meet the required specification; including any requirements to be registered with a professional body.



6.2 Monitoring Compliance

The annual review process will provide an opportunity to discuss continued “fitness”, competence and how the post holder displays the values and behaviour standards including the leadership behaviour expected.

The Chief Executive will be responsible for discussion with the Medical Director, and the Chair will be responsible for the discussion with other Directors and the Chief Executive.

On an annual basis, all relevant post holders will be asked to complete the FPPR

Declaration form (Appendix 1). Individuals are required to make the Chair aware as soon as practicable of any incident or circumstances which may mean they are no longer to be regarded as a ‘fit and proper person’, and provide details of the issue, so that this can be considered by the Chair.

6.3 Concerns

If, either at the time of appointment or later, it becomes apparent that circumstances exist or have arisen whereby an Director may not be considered to meet all the requirements of a ‘fit and proper person’, the Chief Executive shall inform the Chair.

The Chair will lead on addressing these concerns on a case by case basis and will need to consider whether an investigation is necessary or appropriate given the allegation.

Where it is necessary to investigate or take action, MBPCC current HR processes

MBPCC reserves the right to suspend a Director or restrict them from duties on full pay to allow the investigation of the matters of concern. Suspension or restriction from duties will be for no longer than necessary to protect the interests of service users or MBPCC and/or where there is a risk that the Director’s presence would impede the gathering of evidence in the investigation.

Should the Chair consider the individual to be suitable, despite existence of information relevant to issues identified, the Chair’s reasons should be recorded for future reference and made available.

Should there be sufficient evidence to support the allegation(s), then MBPCC may terminate the appointment of the Director with immediate effect, in line with the Organisation’s Disciplinary policy. Where an individual who is registered with a professional regulator (General Medical Council (GMC), Nursing & Midwifery Council (NMC) etc.) no longer meets the fit and proper person’s requirement MBPCC must inform the regulator, and take action to ensure the position is held by a person meeting the requirements.

6.4 Board Assurance

The Chair is the responsible officer for ensuring compliance for new starters. The Chair will be required to make an annual declaration to the Board of Directors regarding ongoing compliance with the Regulations of all Board members. A summary of compliance will appear in the AGM/ annual report.

7. DISSEMINATION/TRAINING PLAN



Action by	Action Required	Implementation Date
Liz Stedman	Upload policy to MBPCC website, Shared Drive and Teamnet	Following approval of V1.0 ~May 22
Arun Thimmiah	Ensure all Directors are aware of the policy and are asked to read and understand it	MBPCC Board Meeting May 22

8. AMENDMENT HISTORY

Version No.	Date of Issue	Section/Page changed	Description of change	Review Date
V1.0	27/08/21	All	New policy - created	April 2024
V1.0	17/05/2022	Review	Approved by the Board	17/05/2024

Appendix 1 Fit and Proper Person Declaration Form

Annual declaration for director and director-equivalent posts

Morecambe Bay Primary Care Collaborative ("MBPCC") "FIT AND PROPER PERSON" DECLARATION

1. It is a condition of employment that those holding director posts provide confirmation in writing, on appointment and thereafter on demand, of their fitness to hold such posts. Your post has been designated as being such a post.

Fitness to hold such a post is determined in a number of ways, including (but not exclusively) the Health and Social Care Act 2008 (Regulated Activities) and Regulations 2008 ("the Regulated Activities Regulations")

2. By signing the declaration below, you are confirming that you do not fall within the definition of an "unfit person" or any other criteria set out below, and that you are not aware of any pending proceedings or matters which may call such a declaration into question.

3. An "unfit person" is defined as:

(a) an individual: (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or (ii) who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or (iii) who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him; or (iv) who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986; or (b) a body corporate, or a body corporate with a parent body corporate: (i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of sub-paragraph (a) of this paragraph, or (ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or (iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or (iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or (v) which passes any resolution for winding up, or (vi) which becomes subject to an order of a Court for winding up.

4. The requirements of paragraph 3 of Regulation 5 of the Regulated Activities Regulations are that:

(a) the individual is of good character;

(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;

(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;



(d) 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; and

(e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

5. The grounds of unfitness specified in Part 1 of Schedule 4 to the Regulated Activities

Regulations are:

(a) 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;

(b) 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;

(c) 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 1986;

(d) the person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;

(e) 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 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;

(f) the person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.

I acknowledge the extracts from the Regulated Activities Regulations above. I confirm that I do not fit within the definition of an "unfit person" as listed above and that there are no other grounds under which I would be ineligible to continue in post. I undertake to notify the Trust immediately if I no longer satisfy the criteria to be a "fit and proper person" or other grounds under which I would be ineligible to continue in post come to my attention.

Named

Signed

Date

Please return this form to the Chair of the Board.