Torbay and South Devon NHS Foundation Trust

RECRUITMENT AND SELECTION POLICY (H12)

If you require a copy of this policy in an alternative format (for example large print, easy read) or would like any assistance in relation to the content of this policy, please contact the Equality and Diversity team on 01803 656680.

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Date of Issue:	**April 2022**	**Next Review Date:**	**July 2022**
Version:	**1.4**	**Last Review Date:**	**April 2022**
Author:	Recruitment and Temporary Staffing Manager		
Directorate:	People Directorate		
Approval Route			
Approved By:		**Date Approved: 5th April 2022**	
LCNC			
JCNC			
LNC			
Links or overlaps with other policies:			
Fixed Term Contract		Professional Registration	
Appointment of Near Relatives		Salary on Appointment	
Disclosure and Barring Service Check		Secondment and Acting up	
Flexible Working Arrangement		Right to Work in the UK Procedure	
Job Evaluation and Re-Evaluation of posts		NHS Employment Check Standards	
Personal Files Protocol		Volunteer	

Amendment History

Issue	Status	Date	Reason for Change	Authorised
1.1	Approved	1st February 2016	Amendment to Appendix 2 Fit & Proper Persons Changes to reflect new ICO logo	JCNC
1.2	Approved	17 Jan 2019	General review and audit	HR Advisor
1.3	Approved	9th April 2021	Covid Updates added and Updated Logo	Recruitment Manager
1.4	Approved	5th April 2022	General review and audit to be reviewed and updated July 2022	Temporary Staffing and Recruitment Manager

Torbay and South Devon NHS Foundation Trust

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Policy Title (and number)	RECRUITMENT AND SELECTION POLICY (H12)	**Version and Date**	*1.4 Aril 2022*
Policy Author			

An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.

Who may be affected by this document?

Patients/ Service Users ☐	Staff ☒	Other, please state… ☐

Could the policy treat people from protected groups less favorably than the general population?
PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below

Age	Yes ☐ No☒	Gender Reassignment	Yes ☐ No☒	Sexual Orientation	Yes ☐ No☒
Race	Yes ☐ No☒	Disability	Yes ☐ No☒	Religion/Belief (non)	Yes ☐ No☒
Gender	Yes ☐ No☒	Pregnancy/Maternity	Yes ☐ No☒	Marriage/ Civil Partnership	Yes ☐ No☒

Is it likely that the policy could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers[1]; travellers[2]; homeless[3]; convictions; social isolation[4]; refugees)	Yes ☐ No☒
Please provide details for each protected group where you have indicated 'Yes'.	

VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion

Is inclusive language[5] used throughout?	Yes ☒ No☐ NA ☐
Are the services outlined in the policy fully accessible[6]?	Yes ☒ No☐ NA ☐
Does the policy encourage individualised and person-centered care?	Yes ☐ No☐ NA ☒
Could there be an adverse impact on an individual's independence or autonomy[7]?	Yes ☐ No☐ NA ☒

EXTERNAL FACTORS

Is the policy a result of national legislation which cannot be modified in any way?	Yes ☐ No☒
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)	

Who was consulted when drafting this policy?

Patients/ Service Users ☐	Trade Unions ☒	Protected Groups (including Trust Equality Groups) ☒
Staff ☒	General Public ☐	Other, please state… ☐

What were the recommendations/suggestions?

Does this document require a service redesign or substantial amendments to an existing process? ***PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below***	Yes ☐ No☒

ACTION PLAN: Please list all actions identified to address any impacts

Action	Person responsible	Completion date

Please contact the Equalities team for guidance: For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdhct@nhs.net **This form should be published with the policy and a signed copy sent to your relevant organisation.**

[1] Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
[2] Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them
[3] Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
[4] Consider how someone will be aware of (or access) a service if socially or geographically isolated
[5] Language must be relevant and appropriate, for example referring to partners, not husbands or wives
[6] Consider both physical access to services and how information/ communication in available in an accessible format
[7] Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or auton

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1 Policy Statement

1.1 Torbay and South Devon NHS Foundation Trust (hereafter referred to as the Trust), as a major employer in the area, recognises that recruitment and selection of quality staff is central to the achievement of its business goals and objects.

1.2 The Trust's Recruitment and Selection Procedure has been developed taking into account current legislation, guidelines and existing Trust policies and the NHS Employment Check Standards.

1.3 The Trust has followed recommendations from the Department of Health in using the national NHS Jobs website as a means of facilitating the recruitment process. Provision for manual applications and assisted applications has been taken into account.

2 Introduction

2.1 The following key principles outline the Trust's approach to recruitment and selection:

- Commitment to equal treatment in access to employment regardless of age, disability, gender reassignment, marriage or civil partnership, maternity or pregnancy, race, religion or believe, sex and sexual orientation (protected characteristics defined by the Equality Act 2010).
- All employees and potential employees are treated fairly and consistently.
- Assisted applications are supported
- Achievement of a staff equality profile within the Trust that matches more closely that of the local population.
- Implementation of flexible working policies which allow genuinely flexible ways of working which meet the needs of the service and individual.
- Provision of a centralised recruitment service which recruits people of the highest possible calibre into posts efficiently and effectively
- Compliance with equality, human rights, employment legislation, statutory and mandatory requirements in recruitment and selection.

3 Scope

3.1 This policy applies to all staff employed by the Trust, together with those on a joint contract with the organisation and another employer.

4 Equality and Diversity Statement

4.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.

4.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality Analysis Procedure.

5 Roles and Responsibilities

5.1 Vacancy & Scrutiny

- Review all vacancies, ensuring appropriate approval has been sought, enabling an informed decision on whether to approve the recruitment.
- Should any recruitment restrictions be put in place these will be highlighted by the Recruitment and Temporary Staffing Manager.

5.2 Recruiting Managers

- Ensure that workforce requirements and skill mix are reviewed prior to advertising
- Ensure that the vacancy is appropriately funded and the post approved for advertising via the Trust's vacancy approval process prior to advertising
- Provide a job description with a valid Agenda for Change reference number, person specification and advert in the correct format which accurately reflect the needs of the post and ensuring they are non-discriminatory
- Provide all relevant documentation, undertake shortlisting and interviewing in a timely manner and feedback decisions to Recruitment team without delay
- Prior to advertising, ensure posts have been evaluated in accordance with the Trust's job matching process
- Ensure selection panels are properly constituted and are reflective of equality groups
- Provide constructive feedback to unsuccessful candidates in a timely way
- Undertake latest relevant training
- Maintain an up-to-date knowledge of the recruitment process
- Keep abreast of changes in legislation, developments in best practice and NHS requirements
- Are aware of their responsibilities of the disability confident scheme and ensure that those with a disability who meet the essential criteria for the post, are shortlisted for interview
- Make 'reasonable adjustments' for the interview where a disabled applicant has specifically requested these
- Prior to interview ensure any special requirements are in place to support applicants
- Maintain an awareness of the equality and diversity agenda and its impact on the recruitment process
- Take responsibility for withdrawing offers of employment where satisfactory clearances cannot be obtained

5.2 Recruitment and Temporary Staffing Manager

- Monitor compliance with Employment Check Standards – TRAC reports
- Monitor the recruitment service and aid improvements
- Develop, implement and monitor quality standards for the recruitment service
- Ensure training and advice for recruiting managers is available

- Keep up-to-date of changes in legislation, developments in best practice and NHS requirements and implement changes accordingly

5.3 Recruitment Team

- Working with Resourcing Support to provide guidance to recruiting managers on job descriptions and person specifications
- Provide an efficient and effective recruitment service
- Check that adverts, job descriptions and person specifications are non-discriminatory
- Liaise with the advertising agency when advertising media is used in conjunction with the Recruitment & Temporary Staffing Manager
- Ensure compliance with NHS Employment Check Standards
- Issue contract documentation
- Keep up-to-date of changes in legislation, developments in best practice and NHS requirements and implement changes accordingly
- Liaise with recruitment Agencies when an agency is used in conjunction with the Recruitment & Temporary Staffing Manager

6 Apprenticeships and Trainee Posts

6.1 Managers recruiting to posts in AfC Band 2 and Band 3 should routinely consider the option of deploying apprenticeship opportunities (where appropriate), or deploying 'trainee' employment opportunities. Advice can be obtained from the Education Department.

7 Fixed Term Appointments

7.1 Fixed term appointments are usually made in the following circumstances:

- To undertake a specific project which is time limited
- Where funding is limited to a specific period
- To cover a period of secondment
- To cover a period of maternity/ paternity leave
- To cover a career break

7.2 The duration of the fixed term appointment should be clearly stated in the advert and on any associated documentation, including the offer letter and contract of employment.

7.3 If there is any possibility that the post may become permanent after the fixed term period, this should be stipulated in the advert. In such an event the employee may be slotted into the permanent post once it has gone through the necessary vacancy authorisation procedures.

7.4 However, if the fixed term contract is not advertised with the possibility of becoming permanent stated on the advert at the time of advertisement and the post becomes permanent, in order to provide equality of opportunity the post will need to be advertised and the standard recruitment process undertaken before a substantive appointment can be made.

8 Recruitment Agencies and Temporary Workers –

8.1 For all Agency and Temporary Staffing workers, please liaise with the Temporary Staffing Team.

9 Acting up into a Higher band and Secondments

9.1 It is expected that all secondment opportunities are advertised via TRAC, this may be internal and/or external, depending on the circumstances and the appointment undertaken in accordance with this procedure.

9.2 Further information on Acting up staff into higher banding roles temporarily can be found in the Acting up and Secondment Policy (H28)

10 Recruitment Advertisements

11.1 Recruitment Advertisements shall reflect the realistic requirements of the post with regard to skills, qualifications and experience, and shall not include any unjustifiable requirements

11.2 Vacancies should be advertised via TRAC which interacts with NHS Jobs, Indeed, Jora and Linkdin, except in certain circumstances where those posts into which staff at risk of redundancy or are placed on the redeployment register may be redeployed.

11.3 For adverts to be placed in a professional journal or external media this request should be clearly stated in the recruitment documentation and will be subject to the confirmation that the necessary funding is available from the Directorate.

11.4 The advertising period is a minimum of one week, longer if using an external media and the recruitment team will provide guidance on as required. Where a high volume of applicants are received then the advert may close earlier provided this has been clearly stated in the advert.

11.5 In circumstances where an applicant declines a post, or the post is withdrawn because of unsatisfactory employment checks, then the Recruiting Manager may consider other suitable applicants without re-advertising if the closing date was less than 3 months prior. Once 3 months has expired the vacancy should be advertised in order to ensure equality of opportunity.

11.6 Where there is a Genuine Occupational Requirement to recruit a particular gender, ethnic background or age limitation, then this should be clearly identified within the advert in line with the current legislation. Advice can be obtained from the Recruitment Team.

11.7 Where a Certificate of Sponsorship is required please refer to the Right to work in the UK policy

12 Selection Process

12.1 The aim of the selection process is to appoint the candidate who, in the opinion of the interview panel, is the candidate most able to perform the duties outlined in the job description by reference to the person specification. Selection for posts will be based solely on objective criteria laid down in the person specification. Recruiting Managers have the responsibility, in conjunction with the interview panel, to ensure that criteria are not directly or indirectly discriminatory and that measurement of criteria is undertaken objectively. A copy of all interview documentation should be returned to the recruitment team and kept for a maximum of 12 months.

13 Shortlisting

13.1 It is good practice that all panel members are involved in the shortlisting process which should be undertaken using TRAC as this supports equality of opportunity in the fact that online applications are anonymous to recruiting managers

13.2 Shortlisting should be based on the criteria contained in the person specification. Essential criteria should be considered first, desirable criteria can be introduced to help make decisions between candidates who meet all the essential criteria. Shortlisting criteria should be used consistently across all applications.

13.3 The Trust is positive about employing disabled people and promotes the disability confident scheme. As such all applicants who have declared that they have a disability, and who meet the essential criteria for a post will be shortlisted and invited to interview. Please contact the recruitment team for support or guidance.

14 Interview Panels

14.1 Interview panels should consist of a minimum of two people one being the recruiting manager.

14.2 We encourage diverse panels for all roles. For roles at Band 8A and above an Inclusivity Rep may also be part of the panel

14.3 Recruiting Managers are responsible for making any 'reasonable adjustments' to the recruitment process and to any assessments, for candidates who have declared they have a disability.

14.4 Panel members should declare any personal interest in the appointment. If a candidate is a close friend or relative of a panel member ideally, they should not take part in the selection process. Where this is not possible, the panel member should make the other members aware and the panel should unanimously agree on the appointment. The relationship or business interest should be discussed and the impact on the candidate's suitability recorded.

14.5 It is worth noting that Managers should not have line management responsibility for a close friend or relative.

15 Methods of Selection

15.1 Interview questions should:

- be well prepared in advance
- be structured to gain evidence to support how well the candidate meets the person specification
- allow the candidate to ask questions and seek clarification

15.2 Managers drafting questions should consider what benefit the information obtained in response will be in making a decision against the person specification. The use of questions involving a scenario relevant to the post, which test the candidates' knowledge of key subject matters and which allow the best candidates to demonstrate how closely they match the person specification, are recommended.

15.3 Questions should generally be the same for each candidate and relate to the requirements of the post. However, this does not preclude specific questions about issues raised or requiring clarification in the application, for example, about a gap in the employment history or why an applicant wants to take a pay cut, nor probing questions as a follow up to an answer.

15.4 Health related questions should be avoided, unless specifically needing to assess an individual's ability to perform duties e.g. lifting heavy patient notes. Fitness to work checks are undertaken by Occupational Health. A recruitment co-ordinator will be able to provide support and advice on interview questions

15.5 The interview panel should take robust interview notes as these are used to make the appointment and to provide feedback to unsuccessful candidates. Panel should agree a scoring criterion prior to candidate interview.

15.6 Presentations can test the candidate's ability to deliver training or presentations in other contexts and knowledge and understanding of a topic. They should only normally be used for posts where training or presentations are a requirement for the post and candidates should be notified that this will be the case in advance of the interview.

15.7 Selection tests are a method of assessing a candidate's ability to perform the duties of the post, provided they are relevant, reliable, fair and unbiased and are recommended for all recruitment exercises. Examples include typing tests, maths, 'in tray' tests, writing a document, tests in the use of applicable software, case studies or scenario exercises and group exercises.

15.8 If psychometric tests are proposed, these should be discussed with the Recruitment Manager prior to advertising a vacancy and will be developed, administered and interpreted only by properly accredited people.

16 Interview Checklist

16.1 For all interviews being held via Microsoft Teams or any other form of video interview the Recruiting Manager must see photographic evidence of the candidate at commencement of the interview. The candidate should hold the ID next to their face so that the check can be completed. Please state what ID has been presented and tick

relevant box on interview pro forma.

16.2 Original ID – refer to the Right to Work Policy. All candidates will be requested to upload their ID via TRAC

16.3 Checking an individual's right to work using the temporary COVID-19 adjusted check measures:

Up to and including 5 April 2022, if you are carrying out a temporary adjusted check, you must:

- ask the worker to submit a scanned copy or a photo of their original documents via email or using a mobile app
- arrange a video call with the worker – ask them to hold up the original documents to the camera and check them against the digital copy of the documents, record the date you made the check and mark it as "adjusted check undertaken on [insert date] due to COVID-19"
- if the worker has a current Biometric Residence Permit or Biometric Residence Card or has been granted status under the EU Settlement Scheme or the points-based immigration system you can use the online right to work checking service while doing a video call – the applicant must give you permission to view their details.

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17 Making an Appointment

17.1 In selecting the successful candidate, the panel should make a decision based on the merit and eligibility of the candidates as assessed by:

- Whether there is evidence that they meet all the essential criteria on the person specification including qualifications (if required for the post)
- The content of the application
- Performance at interview
- Outcome of any selection tests

17.2 For audit purposes the panel should record on TRAC using the notes section why the applicant was chosen, this should include evidence of them meeting the essential criteria, their performance at interview and where appropriate them passing selection tests.

17.3 An appointment should not be made if the panel is not satisfied that any of the candidates meet all the essential requirements of the post.

17.4 As part of assessing the merit of each candidate, Managers should satisfy themselves that the information the candidate gives is authentic, consistent and honest. Any gaps in employment should be checked at interview along with any declaration information.

18 Making an Offer of Employment

18.1 Recruiting Managers should contact the successful candidate to make a verbal offer of appointment but should make it clear to prospective employees that any offer of appointment is conditional pending the successful completion of pre-employment checks.

18.2 The Recruitment Team will raise the conditional offer of employment via the TRAC system which will be emailed to the successful candidate. The offer letter will set out the conditions

of employment, including details of pre-employment checks and that the offer is subject to pre employment checks and satisfactory references.

At this point the recruitment co-ordinator will make arrangements with the individual to complete the necessary paperwork and pre-employment checks.

19 Feedback to Candidates

19.1 Recruiting managers are responsible for providing constructive feedback to unsuccessful candidates. Feedback should be provided to candidates either by telephone or face to face as soon as possible after the interview.

19.2 Unsuccessful candidates will also then be notified through TRAC.

20 Maintaining Records

20.1 Under GDPR, candidates have a right to request copies of all interview documentation.

20.2 All documentation relating to the recruitment campaign should be kept for 12 months, this includes but not limited to; application forms, interview notes, scoring forms and ability tests.

21 Pre-Employment Checks

21.1 The following checks should be undertaken before commencement of employment. The Recruitment Department will administer these checks where necessary.

Self-declaration Forms	A potential employee will be asked to complete a self-declaration form. This is checked by Recruitment for any disclosure information and any concerns raised with the recruitment manager. If a disclosure has been made and the post requires a DBS check, the individual cannot commence employment before their DBS has been received. Self-declaration information is subject to GDPR and should be handled, stored and destroyed in the same way as DBS information.
Disclosure and Barring Service (DBS) Checks (if applicable) **Previously known as CRB**	DBS checks are mandatory for all staff commencing employment in a role which is covered by Safeguarding Children and Vulnerable Adults legislation. Appointments can be made on a provisional basis, pending the outcome of the DBS. In extreme circumstances an individual who works with vulnerable adults may commence employment whilst waiting for their DBS to be returned if a risk assessment has been completed. Individuals working with Children should not commence employment without DBS clearance.

	Portability of DBS between organisations is not generally accepted unless the post is considered to be 'highly mobile' e.g. doctors in training. Further information regarding DBS is contained in the Trust DBS policy.
References and Employment History	References should validate three years employment and/or training. Ideally this should be with two separate employers (where possible), one of which should be the applicants current or most recent employer Where an individual has been with the same employer for three years or more, one reference may be sufficient References should be requested with the individual's consent and only for the preferred candidate(s) following interview References will be requested automatically via TRAC. Other references may be appropriate depending on the personal circumstances of the individual e.g. unemployed for a period of time, or working overseas. Any gaps of employment which are not explained in the application form should be discussed with the individual. The individual will then need to complete a employment history and gap statement, explaining the gap. These forms can be obtained from the Recruitment department.
Registration (if applicable)	Before appointing a health professional, recruitment will check whether the appointee is registered with the relevant regulatory body and whether any special conditions apply. This information will be fed back to the recruiting manager for consideration Recruitment will check the Alert Notice Register prior to interview. If an individual is subject to an alert notice then the recruitment manager will check whether they are suitable to be employed in the position. The information will be reported back to the recruiting manager and HR to make the final decision.
Qualifications (if applicable)	Qualifications relevant to the position applied for should be verified once a job offer is made. The following should occur: • Request original certificates and take copies • Check that the details on certificates match those detailed as

	part of the application If in any doubt contact the awarding body directly, where possible, to confirm the details. Where a check has been made by the relevant regulatory body it should not be necessary to verify qualifications separately.
Work Health Assessments	All NHS staff should have a pre-appointment health screening, which adheres to equal opportunities legislation and good occupational health practice. Pre-appointment health checks are carried out to: • ensure that prospective staff are physically and psychologically capable of doing the work proposed, taking into account any current or previous illness • identify anyone likely to be at excess risk of developing work-related diseases from hazardous agents present in the workplace • ensure, as far as possible, that the prospective employee does not represent a risk to patients and that they will be doing work that is suitable and safe for them. All checks should take into account the requirements of the Equality Act 2010 and reasonable adjustments should be made to ensure that people can work in the NHS. Occupational health checks are made once a job offer has been made. The Trust makes it clear to prospective employees that any offer of appointment is conditional pending the successful completion of pre-employment checks, including an occupational health check.

22 Confirmation Offer of Employment

22.1 Once satisfactory pre-employment checks have been received, the Recruitment team will inform the recruiting manager through TRAC. A start date can then be arranged with the candidate.

22.2 Contracts will not be issued without the necessary pre-employment checks being completed

23 Pre-Employment Checks not Completed

23.1 If information for pre-employment checks cannot be obtained, and the reasons are genuine, the recruiting manager should decide whether to continue with the employment or withdraw the offer of employment.

23.2 If pre-employment checks are not satisfactory e.g. poor reference, the recruiting manager may decide to withdraw the offer of employment. Advice should be sought from HR or Recruitment Manager before withdrawing any offer of employment to ensure

compliance with employment law.

23.3 Should the offer of employment be withdrawn, this should be discussed with the candidate as soon as possible, followed by a letter confirming the decision.

23.4 The candidate has the right to request information detailed about them from the interview process, this includes references and interview notes.

24 Contract of Employment

24.1 On receipt of all satisfactory pre-employment checks, a written offer of employment will be made through the issue of a Contract of Employment. The contract will be supplied by the Recruitment team via TRAC to the recruiting manager and candidate. The candidate must accept their contract through TRAC to complete the recruitment process.

24.2 The Contract of Employment must be issued before the candidates start date. The candidate must not start working until their contract has been issued.

25 Candidate Appointment & Induction

25.1 On the day of commencement of employment with the Trust, the appropriate line manager must ensure that the appropriate electronic new starter form is completed and submitted to workforce information team.

25.2 Line managers have a responsibility to ensure new starters are booked onto corporate induction and are registered with a HIVE account.

25.3 As well as undertaking the corporate induction programme, there is also a need for all Line Managers to ensure that local induction takes place to ensure that new employees feel at ease and becomes familiar with what happens in their specific area/service/job role.

25.4 For more information refer to the Induction Policy.

26 Monitoring

26.1 The Recruitment manager will monitor the recruitment processes to ensure equality of opportunity and that processes are not discriminatory.

26.2 Statistical data on the profile of applicants can be provided from TRAC to the Board as requested.

27 Training and Awareness

27.1 Advice and support will be provided by the Resourcing Service Manager, Recruitment and Temporary Staffing Manager and HR team to support staff and managers in adhering to this policy and their understanding of dealing with recruitment and selection.

27.2 The recruitment team will raise awareness of this policy through the publication of information on ICON and to advise staff of changes to the policy through the staff bulletin and ratification processes.

28 References

- NHS employment Check Standards – Last 3 years employment history required from all applicants unless internal whereby we will seek one reference from the current line manager.

29 Contact Details

29.1 Any queries regarding this policy should be directed to the Recruitment and temporary Staffing Manager or HR Team of the Directorate of People .

- Recruitment and Temporary Staffing Manager – 01803 656762
- HR Helpline – 01803 655754 (ext. 55754)

30 Monitoring, Audit and Review Procedures

30.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the Directorate of People unless legislative changes determine otherwise.

32. Appendix 1 – Appointments to the Board

(Extract from NHS Foundation Trusts: Code of Governance 2014)

1.0 Principles

1.1 There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board. Directors of NHS foundation trusts must be "fit and proper" to meet the requirements of the general conditions of the provider licence.

1.2 The search for candidates for the board of directors should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board and the requirements of the trust.

1.3 The board of directors and the council of governors should also satisfy themselves that plans are in place for orderly succession for appointments to the board, so as to maintain an appropriate balance of skills and experience within the NHS foundation trust and on the board.

2.0 Code provisions

2.1 The nominations committee or committees, with external advice as appropriate, are responsible for the identification and nomination of executive and non-executive directors. The nominations committee should give full consideration to succession planning, taking into account the future challenges, risks and opportunities facing the NHS foundation trust and the skills and expertise required within the board of directors to meet them.

2.2 Directors on the board of directors and governors on the council of governors should meet the "fit and proper" persons test described in the provider licence. For the purpose of the licence and application criteria, "fit and proper" persons (see Appendix 3) are defined as those without certain recent criminal convictions and director disqualifications, and those who are not bankrupt (undischarged). Trusts should also abide by the updated guidance from the CQC regarding appointments to senior positions in organisations subject to CQC regulations.

2.3 There may be one or two nominations committees. If there are two committees, one will be responsible for considering nominations for executive directors and the other for non-executive directors (including the chairperson). The nominations committee(s) should regularly review the structure, size and composition of the board of directors and make recommendations for changes where appropriate. In particular, the nominations committee(s) should evaluate, at least annually, the balance of skills, knowledge and experience on the board of directors and, in the light of this evaluation, prepare a description of the role and capabilities required for appointment of both executive and non-executive directors, including the chairperson.

2.4 The chairperson or an independent non-executive director should chair the nominations committee(s). At the discretion of the committee, a governor can chair the committee in the case of appointments of non-executive directors or the chairman.

2.5. The governors should agree with the nominations committee a clear process for the nomination of a new chairperson and non-executive directors. Once suitable candidates have been identified the nominations committee should make recommendations to the council of governors.

2.6 When nominations for non-executives, including the appointment of a chairperson or a deputy chairperson, are being discussed, there should be a majority of governors on the committee and also a majority governor representation on the interview panel.

2.7 When considering the appointment of non-executive directors, the council of governors should take into account the views of the board of directors and the nominations committee on the qualifications, skills and experience required for each position.

2.8 The annual report should describe the process followed by the council of governors in relation to appointments of the chairperson and non-executive directors.

2.9 An independent external adviser should not be a member of or have a vote on the nominations committee(s).

2.10 A separate section of the annual report should describe the work of the nominations committee(s), including the process it has used in relation to board appointments. The main role and responsibilities of the nominations committee should be set out in publicly available, written terms of reference.

3.0 Relevant statutory requirements

3.1 It is a requirement of the 2006 Act that the chairperson, the other non- executive directors and – except in the case of the appointment of a chief executive – the chief executive, are responsible for deciding the appointment of executive directors. The nominations committee with responsibility for executive director nominations should identify suitable candidates to fill executive director vacancies as they arise and make recommendations to the chairperson, the other non-executives directors and, except in the case of the appointment of a chief executive, the chief executive.

3.2 It is for the non-executive directors to appoint and remove the chief executive. The appointment of a chief executive requires the approval of the council of governors.

3.3 The governors are responsible at a general meeting for the appointment, re- appointment and removal of the chairperson and the other non-executive directors.

33. Appendix 2– Fit & Proper Persons

This appendix provides a summary of the regulations, as well as a practical toolkit to support the Trust in assuring itself that a robust and due process has been followed with regards to the fit and proper persons test.

The regulations

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

The requirement for fit and proper persons

Trusts must not appoint a person to an executive director level post (including associate directors) or to a non-executive director post unless they are:

- Of good character;
- Have the necessary qualifications, skills and experience;
- Are able to perform the work that they are employed for after reasonable adjustments are made;
- Can supply information as set out in Schedule 3 of the Regulations

The regulations also states that in assessing whether a person is of good character, the matters considered must include:

- 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, and
- 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.

The CQC's definition of good character is not the objective test of having no criminal convictions but instead resets upon a judgement as to whether the person's character is such that they can be relied upon to do the right thing under all circumstances. This implies discretion for boards and councils in reaching a decision and allows for the fact that people can and do change over time.

The regulations list categories of persons who are prevented from holding the office and for whom there is no discretion:

- The person is an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged;
- 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;
- 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(40);
- The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- 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;

- 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;
- The person has 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 discharging any functions relating to any office or employment with a service provider.

It will be the responsibility of the chair of the provider to discharge the requirement placed on the provider, to ensure that all directors meet the fitness test and do not meet any of the 'unfit' criteria.

Employment checks will be carried out in accordance with NHS Employment Check Standards, issued by NHS Employers including:

- two references, one of which must be most recent employer;
- qualification and professional registration checks;
- right to work checks;
- proof of identity checks;
- occupational health clearance;
- DBS checks (where appropriate);

- search of insolvency and bankruptcy register;
- search of disqualified directors register.

The CQC expects senior leaders to set a tone and culture of the organisation that leads to staff adopting a caring and compassionate attitude. It is important therefore that in making appointments boards and councils take account of the values of the organisation and the extent to which candidates provide a good fit with those values.