

TRUST BOARD27th November 2014

TITLE	The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
EXECUTIVE SUMMARY	<p>The Chairman and the Nominations committees for Executive Directors and Non-Executive Directors need to be assured that the Trust is implementing the standards pertaining to 'duty of candour' and 'fit and proper test' from 27th November 2014, arising from the Francis Enquiry.</p> <p>This new registration requirement now sets out that all Directors of providers, registered with the CQC, must meet a Fit and Proper Person Test (FPPT).</p> <p>The Trust already undertakes employment checks for Executive and Non-Executive Directors in line with NHS Employers' Employment Check Standards for all staff, and these cover the majority of the FPPT:</p> <ul style="list-style-type: none"> • Identity checks • Right to work checks • Professional registration and qualification checks • Employment history and reference checks • Criminal record and barring checks • Occupational health checks <p>The Trust is working to implement the following additional steps to meet the FPPT:</p> <ul style="list-style-type: none"> • A bankruptcy check of all Directors, • A self-assessment for individuals to declare that they are a fit and proper person, • Issuing all Directors with amendments to contract to make the FPPT and Duty of Candour explicit contractual requirements.
ASSURANCE (Risk) / IMPLICATIONS	<p>The report provides assurance that</p> <ul style="list-style-type: none"> • The Trust understands the implications of the Fit and Proper Person Test, and the Duty of Candour; and • Is putting in place the appropriate process to give assurance of compliance.
LINK TO STRATEGIC OBJECTIVE	SO2: Excellent experience.
STAKEHOLDER / PATIENT IMPACT	Patients' views are included via the reporting mechanisms for quality. The clinical quality metrics indicate where poor care and

AND VIEWS / STAFF VIEWS	poor experience are occurring. Where appropriate staff views are included.
EQUALITY AND DIVERSITY ISSUES	All of our services give consideration to equality of access taking into consideration disability and age. All matters are dealt with in a fair and equitable way regardless of ethnicity or religion of patients.
LEGAL ISSUES	Non-compliance with CQC standards and potential breach of Monitor licence.
The Trust Board is asked to:	Review the paper and discuss the contents seeking additional assurance as necessary.
Submitted by:	Heather Caudle, Chief Nurse and Louise McKenzie, Director of Workforce Transformation
Date:	25 th November 2014
Decision:	For Assurance

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

DIRECTORS DUTIES PER THE HEALTH AND SOCIAL CARE ACT 2008 (REGULATED ACTIVITIES) REGULATIONS 2014

1. In November 2014 it was announced that from April 2015 the CQC's 12 new Fundamental Standards will replace the current 16 Essential Standards. In addition to this the standards pertaining to 'duty of candour' and 'fit and proper test' apply to Board level Directors from 27th November 2014.

BACKGROUND & DETAIL OF FIT AND PROPER PERSON REQUIREMENT (FPPR) FOR DIRECTORS

2. As part of their review, the Francis Inquiry raised concerns about the fitness of directors at Mid Staffordshire NHS Foundation Trust, emphasising that the public have a right to expect that those in leading NHS positions are fit and proper persons.
3. This new registration requirement now sets out that all Directors of providers, registered with the CQC, must meet a fit and proper person test.
4. This applies to all board level positions – directors and “equivalents”:
 - a. Executive directors
 - b. Non Executive directors
5. The Chair of the Board is responsible for ensuring that all directors meet the new requirements of FPPT, and do not meet any of the 'unfit' criteria. The FTN also asserts that nominations committees will need to satisfy themselves that the board has adequate assurances on the robustness of procedures regarding the FPPR.
6. To be a fit and proper person, Directors must meet all of the following:
 - a. Be of good character;
 - b. Have the qualification, skills, and expertise necessary for that office / position;
 - c. Be capable by reason of their health to properly perform tasks intrinsic to their office / position;
 - d. Not have been responsible for, privy to, contributed to or facilitated any misconduct or mismanagement in the course of discharging functions relating to their office or positions previously; and
 - e. Be prohibited from holding the office or position.
7. A person is deemed unfit if:

- a. They have been convicted in the UK of any criminal offence (or elsewhere if committed in the UK would be an offence) within the preceding 5 years; and
 - b. Been sentenced to imprisonment (served or suspended) for a period of not less than 3 months; and
 - c. On appeal the conviction has not been quashed, or sentence reduced.
8. Also a person deemed unfit if:
- a. Is an undischarged bankrupt;
 - b. Subject to bankruptcy restrictions;
 - c. Has made an arrangement with creditors and has not been discharged in respect of it;
 - d. Is included in the children's or adult's barred list under Section 2 Safeguarding Vulnerable Groups Act 2006.
9. Trusts should not appoint as a Director any person who is unfit except with the approval in writing of Monitor.
10. The Trust will need to ensure that there is a provision in contracts permitting summary termination in the event of a Director being or becoming an unfit person.
11. The Foundation Trust Network (FTN) review of the Regulations¹ concludes that it envisages the role of the CQC to be examining the robustness and effectiveness of procedures rather than the individual directors that are in post as a result of those procedures.

CURRENT STATUS AND NEXT STEPS

12. The Acting Director of Human Resources has undertaken an initial review of the existing checks undertaken for Executive and Non-Executive Director regarding the new Regulations and these are outlined in Appendix A.
13. It is noted that the Trust's Recruitment and Selection Policy and Procedure follows the NHS Employers' Employment Check Standards in meeting these requirements.
14. From this review, the Trust is satisfied that it meets the majority of the expectations of the FPPT, but there is some further work to do including:
 - a. A bankruptcy check of all Directors;
 - b. A review to ensure all Directors have an up to date CRB check;

¹ Foundation Trust Network 'On the Day Briefing' 20 November 2014

- c. A self-assessment for individuals to declare that they are a fit and proper person; and
- d. Issuing all Directors with amendments to contract to make the FPPT and Duty of Candour explicit contractual requirements.

DUTY OF CANDOUR

- 15. The Francis Inquiry also made a number of recommendations in relation to NHS providers being open and honest with patients when things go wrong with their care and treatment.
- 16. This includes having an open and honest culture across all levels of the organisation, and telling patients when particular incidents have occurred. There are specific requirements about the information and support to be provided to patients and their representatives. Whilst guidance specifically addresses incidents with harm the default position is to be open, honest and candid unless there are justifiable reasons for not being so.
- 17. The Foundation Trust Network (FTN)² states the CQC has committed to working with providers to develop processes by which compliance with the duty can be assessed and to reserve use of prosecution for those cases where there is evidence of deliberate withholding or manipulation of information.
- 18. The Trust's 'Being Open' Policy addresses the duty of candour and the monitoring of this. The Head of Patient Safety will review this Policy to ensure it is fully aligned with the new Regulation by Monday 1st December 2014.

CONCLUSION

- 19. The Board are asked to note and obtain assurance from the update given, and the next steps being undertaken.

² Per 20 November 2014 On the Day Briefing

Appendix A – Schedule 3 employment information to be available

The Health and Social Care Act 2008 (Schedule 3) requires organisations carrying out Regulated Activities to ensure that persons carrying on or managing a regulated activity meet a set of requirements as set out in table below.

The Trust's Recruitment and Selection Policy and Procedure follows the NHS Employers Employment Check Standards in meeting these requirements. These checks are carried out for all Director and Non-Executive Director posts. The method for assessing and recording each of these is listed below:

H&SC Act Requirement	Evidence	Assessment and recording
Proof of identify (including recent photograph)	After offer: All candidates offered a job are required to show valid photo identification	ID is verified by Recruitment officer, recorded on ESR and copy held on personal file
Criminal Record certificate and information relating to safeguarding children and vulnerable adults	After offer: all candidates offered job in a regulated activity are required to undertake a Disclosure & Barring Service check. The check is repeated every three years	Check certificate is verified by recruitment officer and recorded on ESR
Satisfactory evidence of conduct in previous employment	After offer: references covering last three years of employment, including current or most recent employer	References are approved by Recruiting Manager and held on personal file
Reason for employment ending	Application form: requires applicant to state previous employers and reason for leaving	Verified at interview and by references
Documentary evidence of qualifications relevant to duties	After offer: candidates required to show Certificate of qualification or registration	Certificate is verified by recruitment officer, registration checked on professional body website and recorded on ESR
Full employment history with written explanation of gaps	At interview: Application form or CV	Employment history and gaps explored by interview panel and recorded on interview notes, held on personal file
Satisfactory information about physical or mental health conditions relevant to ability to perform tasks	After Offer: Occupational health assessment	Assessed by occupational health and certificate held on personal file