

James Paget University Hospitals

NHS Foundation Trust

Report to the Board of Directors 2015/16

Date of meeting	31 July 2015			
Subject	Fit and Proper Person Requirement Update			
Report of	Director of Workforce & Corporate Affairs Head of Communications & Corporate Affairs			
Prepared by	Ann Filby, Head of Communications & Corporate Affairs			
Previously considered by	N/A.			
Question(s) addressed in this report	Confirmation that the required actions have been taken to meet the Care Quality Commission's requirements			
Board Action Required	Approval			Discussion
	Decision			Information
				X

Executive Summary, purpose and recommendation(s)

This report provides an update on the requirement to implement the Care Quality Commission's (CQC's) Fit and Proper Person Requirement (FPPR) for directors which came into effect on 27 November 2014. For ease of reference, the guidance can be found at this link http://www.cqc.org.uk/sites/default/files/20141120_doc_fppf_final_nhs_provider_guidance_v1-0.pdf

The Board of Directors at its meeting in April agreed that the requirement is applicable to Executive Directors, Non Executive Directors and 'equivalents', interim or permanent, who are members of the Board, irrespective of their voting rights. This does not extend to Clinical Director posts within the Trust.

At the time of writing final checks are being made to resolve the remaining issues and enable the due diligence to be signed by the Trust Secretary (Head of Communications & Corporate Affairs) and Director of Workforce & Corporate Affairs and for the Chairman to make his declaration on each member subject to this process. A verbal update will be provided at the meeting.

The Board is asked to **note** the action taken to meet the new Fit and Proper Person Requirement.

Strategic Context/Objective(s) and Board Assurance Framework links		
Strategic aim(s)	To be safe	X
	To be effective	X
	To be caring	X
	To be responsive	X
	To be well-led	X
Strategic objective(s)	2a, 5a	
BAF reference(s)	For information – no specific risk included on BAF.	

This paper provides assurance against the Trust objective(s) identified	X
This paper is to close a gap in control/assurance in relation to the objective(s)	

Legal/regulatory (relevant legislation and specific reference where appropriate)	The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014		
Equality Impact/risks: (Equality Delivery System 2 – EDS2 Nov 2013)	Impact		
	Positive	Negative	Neutral
			X
Assurance/monitoring	Trust Secretary to have operational responsibility for ensuring annual due diligence is undertaken to enable the annual declaration required by the Chairman. This is included in the Board agenda schedule for July following the completion of annual appraisals.		

DEFINITIONS

Information: Update to ensure Board has sufficient knowledge on subject matter and to provide assurance on progress

Discussion: seeking Board members' views, potentially ahead of final course of action being agreed

Decision: when being asked to choose between alternative courses of action

Approval: positive resolution, to confirm paper is sufficient to assure the Board in its ongoing monitoring role, or to address a gap in control

1. Background

At the meeting on 24 April 2015, the Board approved a number of actions to meet the requirements of the CQC's Fit and Proper Person Requirement (FPPR). It is expected that this will be tested during the CQC's visit to the Trust in August.

Significant work has been undertaken to ensure that all existing paperwork is to be found in the right place, i.e. individuals' personal file, and that all requirements are met. Set out below are the recommendations approved in April, the action already taken and any further work outstanding at the time of writing to enable the due diligence to be completed. A verbal update will be provided at the meeting.

2. Current position

The requirements are set out below, with the current position against each element.

6. Recommended Next Steps

- 6.1 In addition to the existing processes for appointing Board members (which incorporates NHS pre-employment checks), the Trust should introduce a specific process for its Board members, to be co-ordinated by the Trust Secretary (in liaison with the Human Resources department), and to involve the following five steps (which are illustrated in Appendix 1):

Summary of requirement		Action taken	Further action required/estimated timeline for completion
6.1.1	Each Director should be asked to sign a declaration covering the specific aspects of the FPPR (verbatim). It is recommended that the declaration forms part of the application process for new Executive Directors (the appointment of new Non Executive Directors is operated by the Council of Governors and would need to follow the same process). This will be re-affirmed on appointment (for all Directors), and annually thereafter (again, for all Directors). The latter two stages mirror the current Directors' declaration of interests process, and would be scheduled to be undertaken at the same time.	Declaration signed for all Directors and at the front of each personal file. To be included in future HR recruitment processes. Council of Governors updated on process, with April Board report, at their meeting on 15 May 2015. Declaration of Interests process undertaken. Register for 2015/16 updated and on Trust website. New process for Board papers from this meeting with all declarations included within that item on the agenda.	None
6.1.2	An "Enhanced with list checks" Disclosure and Barring Service	DBS forms completed and submitted 8 July 2015. One member of the	Awaiting final certificates to be

Summary of requirement	Action taken	Further action required/estimated timeline for completion
<p>(DBS) check should be undertaken for each Director. The “standard” DBS check covers spent and unspent convictions, cautions, reprimands and final warnings. The “Enhanced with list checks” check also includes a review of the DBS barred lists, which is one of the FPPR criteria for being “unfit” (as listed above).</p> <p>If the DBS check identifies any convictions that have not been declared (see step 1 above), the Chairman will discuss the findings of the check with the individual (and the Chief Executive, for an Executive Director), and instigate appropriate action.</p>	<p>Board had an existing check in date so this was not undertaken; one member had a check on recent appointment in May 2015.</p> <p>There are five stages to this external process and progress is being tracked. Currently four Directors have received their certificates. By the time of the meeting, or very shortly after, it is hoped all will have been completed.</p>	<p>returned for 10 Board members</p> <p>By 31 July or shortly afterwards</p>
<p>6.1.3 The Trust Secretary should ensure, under the direction of the Director of Workforce & Corporate Affairs, that ‘due diligence’ checks for each Director are undertaken, to support the declarations in 6.1.1</p> <p><i>Such checks will be undertaken on appointment. Ad-hoc checks will also be undertaken if any information is received that warrants such checks being made. If these checks identify any issues of concern in relation to the FPPR, the Trust Secretary will raise these concerns with the Chairman of the Board, who will in turn discuss the concerns with the individual, and instigate appropriate action.</i></p>	<p>Due diligence checks completed by Trust Secretary, with assessment of each file.</p> <p>Copy qualifications were sought where these were missing; PIN numbers/registration details checked as appropriate.</p> <p>Updated job descriptions included on personal files.</p>	<p>Paperwork for two Directors to be finalised/added to the personal files.</p> <p>By 31 July</p>
<p>6.1.4 The annual appraisal process for all Board members should</p>	<p>Completed for the performance reviews 2014/15 and objective setting</p>	<p>One signed checklist</p>

Summary of requirement	Action taken	Further action required/estimated timeline for completion
<p>include the completion of a checklist to ensure that the individual:</p> <ul style="list-style-type: none"> • Continues to have the qualifications, competence, skills and experience which are necessary for the work to be performed by them; and • Continues to be able by reason of their health (after reasonable adjustments are made) of properly performing tasks which are intrinsic to the work for which they are employed. <p>These aspects should be part of the formal documentation for such appraisals.</p>	<p>for 2015/16.</p> <p>Outcome for Chairman and Non Executive Directors confirmed at the Council of Governors meeting held on 10 July 2015.</p> <p>Sandy Oosthuysen, Assistant Director of Learning and OD, alerted that Board member specific forms need to include these requirements for future years to ensure a smooth process.</p> <p>Also to be included in consideration of the Chairman and Non Executive Director performance review process prior to Council approving revisions for next year's use (scheduled for Governors Nomination & Remuneration Committee in the autumn). This is one of the Chairman's objectives as set by the Council.</p>	<p>outstanding, but will be resolved by the time of the Board meeting</p> <p>By 31 July</p>
<p>6.1.5 The contracts of employment for individuals and appointment details for Non Executive Directors (and the standard contract for any new Executive Director appointments) will be amended to make reference to the FRRR. A copy of the proposed amended contract is contained in Appendix 4. The wording will also be incorporated into the Trust's disciplinary policy.</p> <p><i>The above five steps will be applied routinely. However, if an allegation is made that a specific Board member is in breach of the FPPR, the Trust Secretary will oversee an investigation into the circumstances of the allegation, and ensure the findings of the investigation are provided to the</i></p>	<p>Applied to all members.</p> <p>Amendment made for existing Board members with an addendum signed and accepted by Executive Directors/ the Trust Secretary.</p> <p>For Non Executive Directors revised contracts provided for signature.</p> <p>Latest Director contract includes FPPR text. With HR for future appointments.</p>	<p>One remains outstanding and will be resolved by the time of the Board meeting</p> <p>By 31 July</p>

310715 FPPR Update
Ann Filby, Head of Communications & Corporate Affairs
8 July 2015
REP/BOD/AMF0807/01

Summary of requirement	Action taken	Further action required/estimated timeline for completion	
<p><i>Chairman of the Board, for consideration.</i></p> <p>a. The process described in steps 1-5 should be applied to all those individuals who constitute the “Board”, using the definition in the Standing Orders. Currently, this would therefore include the following individuals:</p> <p>Voting</p> <ul style="list-style-type: none"> • Chairman of the Board • Deputy Chairman • Non Executive Directors (4) • Chief Executive • Director of Nursing, Quality & Patient Experience • Director of Finance • Director of Operations • Medical Director <p>Non Voting</p> <ul style="list-style-type: none"> • Director of Workforce & Corporate Affairs • Director of Performance & Planning • Associate Director of Governance, Safety & Compliance • Head of Communications & Corporate Affairs (Trust Secretary) <p>b. The process described in steps 1-5 should be applied to all existing post-holders, as well as to new appointments. Although legally speaking, the FPPR do not apply retrospectively, the CQC guidance makes it clear that providers are expected to apply the new requirements to their existing Directors.</p>			
6.1.6	The Trust Secretary will review the Board of Directors’ Annual	The annual declaration of interests was reviewed and undertaken.	None

Summary of requirement	Action taken	Further action required/estimated timeline for completion	
	<p>The previous constitution revision in March 2014 included the requirement for FPPR. A number of changes are to be considered in the next review of the constitution later in the year to fully align with the FPPR. This is scheduled for the Governors Review & Planning Committee, Board Seminar, leading to November Council of Governors and Board of Directors approvals.</p>	<p>Full review of constitution by 27 November</p>	
6.1.7	<p>The Chairman via the Trust Secretary will ask members of the Board of Directors to confirm that they continue to meet the requirements of the Fit and Proper Persons Test as part of the Board's annual review of interests and standards of public life declaration;</p>	<p>Single form signed by all Board members and included in personal files.</p>	<p>None</p>
6.1.8	<p>The Trust Chairman via the Trust Secretary will be responsible for confirming to CQC that a new Director is a fit and proper person and for completing the annual declaration.</p>	<p>Not yet undertaken; awaiting final document checks to be made week commencing 27 July 2015.</p> <p>Individual directors alerted to final requirements, particularly revised job descriptions with recent transfer of responsibilities. Declaration cannot be made until all DBS certificates are returned.</p>	<p>By 31 July or shortly after</p>

3. Preparation for 2-16/17 process

Following the completion of this process and the Chairman' annual declaration, the following action will be taken to ensure a smooth process for 2016/17:

- a. Review the Board contract
- b. Agree where the Board members personal files are to be kept to ensure they are kept up to date
- c. Review the most effective way of integrating the requirements into the appraisal process for both Executive, Non Executive Directors and the Trust Secretary
- d. Complete the constitution review to ensure full alignment.

4. Recommendation

The Board is asked to **note** the action taken to meet the new Fit and Proper Person Requirement.