

<p><b>Subject:</b></p>	<p>Fit and Proper Person requirement for Directors and the Duty of Candour</p>
<p><b>Prepared by:</b></p> <p><b>Sponsored by:</b></p> <p><b>Presented by:</b></p>	<p>Natalie Sanderson, Head of Employee Resourcing Fiona McNeight, Acting Head of Quality</p> <p>Tim Powell, Director of Workforce and Organisational Development Cathy Stone, Director of Nursing</p> <p>Tim Powell, Director of Workforce and Organisational Development Cathy Stone, Director of Nursing</p>
<p><b>Purpose of paper</b></p>	<p>To define the requirement on the Trust under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 for Fit and Proper Persons Test and Duty of Candour.</p>
<p><b>Key points for Trust Board members</b></p> <p><i>Briefly summarise in bullet point format the main points and key issues that the Trust Board members should focus on including conclusions and proposals</i></p>	<ul style="list-style-type: none"> <li>• From 27<sup>th</sup> November 2014 NHS Trusts are required by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to demonstrate that all Directors must:             <ul style="list-style-type: none"> <li>- be of <i>good character</i> - openness, honesty and integrity</li> <li>- have the qualifications, skills and experience necessary for the position being offered</li> <li>- not have been responsible for any misconduct or mismanagement in the course of any employment with a CQC registered provider</li> <li>- not be prohibited from holding the relevant position under any other law</li> </ul> </li> <li>• The requirement does not make any amendment to current NHS Employers Employment Check Standards, which remain accurate and correct.</li> <li>• The requirement placed on NHS providers organisation has been integrated in to the CQC's registration requirement and falls within the purview of their regulatory and inspection approach.</li> <li>• From 27<sup>th</sup> November 2014 NHS Trusts are required by the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to demonstrate compliance with the Duty of Candour requirements.</li> <li>• The Trust incident reporting system (Datix) has been updated to include the requirements of the Regulation for all red and amber patient safety incidents. This provides a clear audit trail of compliance.</li> <li>• Weekly monitoring of compliance is underway and compliance reported monthly to the Board.</li> </ul>

<p><b>Options and decisions required</b></p> <p><i>Clearly identify options that are to be considered and any decisions required</i></p>	<p>Trust Board to agreed that:</p> <ul style="list-style-type: none"> <li>• Directors undertake an annual self declaration to confirm they remain fit and proper under the regulations definition.</li> <li>• Directors accept summary termination of their contract should they become/be considered unfit under the regulations definition.</li> </ul>
<p><b>Next steps / future actions:</b></p> <p><i>Clearly identify what will follow the Trust Board's discussion</i></p>	<ul style="list-style-type: none"> <li>• Self declaration will be issued by HR to Executives and Non Executive Directors</li> <li>• Executive and Non Executive Directors will provide evidence as requested to be placed on their personal file.</li> </ul>
<p><b>Consideration of legal issues (including Equality Impact Assessment)?</b></p>	<p>Compliance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.</p>
<p><b>Consideration of Public and Patient Involvement and Communications Implications?</b></p>	<p>Minor – May receive some requests for information.</p>

<p><b>Links to Portsmouth Hospitals NHS Trust Board Strategic Aims, Assurance Framework/Corporate Risk Register</b></p>	
<p><b>Strategic Aim</b></p>	<p>Deliver safe, high quality patient centred care</p>
<p><b>BAF/Corporate Risk Register Reference (if applicable)</b></p>	<p>BAF: 1.1</p>
<p><b>Risk Description</b></p>	<p>Inability to maintain on-going compliance with all CQC standards</p>
<p><b>CQC Reference</b></p>	<p>Regulation 5: Fit and Proper Persons Regulation 20: Duty of Candour</p>

<p><b>Committees/Meetings at which paper has been approved:</b></p>	<p><b>Date</b></p>
<p>N/A</p>	

## 1. Introduction

New regulations setting out fundamental standards of care will come into force for all care providers on 1 April 2015. However, two of the new requirements; the fit and proper person requirements for Directors and the Duty of Candour, came into force for 'NHS bodies' from 27 November 2014.

## 2. Fit and Proper Person Requirements (FPPR)

The new regulations apply to all Board members including Executive and Non Executive Directors or their equivalent, regardless of their voting position. It will apply to all interim directors as well as those in permanent positions and will require Trusts to ensure they continue to be fit.

The new laws say that Directors must:

- be of *good character* - openness, honesty and integrity
- have the qualifications, skills and experience necessary for the position being offered
- not have been responsible for any misconduct or mismanagement in the course of any employment with a CQC registered provider
- not be prohibited from holding the relevant position under any other law

A Director can be unfit if they:

- Have been sent to prison for at least three months in the last 5 years;
- Have problems with money – for example they have been made bankrupt; or have a poor credit history
- Are on a list which stops them from working with children and vulnerable adults

This is potentially a wide test and the CQC has stated that it will not get involved in individual determinations on this issue. The responsibility rests with the provider.

The CQC will require the Chair to:

- Confirm the fitness of new Directors to ensure they have been assessed in line with the regulations
- Declare in writing that they are satisfied that the Director or equivalent are fit and proper individuals for that role

The CQC has anticipated that it will receive information from members of the public or staff about existing Directors which may be relevant to fitness. The CQC will deal with this information by convening a panel, led by the Chief Inspector of Hospitals, to screen this information and decide whether to escalate it to the provider. This could lead to a follow-up inspection and, in theory, a condition being imposed on the provider which would effectively require the removal of the director concerned.

### **How will the Trust meet this requirement?**

The NHS Employment Check Standards outline the legal and mandatory checks employers should undertake for all appointments into NHS positions - including appointments to Board level positions, so the new regulations are not introducing something new or unfamiliar.

The Trust current process of application, shortlist, assessment, interview, references and credit check will ensure compliance.

### **Evidence to satisfy this requirement?**

- Recruitment Policy and the Policy on Pre-Employment and On Going Checks both reflect NHS Employment Check Standards.
- Recruitment processes are audited in line with these policies and NHS Employers Standards:
- Last internal audit was November 2012 – provided substantial assurance. Auditors have been requested to audit recruitment processes in 2015.

- All current Executives and Non Executive Directors have been audited. The gaps in evidence on person files i.e. evidence of qualifications on file, will be completed during January. These gaps are due to the director's length of service and changes in recruitment standards.
- The Trust has not evidenced the checks for those Non Executive Directors recruited by the NTDA. Those individuals will be required to provide full evidence to satisfy the requirements.

**Actions to improve current process:**

- Additional pre application question to be added to NHS Jobs for Director posts asking if they have been sent to prison in the last 5 year. Directors also complete a Fitness to Practice form following offer of a position when they declare any previous convictions.
- Reference request to be amended to specifically request confirmation the Director is a fit and proper person under the regulations definition.
- Undertake a free check against the list of Directors which is held by Companies House to verify if a Director has been barred as a Director or is subject to any restrictions.
- Undertake a credit check on every appointment.
- Amend the contract of employment permitting summary termination in the event of a Director being/becoming an unfit person.
- Introduce a process of annual self declaration for all Directors to be undertaken in January each year. To be confirmed during annual appraisal.
- Non Executive Directors to undergo an annual appraisal.

This is not just about recruitment – the Trust will need to be able to confirm to the CQC that Directors remain fit throughout their employment, and that they have access to on-going development. This can be demonstrated using the appraisal documentation and outcomes of any investigations where appropriate bodies are informed.

### **3. Duty of Candour Requirements**

The introduction of a statutory duty of candour is an important step towards ensuring the open, honest and positive culture that Sir Robert Francis found was lacking at Mid Staffordshire NHS Foundation Trust.

**What does this mean for the Trust?**

The aim of the regulation is to ensure that providers are open and honest with patients when things go wrong with their care and treatment.

To meet the requirements of the regulation, a provider has to:

- Make sure it has an open and honest culture across and at all levels within its organisation.
- Ensure it has a system in place for knowing about notifiable safety incidents.
- Tell patients in a timely manner when particular incidents have occurred.
- Provide in writing a truthful account of the incident and an explanation about the enquiries and investigations that they will carry out.
- Offer an apology in writing.
- Provide reasonable support to the person after the incident and maintain appropriate written records.

The regulations apply to the patient themselves and, in certain situations, to people acting on the patient's behalf, for example when something happens to a child or to a person over the age of 16 who lacks the capacity to make decisions about their care.

If the provider fails to do any of the things above, CQC can move directly to prosecution without first serving a warning notice.

The CQC have incorporated candour in the key lines of enquiry and descriptors of rating levels that they set out in their provider handbooks for consultation earlier this year.

### **How does the Trust meet the requirements?**

When an amber or red (moderate and severe harm and death) incident is identified, the Trust must ensure the following:

- The patient (or relevant person if applicable e.g. patient lacks capacity) is informed of the incident as soon as is practicable.
- This should include a true account of all the facts known at the time of the incident, what further enquiries and/or investigations in to the incident are going to be undertaken and an apology offered.
- Provision of reasonable support to the relevant person in relation to the incident must be provided.
- The above should be documented in the patient's record (clear documentation of what was discussed with the patient).
- The verbal notification must be provided by one or more representatives of the Trust (with sufficient seniority).
- The verbal notification above must be followed by a written notification given or sent to the relevant person.
- The written notification should contain all the information provided in person including an apology.
- A record of this written notification must be kept by the provider, along with any enquiries and investigations and the outcome or results of the enquiries or investigations.
- The outcomes or results of any enquiries and investigations should also be provided in writing to the relevant persons, should they wish to receive them.
- Any correspondence from relevant person(s) relating to the incident should be responded to in an appropriate and timely manner and a record of communications kept.
- If the relevant person cannot be contacted in person or declines to speak to a member of the Trust or receive the written notification then there must be a written record of this.

The Trust has agreed and implemented the following process to ensure compliance with the requirements:

- All patient safety red and amber incidents reported on to Datix, trigger a notification to the relevant senior CSC managers and to the Risk Management Team/CSC Governance leads.
- Any amber or red incident reported on Datix will trigger a mandatory field regarding Duty of Candour requirements for the reporter and reviewer to complete. This provides audit data to demonstrate compliance.
- This mandatory field provides:
  1. Confirmation that the patient or other authorised person has been verbally notified of the red/amber incident, received an apology and information of any enquiry that is to take place; this includes documentation of who informed the patient and the date the being open conversation took place.
  2. Confirmation that the conversation has been recorded in the patients records.
  3. Followed by a date field for confirmation that a letter of written notification has been signed off by the CSC management team and sent to the patient or authorised person. Letter templates are available to be downloaded via Datix.
  4. Confirmation that following investigation the final report has been shared with the patient or authorised person.
- Weekly reports are presently being compiled by the risk management team to monitor compliance and outstanding information is escalated to the CSC Governance leads.
- Duty of Candour data is included in quarterly board reports.
- Training materials have been distributed to the CSC Governance Leads and practice educators for cascading to all staff.
- Duty of Candour information has been included in the CEO weekly message, team brief and Spotlight on Safety newsletter.
- The Risk Management home page on the intranet host resources on Duty of Candour.

**Conclusion**

The Trust Board has considered the new fundamental standards and processes have been established to ensure ongoing compliance with the national requirement.

The Trust Board is asked to note the content of the report.