

CONFIDENTIAL WHEN COMPLETE

Guidance for providers

How to meet Regulation 5: Fit and Proper Persons: Directors

You can view the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 via this link:
<http://www.legislation.gov.uk/ukdsi/2014/978011117613/contents>

Regulations 5 and 20 came into force for NHS bodies on 27 November 2014

The position for which you have applied/currently hold is subject to Regulation 5 of the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* (the Regulations). The Regulations requires that Chelsea and Westminster NHS Foundation Trust NHS Foundation Trust (the "Trust") must not appoint, or have in place, a) an individual as a director of the Trust, or b) performing the functions of, or functions equivalent or similar to the functions of a director, without being satisfied that the individual is a fit and proper person to hold such a position.

The Trust aims to promote equality of opportunity and is committed to treating all applicants for positions and existing staff fairly and on merit regardless of race, disability, age, gender, gender re-assignment, religion or belief, sexual orientation, pregnancy or maternity, marriage or civil partnership.

The information that you provide in this declaration form will be processed in accordance with the General Data Protection Regulation and Data Protection Act 2018. It will be used for the purpose of determining your application for the position for which you have applied or assessment of your suitability to continue in your current role. It will also be used for purposes of enquiries in relation to the prevention and detection of fraud. Any information provided during your application/continued employment shall be processed and retained in accordance with the Trust's Privacy Statement (see below).

Directors to self-declare that they are compliant with the requirements of the regulations:

5—(1) This regulation applies where a service provider is a health service body.

(2) Unless the individual satisfies all the requirements set out in paragraph (3), the service provider must not appoint or have in place an individual—

- (a) as a **director** of the service provider, or
- (b) performing the functions of, or functions equivalent or similar to the functions of, such a director.

(3) The requirements referred to in paragraph (2) 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, 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, and
- (e) none of the grounds of unfitness specified in Part 1 of Schedule 4 apply to the individual.

(4) In assessing an individual's character for the purposes of paragraph (3) (a), the matters considered must include those listed in Part 2 of Schedule 4.

(5) The following information must be available to be supplied to the Commission in relation to each individual who holds an office or position referred to in paragraph (2)(a) or (b)—

(a) the information specified in Schedule 3, and

(b) such other information as is required to be kept by the service provider under any enactment which is relevant to that individual.

(6) Where an individual who holds an office or position referred to in paragraph (2) (a) or (b) no longer meets the requirements in paragraph (3), the service provider must—

(a) take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements, and

(b) if the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.

SCHEDULE 4 Good character and unfit person tests

PART 1 Unfit person test

Please respond to the following questions by indicating your response by circling Yes or No

1. 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. **Yes/No**
2. 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. **Yes/No**
3. 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. **Yes/No**
4. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it. **Yes/No**
5. 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. **Yes/No**
6. 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. **Yes/No**

PART 2 Good character

6. 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.

7. 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.

Please choose one option below.

I confirm that I **MEET** the Fit & Proper Persons and Good Character requirements set out above.

I confirm that I **DO NOT MEET** the Fit & Proper Persons and Good Character requirements set out above. If you have chosen this option, please provide details in the box below.

Declaration Privacy Statement

As an employee or applicant for employment by the Trust, your personal information is processed (created, stored and transmitted) in a variety of paper and electronic formats by the Trust in accordance with the provisions of current data protection law. The General Data Protection Regulation (GDPR) Article 6, paragraph 1b) – *processing is necessary for the performance of a contract to which the data subject is a party.....* is the lawful basis for using your data.

Personal data includes that relating to ethnic origin, health, disability, religious belief, sexual orientation, genetic and biometric data and gender identity. You will have been asked to provide personal sensitive information during the recruitment process. The Trust is obliged to seek this information from staff but it is not compulsory for staff to provide responses. Access to and the sharing of this information is controlled very carefully. When reporting on personal sensitive information only aggregate data is presented so that an individual's data is protected.

For more information about how your personal information is collected, used, stored and shared please visit our website: <https://www.chelwest.nhs.uk/about-us/organisation/our-way-of-working/how-we-use-your-information>

There is a legal obligation on the Trust as employer, (see Article 10 of GDPR) to provide information regarding the commission of offences, or alleged commission of any offence, or any proceedings for any offence committed, the disposal of proceedings, or the sentence of any courts of any such proceedings.

The Trust will not retain this Declaration Form for longer than is necessary accordance with the NHS Code of Practice: Records Management. Your completed form will be kept securely and in confidence. Access to the information contained within the Form will be restricted to designated persons within the Trust who are authorised to view it as a necessary part of their work. It may also need to be disclosed to the Care Quality Commission (CQC) or, where applicable your Professional Regulator.

In signing the Declaration below you are explicitly consenting for the data you provide to be processed in the manner described above.

I hereby consent to the information provided in this Declaration Form being used by Chelsea and Westminster NHS Foundation Trust NHS Foundation Trust for the purpose of ensuring that I meet the Fit and Proper Persons Requirements and for enquiries in relation to the prevention and detection of fraud.

I hereby confirm that the information I have provided in this Declaration Form is correct and complete. I understand and accept that if I knowingly withhold information, or provide false or misleading information, this may ultimately result in the withdrawal of an offer of employment or my dismissal, and I may be liable to prosecution.

In addition to completing this questionnaire I understand I must also make the Trust aware as soon as practicable of any incident or circumstances which may impact on my position and provide details of the issue to the Director of Corporate Governance and Compliance so that this can be considered by the Trust.

Should you wish to withdraw your consent at any time after completing this Declaration Form, or you have any enquiries relating to the information required in this form, please contact the Recruitment Team.

Signed.....

Name

Position / Position applying for
.....

Date.....

PLEASE COMPLETE, SIGN AND FORWARD A HARD COPY OF THE DECLARATION FORM IN AN ENVELOPE MARKED 'CONFIDENTIAL' FOR THE ATTENTION OF THE INTERIM DEPUTY COMPANY SECRETARY AND BOARD GOVERNANCE MANAGER.