

# Fit and Proper Persons Policy

As a health service body within the NHS, LPT is bound by law to ensure that its directors are fit and proper persons. It also must comply with Condition G3 of its provider licence. The policy sets out the arrangements in LPT for ensuring that all directors are compliant with the requirements of the 'fit and proper person test'.

**Key words: Fit and Proper Person**

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**Type of Policy: Non-clinical, not sensitive**

## Contents

SUMMARY & AIM.....	3
KEY REQUIREMENTS .....	3
TARGET AUDIENCE: .....	3
TRAINING .....	3
1.0 Quick look summary .....	4
1.1 Version control and summary of changes.....	4
1.2 Key individuals involved in developing and consulting on the document .....	4
1.3 Governance .....	4
1.4 Equality Statement.....	5
1.5 Due Regard.....	5
1.6 Definitions that apply to this policy. ....	5
2.0 Definitions that apply to this Policy .....	6
3.0 Purpose of the Policy .....	6
4.0 Introduction .....	6
5.0 Core Standards.....	10
6.0 Monitoring Compliance and Effectiveness.....	12
7.0 References and Bibliography.....	13
8.0 Fraud, Bribery and Corruption consideration .....	13
Appendix 1 Training Needs Analysis .....	14
Appendix 2 The NHS Constitution.....	15
Appendix 3 Due Regard Screening Template .....	15
Appendix 4 Data Privacy Impact Assessment Screening.....	16

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

## Policy On A Page

### SUMMARY & AIM

To ensure that senior leaders are of good character, are honest, reliable, trustworthy and respectful, and that they have the right qualifications, competence, skills and experience to perform their role.

### KEY REQUIREMENTS

Annual declaration.

### TARGET AUDIENCE:

Senior NHS leaders

### TRAINING

There is no training requirement identified within this policy.

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

## 1.0 Quick look summary

Please note that this is designed to act as a quick reference guide only and is not intended to replace the need to read the full policy.

The Fit and Proper Person Test Framework's purpose is to ensure that providers meet their obligations to only employ individuals who are fit for their role and to ensure that appropriate steps have been taken to ensure they are of good character; are able to perform the work that they are employed for after reasonable adjustments are made; have the necessary qualifications, skills and experience for the role; and can supply certain information (including a Disclosure and Barring Service (DBS) check where required) and full employment history. Together these measures enhance the quality of leadership within the NHS.

## 1.1 Version control and summary of changes

Version number	Date	Comments (description change and amendments)
1.0	December 2022	New Policy
1.1	December 2024	Update to incorporate September 2023 changes following the recommendations in the Kark Review (2019)

## 1.2 Key individuals involved in developing and consulting on the document

Kate Dyer - Director of Governance and Risk

Dan Norbury - Deputy Director of HR and OD

## 1.3 Governance

Sarah Willis - Director of HR and OD

Dan Norbury - Acting Deputy Director of HR and OD

Policy Expert Group

Members of the Workforce Development Group

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

## 1.4 Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 (Amendment) Regulations 2023 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

If you would like a copy of this document in any other format, please contact [lpt.corporateaffairs@nhs.net](mailto:lpt.corporateaffairs@nhs.net)

## 1.5 Due Regard

LPT will ensure that due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and procedures and services are free from discrimination.
- LPT complies with current equality legislation.
- Due regard is given to equality in decision making and subsequent processes.
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 4) of this policy

## 1.6 Definitions that apply to this policy.

**Consent:** a patient's agreement for a health professional to provide care. Patients may indicate consent non-verbally (for example by presenting their arm for their pulse to be taken), orally, or in writing. For the consent to be valid, the patient must:

- be competent to take the particular decision;
- have received sufficient information to take it and not be acting under duress.

**Due Regard:** Having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people. Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

## 2.0 Definitions that apply to this Policy

**Fit and Proper Person** - The person is of good character, as they are honest, reliable, trustworthy and respectful, and that they have the right qualifications, competence, skills and experience to perform their role.

In this policy, this definition is used specifically to refer to staff whose role is defined as falling under the NHS England Fit and Proper Person framework.

**Director** - For the purpose of this policy, LPT considers a 'Director' to be anyone who is a:

- Member of the Trust Board
- Regular Participant at the Trust Board
- Member of either or both the Strategic Executive Board and Executive Management Board

## 3.0 Purpose of the Policy

As a health service body within the NHS, LPT is bound by law to ensure that its directors are fit and proper persons. It also must comply with Condition G3 of its provider licence. The purpose of this policy is to set out these requirements and how the Trust will meet them.

The policy sets out the arrangements in LPT for ensuring that all directors are compliant with the requirements of the 'fit and proper person test'.

This policy should be read in conjunction with the following documents:

- 'The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 no 2936'.
- The CQC's Regulation 5 and associated guidance; and
- The NHS Provider Licence.
- NHS Providers guidance on fit and proper persons.

## 4.0 Introduction

The Care Quality Commission (CQC) introduced requirements regarding the 'Fit and Proper Person Tests' for Directors in November 2014, which became law from 1 April 2015. Subsequent to this, NHS England (NHSE) has developed a Fit and Proper Person Test (FPPT) Framework (The Framework) in response to

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

recommendations made by Tom Kark KC in his 2019 review of the FPPT (the Kark Review). The Framework is effective from 30 September 2023 and implementation by all boards is required from this date.

The Fit and Proper Person Test Framework's purpose is to ensure that providers meet their obligations to only employ individuals who are fit for their role and to ensure that appropriate steps have been taken to ensure they are of good character; are able to perform the work that they are employed for after reasonable adjustments are made; have the necessary qualifications, skills and experience for the role; and can supply certain information (including a Disclosure and Barring Service (DBS) check where required) and full employment history. Together these measures enhance the quality of leadership within the NHS.

The Framework applies to the board members of NHS organisations. Within this guidance, the term 'board member' is used to refer to:

- both executive directors and non-executive directors (NEDs), irrespective of voting rights
- interim (all contractual forms) as well as permanent appointments
- those individuals who are called 'directors' within Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The Framework sets out:

- When the full FPPT assessment is needed, which includes an annual self-attestation declaring fit & proper person status
- New appointment considerations
- Additional considerations in specific situations such as joint appointments, shared roles and temporary absences
- The role of the chair in overseeing the FPPT
- The FPPT core elements to be considered in evaluating board members
- The circumstances in which there will be breaches to the core elements of the FPPT
- The requirements for a board member reference check
- The requirements for accurately maintaining FPPT information on each board member in the ESR record – for the purpose of the FPPT framework, 'ESR' refers to the FPPT data fields in ESR. ESR is the Electronic Staff Record, which is a core HR system LPT uses.
- The record retention requirements, that is FPPT information including the board member reference and data in ESR will be maintained, updated and retained for a career long period, and then disposed of in line with the Trust's Information Lifecycle and Records Management Policy
- Dispute resolution
- Quality assurance over the Framework
- Ultimate accountability for adhering to this framework will reside with the chair of an NHS organisation.

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

- The senior independent director (SID) or deputy chair will review and ensure that the chair is meeting the requirements of the FPPT

The Framework should be read in conjunction with:

- The NHS Constitution
- NHS People Plan
- People Promise
- NHS Leadership Competency Framework for leaders at board level.

Annually there will be a cycle of self-declaration against compliance. Directors will be asked to update their compliance to the Fit and Proper Person Test by a further self-declaration prior to a specified Board meeting, thus a formal record will be held in the Board minutes and the register will be updated. Any Director with any information known to them which would not support their compliance should make this known to the Trust Chair prior to the meeting.

The Human Resource Department maintains the Trust's register and central database holding all relevant information around qualifications and history in order to support compliance with the 'Fit and Proper Person Test'.

When recruited to posts that are subject to Fit and Proper Person checks, directors will have the Fit and Proper Person checks discharged in line with the LPT Recruitment and Selection and DBS policies, along with this policy. Those posts subject to the Fit and Proper Person checks include<sup>1</sup>

- All Executive and Operational Directors
- All non-executive Directors including the Chair

As part of the recruitment process (and compliance for the Fit and Proper Person Test) for the defined staff group of directors appointed by LPT, a number of checks are undertaken. These include the following checks on all individuals:

- Qualifications
- Competence, skills required, relevant experience and ability
- Good character
- Entitlement to work
- Identity
- Career History
- ability to perform the work that they are employed for after reasonable adjustments are made

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<sup>1</sup> <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/fit-proper-persons-directors>



- Ensure, as far as possible the individual has not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether lawful or not) in the course of carrying on a regulated service; this includes any allegations of such
- DBS check.  
Only individuals who will be acting in a role that falls within the definition of a 'regulated activity' as defined by the Safeguarding Vulnerable Groups Act 2006 will be eligible for a check by the Disclosure and Barring Service (DBS)
- Review of Disqualified Directors Register (Companies House)
- Review Individual Insolvency Register (Gov.uk)
- Review of Insolvency Service Bankruptcy register
- A search of the Charity Commission's register of removed trustees
- A review of social media and general internet presence
- Any other reasonable checks that are or may become mandated by NHS England, CQC or any other body that LPT needs to comply with where these are LPT's responsibility to discharge

Through appraisals each year (or through the Trust Policy on Supporting Performance), individuals are continually monitored to ensure that they meet the requirements to hold office of their appointment. Where they do not, action will be taken by the Chief Executive and / or Trust Chair or respective Director (and where appropriate consultation with the Remuneration Committee). For non-executive director appraisals, each contains a fit and proper person self- declaration for NHSEI. Staff in roles covered by this policy should not wait till their appraisal to raise any issue that contravenes the fit and proper person requirements set out in this policy, and should bring this to the attention of the Chief Executive and / or Trust Chair as soon as possible.

As part of the annual appraisal process the Chair and/or Chief Executive will review a Non-Executive Director's/Directors' continued fitness for their role, establish whether anything has changed and record the outcome of the discussion with the appraisee over continued compliance with the fit and proper persons' regulations.

Additionally, there are a number of ongoing checks relating to Fit and Proper Person that are repeated each year.

These are:

- Annual self-declaration process which includes an annual self-attestation declaring fit & proper person status
- Review of Disqualified Directors Register (Companies House)
- Review Individual Insolvency Register (Gov.uk)
- Review of Insolvency Service Bankruptcy register

A review of social media and general internet presence Where appropriate to their role, Directors have a Disclosure and Barring Service (DBS) check in place. Staff who fall under the Fit and Proper person requirements are required to enrol their in the DBS update service to maintain the check's currency. If they are not enrolled in this already, they will need to comply with this when their DBS check is next updated in line with LPT's DBS policy.

There may also be requirements to revisit FPPT checks for individual staff if new requirements are introduced that fall outside of the above schedule.

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Once each year, the Corporate Affairs team will seek a declaration of interests return from the individual.

### **Board member references**

There is a duty on LPT to maintain a Board member reference for all staff who fall under the remit of this policy to provide to other organisations where FPPT requirements are a consideration. .

LPT will maintain a complete and accurate board member references at the point where the board member departs, irrespective of whether there has been a request from another NHS employer and including in circumstances of retirement.

This reference will provide information in relation to that which occurred:

- in the six years before the request for a reference
- between the date of any future request for the reference and the date the reference is given
- in the case of disciplinary action, serious misconduct and/or mismanagement at any time (where known).

The reference format used will be in line with that provided by NHS England as part of their FPPT guidance.

## **5.0 Core Standards**

### **Legal Requirements**

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 requires LPT to ensure that each individual Director:

- Is of “good character”.
- Has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed.
- 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.
- Has not been responsible for, 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

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

- Passes the “unfit person test”.

**Someone is considered of “good character” if they have not 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 and/or
- Erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals

**A person passes the “unfit person test” if they are not:**

- An undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
- 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.
- A person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.
- A person that has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
- 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.
- Possesses a criminal conviction of a nature that does not satisfy LPT’s risk assessment as being appropriate to the role.
- 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.

**Provider licence requirements**

In addition to its legal requirements as specified above, LPT is required to self-certify that they meet the obligations set out in the NHS provider licence.. The requirements under condition G3 Fit and proper persons seek seek to ensure that LPT neither appoints nor allows someone to continue as a Director that is an ‘unfit person’, i.e., someone:

- (i) Who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
- (ii) Who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
- (iii) Who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or **not**) for a period of not less than three months (without the option of a fine) was imposed on them; or
- (iv) Who is subject to an unexpired disqualification order made under the Company Directors’ Disqualification Act 1986

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

**In exceptional circumstances, should LPT wish to appoint an individual who would not meet the requirements of the fit and proper persons' test, the organisation will seek prior approval from NHS England/Improvement.**

### **Staff Acting Up or Being Appointed into a Role Requiring Additional Checks**

Staff who act up or are seconded into a role that is covered by the scope of this policy will be subject to a fit and proper person assessment. Staff appointed to a role that is subject to fitness checks shall be required to undergo a fit and proper person assessment unless they have already been subject to such an assessment due to acting up/secondment in the last 12 months. If the Trust considers it is reasonable not to conduct a check in these circumstances, staff are responsible for notifying the Trust of any change in circumstances that may affect their fitness for the role. thought to lack the mental capacity to give informed consent if they cannot do one of the following:

- Understand information about the decision
- Remember that information
- Use the information to make the decision
- Communicate the decision

## **6.0 Monitoring Compliance and Effectiveness**

Compliance with these Regulations is monitored by the Care Quality Commission (CQC) as part of its inspection regime. The CQC will assess the Trust on:

- The fitness of its appointees.
- The process it uses to assess their fitness; and
- The reasonableness of this process and any decisions the Trust makes.

The Trust shall evidence compliance with this policy via the reporting requirements set out above. The Trust may, from time to time, carry out an audit of compliance, of the Trust's decisions and the quality of the evidence held in relation to this policy. The outcome of these audits and the data underpinning them shall be available to the CQC to provide regulatory assurance of compliance. For the avoidance of doubt, the Trust shall make decisions on a case-by-case basis and this policy or compliance with it shall not be considered ineffective if the Trust reasonably varies its approach from role to role and from time to time.

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

Page/Section	Minimum Requirements to monitor	Method for Monitoring	Responsible Individual /Group	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group). Frequency of monitoring
Whole Policy	Executive Directors against FPP Framework	Annual submission to NHSE	Chair of the Trust	Trust Board

## 7.0 References and Bibliography

The policy was drafted with reference to the following:

- NHFT Fit and Proper Person's Policy CRM011 v4.1
- Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5: Fit and proper persons: directors
- NHS England Fit and Proper Person Test Framework for board members published 27 September 2023
- NHS Provider Licence: standard conditions 31 March 2023

## 8.0 Fraud, Bribery and Corruption consideration

The Trust has a zero-tolerance approach to fraud, bribery and corruption in all areas of our work and it is important that this is reflected through all policies and procedures to mitigate these risks.

Fraud relates to a dishonest representation, failure to disclose information or abuse of position in order to make a gain or cause a loss. Bribery involves the giving or receiving of gifts or money in return for improper performance. Corruption relates to dishonest or fraudulent conduct by those in power.

Any procedure incurring costs or fees or involving the procurement or provision of goods or service, may be susceptible to fraud, bribery, or corruption so provision should be made within the policy to safeguard against these.

If there is a potential that the policy being written, amended or updated controls a procedure for which there is a potential of fraud, bribery, or corruption to occur you should contact the Trusts Local Counter Fraud Specialist (LCFS) for assistance.

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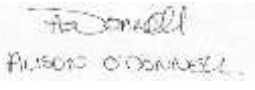
05/12/2024

Status Final

Title – Fit and Proper Person Policy

## Appendix 1 Training Needs Analysis

Training required to meet the policy requirements must be approved prior to policy approval. Learning and Development manage the approval of training. Send this form to [lpt.tel@nhs.net](mailto:lpt.tel@nhs.net) for review.

<b>Training topic/title:</b>			
Type of training: (see Mandatory and Role Essential Training policy for descriptions)	<input type="checkbox"/> Not required <input type="checkbox"/> Mandatory (must be on mandatory training register) <input type="checkbox"/> Role Essential (must be on the role essential training register) <input type="checkbox"/> Desirable or Developmental		
Directorate to which the training is applicable:	<input type="checkbox"/> Directorate of Mental Health <input type="checkbox"/> Community Health Services <input type="checkbox"/> Enabling Services <input type="checkbox"/> Estates and Facilities <input type="checkbox"/> Families, Young People, Children, Learning Disability and Autism <input type="checkbox"/> Hosted Services		
Staff groups who require the training: (consider bank /agency/volunteers/medical)			
Governance group who has approved this training:		Date approved:	
Named lead or team who is responsible for this training:			
Delivery mode of training: elearning/virtual/classroom/ informal/adhoc			
Has a training plan been agreed?			
Where will completion of this training be recorded?	<input type="checkbox"/> uLearn <input type="checkbox"/> Other (please specify)		
How is this training going to be quality assured and completions monitored?			
<b>Signed by Learning and Development Approval name and date</b>			Date: December 2024

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

## Appendix 2 The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

Shape its services around the needs and preferences of individual patients, their families and their carers	✓
Respond to different needs of different sectors of the population	✓
Work continuously to improve quality services and to minimise errors	✓
Support and value its staff	✓
Work together with others to ensure a seamless service for patients	✓
Help keep people healthy and work to reduce health inequalities	✓
Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance	✓

## Appendix 3 Due Regard Screening Template

Section 1	
Name of activity/proposal	New policy for Fit and Proper Persons
Date Screening commenced	November 2022
Directorate / Service carrying out the assessment	Corporate Affairs Department
Name and role of person undertaking this Due Regard (Equality Analysis)	Kate Dyer, Deputy Director of Governance and Risk
<b>Give an overview of the aims, objectives and purpose of the proposal:</b>	
<b>AIMS:</b> This policy describes the process for managing Fit and Proper Persons	
<b>OBJECTIVES:</b> To describe the required approach to the roles and responsibilities under the Fit and Proper Persons requirement.	
Section 2	
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details
Age	None

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05/12/2024

Status Final

Title – Fit and Proper Person Policy

Disability	None		
Gender reassignment	None		
Marriage & Civil Partnership	None		
Pregnancy & Maternity	None		
Race	None		
Religion and Belief	None		
Sex	None		
Sexual Orientation	None		
Other equality groups?	None		
<b>Section 3</b>			
<b>Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please tick appropriate box below.</b>			
Yes	No ✓		
High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B	Low risk: Go to Section 4.		
<b>Section 4</b>			
<b>If this proposal is low risk please give evidence or justification for how you reached this decision:</b>			
This is a neutral policy having no impact on any specific group			
<b>Signed by reviewer/assessor</b>	Kate Dyer	<b>Date</b>	December 2024
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
<b>Head of Service Signed</b>	Kate Dyer	<b>Date</b>	December 2024

## Appendix 4 Data Privacy Impact Assessment Screening

<b>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy. The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</b>			
<b>Name of Document:</b>	Fit and Proper Persons Policy		
<b>Completed by:</b>	Kate Dyer		
<b>Job title</b>	Director of Governance and Risk	<b>Date</b>	November 2022
<b>Screening Questions</b>	<b>Yes / No</b>	<b>Explanatory Note</b>	

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05/12/2024

Status Final

Title – Fit and Proper Person Policy



1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	No	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	No	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	Yes	<b>The requirement for a specified Board member reference to be held by the organisation for issuing to potential future employers of the individual is a new requirement.</b>
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	Yes	<b>If an individual becomes unfit against the Fit and Proper Person Test requirements in this policy, this could result in their dismissal from their post.</b>
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	Yes	<b>The Fit and Proper Person Test requires scrutiny of a range of data including criminal records and various publically accessible registers. The information relating to criminal records is dealt with through the Trust's DBS policy. The policy will also require a review of what is publicly visible on staff's social media accounts, and it is possible that views expressed there has an impact on the individual's ability to pass the Fit and Proper person test.</b>
8. Will the process require you to contact individuals in ways which they may find intrusive?	No	
<p><b>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via <a href="mailto:Lpt-dataprivacy@leicspart.secure.nhs.uk">Lpt-dataprivacy@leicspart.secure.nhs.uk</a></b>  <b>In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</b></p>		
<b>Data Privacy approval name:</b>	<b>Not Required</b>	
<b>Date of approval</b>	--	

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust

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05/12/2024

Status Final

Title – Fit and Proper Person Policy