Fit and Proper Person Policy

# Introduction

New [CQC Regulations](about:blank) came into effect for all healthcare providers on 27 November 2014 requiring directors to be fit and proper persons ([Regulation 5)](about:blank), and providers to implement a duty of candour when dealing with complaints ([Regulation 20)](about:blank). These Regulations, and the fundamental standards of care, were revised and brought into force more widely for all care providers, less partnerships, from 1 April 2015.

Regulation 5 establishes a statutory requirement governing the appointing of or having in place individuals as directors, or individuals performing the functions of, or functions equivalent or similar to, the functions of a director ([Regulation 5(2)](about:blank).

Directors must satisfy all the requirements set out in Regulation 5(3) and be declared fit and proper persons. Individuals must be: of good character, have the necessary qualifications, competence, skills and experience for their role, have the appropriate level of physical and mental fitness (after reasonable adjustments have been made), have not been party or privy to any serious misconduct or mismanagement in the course of carrying on a regulated activity, and not be deemed unfit under the Regulation provisions. Providers must also ensure that certain information regarding the individuals is available to the CQC.

# Purpose

The purpose of the Regulation is to ensure that all board level appointments at Zenith Care Recruitment carrying on a regulated activity are held responsible for the overall quality and safety of the care provided, for making sure the care meets the existing regulations and effective requirements of the [Health and Social Care Act 2008 (Regulated Activities) Regulations 2014,](about:blank) and that providers and directors can be held to account. Services must be safe, effective, caring, responsive, and well-led.

The aim of this document is to provide the policy and procedures by which Zenith Care Recruitment will support its commitment to the fit and proper person requirements, and to ensuring it is not managed or controlled by individuals who present an unacceptable risk either to Zenith Care Recruitment or to the people receiving a service: that Zenith Care Recruitment directors are fit and proper to assume responsibility for the overall quality and safety of care delivered.

# Definitions

## Director

A director is defined by the [CQC](about:blank) as follows:

'Director' includes all board level appointments of NHS foundation trusts, NHS trusts and special health authorities and other bodies carrying on a regulated activity that are responsible for the overall quality and safety of care and for making sure that care meets the requirements of the [Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.](about:blank) It includes executive and non-executive, permanent, interim and associate positions, irrespective of their voting rights.

This definition will apply for the purposes of this policy. The policy covers the application of [Regulation 5](about:blank) to all directors and those performing functions equivalent to directors.

## Good character

The CQC defines good character as “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.”

# Scope

The Care Quality Commission (CQC) has fully integrated the fit and proper person requirements (FPPR) into their regulatory registration and inspection framework. Zenith Care Recruitment must demonstrate that it is meeting these requirements in order to continue to deliver regulated services, or to vary its registration with the CQC should it wish to do so.

The FPPR applies to all directors, or those performing functions equivalent to directors, whether executive, non-executive, permanent, interim, or associate directors, and irrespective of directors' voting rights. Although it is for Zenith Care Recruitment to determine which individuals fall within its scope, the CQC will take a view on how effectively Zenith Care Recruitment has discharged its responsibility. However, the CQC will not undertake the fit and proper persons' test of a director per se, or determine what is serious mismanagement or misconduct.

The CQC will check and monitor the extent to which Zenith Care Recruitment meets the requirements:

* At the point of registration.
* During an inspection. Under the 'well-led' question, CQC will confirm that Zenith Care Recruitment has undertaken appropriate checks and satisfied itself that on appointment, and subsequently, all new and existing directors meet the requirements.
* On receipt of concerning information regarding directors, where that information may need fit and proper person checks to be performed. This will need to be addressed in line with safeguarding and whistleblowing protocols. The CQC will adopt the following process:
  + Convene a management review meeting led by the Chief Executive or other person to determine whether the information is significant and should be passed to Zenith Care Recruitment.
  + Request consent from the director to pass the information to Zenith Care Recruitment. If not received the information may still be passed but governed by the General Data Protection Regulation 2018
  + Zenith Care Recruitment response will either convince CQC that the due process was followed, or lead to further dialogue, an inspection, or regulatory action.
  + Immediate action will not be taken if it is reasonable to wait for a tribunal decision. Thereafter CQC will assess whether Zenith Care Recruitment's judgement is reasonable.

Where there is a serious or systemic failure of a provider:

* The director's name will not be released during the process
* The CQC will determine the most appropriate, relevant and proportionate approach to meeting the requirements on a case-by-case basis.

# Requirement

The CQC assesses the fitness of health service providers by focusing on the fitness of the nominated individuals. It will consider whether Zenith Care Recruitment has taken the appropriate steps to ensure that individuals are:

* of good character;
* have the necessary qualifications, competence, skills and experience for their role;
* have the appropriate level of physical and mental fitness; and
* have not been party to any serious misconduct or mismanagement in the course of carrying on a regulated activity, and are not deemed unfit under the Regulation provisions.

Providers must also ensure that certain information regarding the individuals is available to the CQC.

# Policy

Zenith Care Recruitment fully endorses the importance of ensuring that all directors meet the fit and proper person's requirements under [Regulation 5.](about:blank#full-regulation)

Zenith Care Recruitment will not permit any individual to hold the post of director who does not meet the standards required to be approved as a fit and proper person, either on appointment or through changing circumstances. Decisions may be made regarding whether an individual meets the FPPT after reflecting on the totality of all evidence available.

Zenith Care Recruitment checks and procedures to implement the regulatory requirements are set out in the company Policy.

Overall responsibility lies with the Company Secretary.

## Regularity of review

Zenith Care Recruitment will require all directors to complete an annual declaration confirming that they meet the fit and proper person’s requirements under Regulation 5.

Zenith Care Recruitment will fully assess and review the fitness of all directors every 3 years based on the risk to Zenith Care Recruitment and people using its service.

## Documentation

Documentation verifying the checks conducted for each individual will be retained in accordance with Trust policy throughout their employment with Zenith Care Recruitment, and subsequently to be available through archiving. Organisations registered with the Disclosure and Barring Service (DBS) must observe the Code of Practice for Registered Persons and Other Recipients of Disclosure Information, to ensure the information is stored correctly.

The Company Secretary is responsible for making the information required by Regulation 5 or other enactments available for CQC inspection (see Appendix 2). Any such request is to be notified to the Audit and Risk Committee.

## Responses to concerns

Any concerns regarding a director’s ability to meet the fit and proper person’s requirements must be reported to the Company Secretary directly as soon as they arise. The Company Secretary will follow the Procedure for responding to concerns regarding Fit and Proper status of Directors.

## Compliance

If an individual who holds an office or position no longer meets the requirements, Zenith Care Recruitment will take such action as is necessary and proportionate to ensure that the relevant office or position is held by someone who does meet the requirements.

Zenith Care Recruitment may suspend individuals on full pay during investigations into whether the requirements are met, or if at any stage Zenith Care Recruitment becomes aware of information which may mean an individual is not a fit and proper person. The issues will be addressed on a case by case basis. Where the individual is a health care professional, social worker or professional registered with a health care or social care regulator, Zenith Care Recruitment will inform the regulator in question where appropriate.

Interim measures may be required to minimise the risk to people who use the services.

Where Zenith Care Recruitment is unable to demonstrate it has taken the appropriate steps to achieve compliance, CQC will decide whether to take regulatory action.

# Roles and responsibilities

Zenith Care Recruitment is responsible for the appointment, management and dismissal of its directors, and for ensuring that the FPPR is met.

Zenith Care Recruitment has a responsibility to implement the following on a continuing basis:

* Provide the evidence that appropriate systems and processes are in place to ensure that all new and existing directors are and continue to be fit and proper persons, and do not meet any of the unfitness criteria set out in Schedule 4 part 2 of the regulations.
* Make every reasonable effort to assure itself about the suitability of an individual by all means available.
* Make specified information about board directors available to the CQC.
* Be aware of the various guidelines available, and to have implemented procedures in line with this best practice.
* Inform the regulator where a board member no longer meets the requirement and is registered with a health or social care professional regulator, and take action to ensure the position is held by someone meeting the requirement.

## Trust Chair

It is the overall responsibility of the Chair of Zenith Care Recruitment to discharge the FPPR, to ensure all directors meet the fitness test and not the unfit criteria, and to declare to the CQC that Zenith Care Recruitment complies with the requirements of Regulation 5.

Implementation of the requirements of this policy is delegated to the Company Secretary.

## Audit and Risk Committee

The Audit and Risk Committee has overall responsibility for approving this policy and subsequent amendments, and will seek assurance that Zenith Care Recruitment is compliant with the requirements of this policy.

## Company Secretary

The Company Secretary will:

* Keep this policy and its procedural requirements updated in accordance with regulatory guidance and best practice.
* Arrange for existing and prospective directors to make the necessary annual declarations, for notifying all directors that they are responsible for informing Zenith Care Recruitment if they have reason to believe that they no longer meet the fit and proper person standard.
* Ensure the relevant information is retained for each director in accordance with the Regulation 5 requirements and Appendix 2.

## Head of HR

The Head of HR will:

* ensure the relevant pre-employment and continuing employment checks are carried out satisfactorily in accordance with Appendix 2
* have responsibility for updating the contracts of employment and related relevant employment and recruitment policies to reflect the requirements of this policy
* have responsibility for bringing to the attention of the Company Secretary any variations in

NHS Employment Check Standards further to the publication of this policy

# Monitoring or audit

The Company Secretary will report to the Audit and Risk Committee annually on compliance with the requirements of this policy.

**APPENDIX 2**

**‘Fit Person’ Requirements**

Zenith Care Recruitment will ensure that registered persons and employees must meet the ‘fit person’ requirements of the Care Quality Commission.

They must meet all legal requirements; Zenith Care Recruitment will ensure that anyone who would be employed or appointed as a director to a position of authority should be:

* of good character
* qualified, competent, sufficiently experienced to carry out the role
* sufficiently healthy to carry out role
* made eligible for the role only if the person has no personal history of serious misconduct or mismanagement in carrying on a regulated care activity

**Regulation 5 Fit and Proper Person**

Directors of organisations registered with the Care Quality Commission must meet similar & quote; fit person &quote; requirements to those for registered persons and employees.

They must meet its legal requirements; the company will ensure that anyone who is or has been appointed as a director to a position of authority is:

* Of good character
* They must be qualified, competent, sufficiently experienced to carry out the role
* Must sufficiently healthy to carry out the role
* As no personal history of serious misconduct or mismanagement in carrying on a

regulated care activity, which would make the person ineligible for the role.

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| Signed: | \_\_\_\_\_\_\_Kechi Anyanwu\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: | \_\_\_\_\_\_05th October 2021\_\_\_\_\_\_\_\_\_\_\_\_ |
| Policy review date: | \_\_\_\_\_30th April 2022\_\_\_\_\_\_\_\_ |