Agenda Item No.20

NHS
The Queen Elizabeth Hospital King's Lynn
NHS Foundation Trust

REPORT TO THE BOARD DIRECTORS (IN PUBLIC)

RESPONSIBLE DIRECTOR:	REPORT FOR:		IMPACT ON BUSINESS:		
E Libbey Trust Chair	Decision	√	High	Med	Low
	Discussion			√	
	Information				
LEAD MANAGER:	**REPORT TYPE:**		**BAF REFERENCES & RAG:**		
	Strategic				
	Operational				
	Governance	√	**RELATED WORK: (PREVIOUS PAPERS TO COMMITTEE)**		
PEER ASSIST:	**PEER REVIEW:**				
Gill Rejzl, Trust Secretary	N/A				
CQC Domain: (safe, caring, effective, responsive, well-led)	Well-led				

Meeting Date: **29 May 2018**
Report Title: **Fit and Proper Person Test - update**

PURPOSE:

To review the position of the Trust's Directors in respect of the 'Fit and Proper Person Test'

SUMMARY:

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2014 Regulations), Regulation 5, (fit and proper person) (Regulation 5) places a duty on NHS providers not to appoint a person or allow a person to continue to be an executive director (ED) or equivalent, or a non-executive director (NED) under given circumstances.

Regulation 5 is attached at Appendix A.

The CQC states that providers should be able to evidence that they have undertaken robust and reasonable checks to reach a judgement about fitness and that as long as a provider is able to evidence how they came to the judgement then they will be meeting the requirement.

The Trust has in place a 'Fit and Proper Person Test' Protocol, based on guidance from the CQC, NHS Providers and NHS Employers. The Trust's protocol includes the following due diligence checks, which are undertaken for all executive and non-executive directors on appointment and in some cases, annually thereafter:

- HR employment checks (references, right to work checks, proof of identity checks;
- qualification and professional registration checks;
- occupational health clearance;
- DBS checks (where appropriate);
- search of insolvency and bankruptcy register;

- search of disqualified directors register;
- self-declaration of fitness (at interview for NEDs and by completion / signing of Trust template);
- Management of Conflicts of Interest Declarations;
- internet searches; and
- enquiries with the Trust's key regulators – CQC and NHSi.

The findings of these checks are recorded in each Director's Personal File.

In respect of the Trust's current Board Directors, no 'Fit and Proper Person Test' concerns have been identified.

RISK ASSESSMENT (CROSS-REFERENCE WITH RISK REGISTER WHERE APPROPRIATE):

Strategic / External	Operational/ Organisational	Financial	Clinical	Legal/ Regulatory	Reputational / Patient Experience
				√	

RECOMMENDATION/S:

The Board is invited to confirm that it is satisfied that all Board Directors meet the 'Fit and Proper Person Test' criteria as described in Regulation 5 and as tested through the Trust's 'Fit and Proper Person Test' Protocol.

APPENDIX A

CQC Regulation 5: Fit and proper persons: directors

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

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.
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.
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.
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.
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.

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.

PART 2 Good character

7. 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.
8. 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.

SCHEDULE 3: Information Required in Respect of Persons Employed or Appointed for the Purposes of a Regulated Activity

1. Proof of identity including a recent photograph.
2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997, a copy of a criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request).
3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children or vulnerable adults.
4. Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to—
   (a) health or social care, or
   (b) children or vulnerable adults.
5. Where a person (P) has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why P's employment in that position ended.
6. In so far as it is reasonably practicable to obtain, satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed or appointed to perform.
7. A full employment history, together with a satisfactory written explanation of any gaps in employment.
8. Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity
9. For the purposes of this Schedule—
   (a) "the appointed day" means the day on which section 30A of the Safeguarding Vulnerable Groups Act 2006 comes into force;.
   (b) "satisfactory" means satisfactory in the opinion of the Commission;.
   (c) "suitability information relating to children or vulnerable adults" means the information specified in sections 113BA and 113BB respectively of the Police Act 1997.